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W.P.No.26.....

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2024

CORAM:

THE HON'BLE MR.D.KRISHNAKUMAR
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.P.No.26523 of 2024 and
W.M.P.Nos.29017 & 29018 of 2024

Mr.Kumaravel Varadharaj

... Petitioner

-VS-

The Authorized Officer / Chief Manager,
Canara Bank,
Uthiragadikaval Branch,
Thethukadu Post,
Uthiragagaikaval,
Namakkal District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records in order in Crl.M.P.No.440 of 2024 dated 09.08.2024 on the file of the Chief Judicial Magistrate, Namakkal and quash the same as illegal, incompetent, without jurisdiction and violative of Section 31(g) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and further direct the respondent to reconstruct the loan amount of the petitioner.

For Petitioner : Mr.M.Muruganantham
For Respondent : Mr.R.Sreedhar

ORDER



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(By the Hon'ble Acting Chief Justice)

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This Writ Petition has been filed, seeking to quash the order dated 09.08.2024 passed by the Chief Judicial Magistrate, Namakkal in CrI.M.P.No.440 of 2024, by which an Advocate Commissioner was appointed for taking physical possession of the property.

2. On going through the averments made in the affidavit and the relief sought for, we are of the view that the petitioner has challenged the order passed in respect of taking possession of petition schedule property under Section 14 of the SARFAESI Act, 2002, which is *per se* not maintainable before this Court in terms of the judgment of the Apex Court in the case of **Phoenix ARC Private Limited vs. Vishwa Bharati Vidya Mandir and others**, reported in **(2022) 5 SCC 345**, holding that any Writ Petition filed against the proposed action to be taken under Section 13(4) of the SARFAESI Act, 2002 is an abuse of process of the Court in view of the statutory, efficacious remedy available by way of appeal under Section 17 of the SARFAESI Act. In yet another recent judgment passed in **South Indian Bank Ltd and others vs. Naveen Mathew Philip and another**, reported in **MANU/SC/0400/2023**, the Supreme Court has reiterated its earlier decision.



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3. Following the dictum laid down by the Supreme Court (supra), this Court, in which both of us are parties, passed an order dated 05.08.2024 in W.P.No.21799 of 2024, dismissing the Writ Petition filed against such notice. For the sake convenience, the relevant Paragraph Nos.4 to 7 of the judgment of this Court are extracted hereunder:

“4. The Supreme Court in the case of The Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C., reported in (2018) 3 SCC 85 and Agarwal Tracom Private Limited Vs. Punjab National Bank and others, reported in (2018) 1 SCC 626 held that the aggrieved parties cannot challenge the SARFAESI proceedings directly by filing a writ petition under Article 226 of the Constitution of India without exhausting the appeal remedy available to them.

5. In ICICI Bank Limited v. Umakanta Mohapatra, reported in 2018 SCC Online SC 2349, the Supreme Court has referred to the decision in Mathew K.C. case, referred supra, and has observed that despite several judgments, including the decision of Mathew K.C., supra, the High Courts continue to entertain matters which arise under the SARFAESI Act and keep granting interim orders in favour of persons whose accounts are declared as Non-Performing Assets. Further, the Supreme Court held that writ petition filed by the aggrieved party without exhausting the statutory remedy available under the SARFAESI Act is not maintainable.

6. In Phoenix ARC Private Limited v. Vishwa Bharati Vidya Mandir and others, (2022) 5 SCC 345, after taking note of various earlier decisions, the Apex Court held that writ petitions at the instance of borrowers against the proposed action to be taken under Section 13(4) of the SARFAESI Act, 2002 is an abuse of process of the Court in view of the statutory, efficacious remedy available by way of appeal under Section 17 of the SARFAESI Act. It was further held that under such situation the High Court ought not to have entertained the writ petitions. The relevant portion of the said decision reads thus:



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"10. In *Union Bank of India v. Satyawati Tandon*, (2010) 8 SCC 110, it was observed and held by this Court that the remedies available to an aggrieved person against the action taken under Section 13(4) or Section 14 of the SARFAESI Act, by way of appeal under Section 17, can be said to be both expeditious and effective.

...

12. In the case of *Kanaiyalal Lalchand Sachdev v. State of Maharashtra*, (2011) 2 SCC 782, after referring to the earlier decisions of this Court in the cases of *Sadhana Lodh Vs. National insurance Co. Ltd. and Anr.*, (2003) 3 SCC 524; *Surya Dev Rai Vs. Ram Chander Rai and Ors.*, (2003) 6 SCC 675 and *State Bank of India Vs. Allied Chemical Laboratories and Anr.*, (2006) 9 SCC 252 while upholding the order passed by the High Court dismissing the writ petition on the ground that an efficacious remedy is available under Section 17 of the SARFAESI Act, it was observed that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person." [emphasis supplied]

7. Very recently, the Apex Court in the case of *South Indian Bank Ltd and others v. Naveen Mathew Philip and another*, MANU/SC/0400/2023, deprecated the practice adopted by the High Courts whereby the writ petitions are being entertained as against proceedings initiated by the secured creditor under SARFAESI Act and further held that when the statute prescribes a particular mode, an attempt to circumvent should not be encouraged by the writ Court."

4. In view of the authoritative pronouncement of the Supreme Court in a catena of judgments, which have been followed by this Court, we are of the view that the instant Writ Petition is not maintainable before this Court and is liable to be dismissed.



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5. Accordingly, this ***Writ Petition is dismissed***. It is open to the petitioner to work out his remedy available under Section 17 of the SARFAESI Act before the appropriate forum. Two weeks' time is granted to the petitioner to prefer an appeal before the appropriate Forum. Registry is directed to return the original papers, if any to the petitioner forthwith after retaining xerox copies of the same. No costs. Consequently, connected Miscellaneous Petitions are closed.

[D.K.K.,ACJ.] [P.B.B,J.]
09.09.2024

Index: Yes / No
Internet: Yes / No
Speaking Order/Non Speaking Order
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HON'BLE ACTING CHIEF JUSTICE,
AND
P.B.BALAJI,J.,
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