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W.P.No.27119 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2024

CORAM :

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

and

THE HONOURABLE MR.JUSTICE P.B. BALAJI

W.P.No. 27119 of 2024

and WMP.Nos. 29639 and 29640 of 2024

M/s. TCS Shoes,
represented by its Partner,
Sangali Raj D,
Ground Floor SF No. 10/2,
Samathuva Nagar Main Road,
Kazhipattur,
Kancheepuram - 603101

..Petitioner

Vs

1. The Canara Bank,
Sholinganallur Branch,
No. 124, SAJ Complex, OMR,
Sholinganallur, Chennai – 600119.

2. M/s.Carbon Minus Energy Pvt Ltd.,
357, 1st Cross, 5th Link Road,
Nehru Nagar, Old Mahabalipuram Road,
Chennai- 600006.

..Respondents



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PRAYER: Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of certiorari, calling for the records pertaining to the impugned notices viz., (i) Demand Notice dated 06.09.2022; (ii) Sale/Auction Notice dated 23.12.2022, 19.01.2023, 30.01.2024 and 04.06.2024; and (iii) Eviction Notice dated 23.08.2023 issued by the 1st respondent.

For Petitioner : Mr. Hari Radhakrishnan

For Respondents : Mr M.A. Abdul Wahab

ORDER

(Order of the Court was made by the Hon'ble Acting Chief Justice)

Challenging the demand notice dated 06.09.2022; (ii) Sale/Auction Notice dated 23.12.2022, 19.01.2023, 30.01.2024 and 04.06.2024; and (iii) Eviction Notice dated 23.08.2023 issued by the 1st respondent, the present writ petition is filed.

2. The learned counsel appearing for the petitioner has submitted that the petitioner has received a demand notice dated 06.09.2022 informing that



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the petitioner's loan account had been classified as a Non-Performing Asset as of 04.09.2022. Pursuant to the said notice, the respondent has issued a sale notice dated 23.12.2022 and additional sale notices dated 19.01.2024, 30.01.2024 and 04.06.2024 to the petitioner and proceeded under SARFASI Act.

3. The learned counsel appearing for the petitioner has further submitted that they made several attempts to negotiate one time settlement and to identify a potential buyer to settle the dues. The sale price of 1,75,00,000/- is much lower than the current market value of the petitioner's factory as per the valuation reports from the respondent bank dated 18.02.2021 and 21.12.2023 mentioning the current market value as Rs.2,52,13,000/- and Rs.2,10,00,000/- respectively.

4. The learned counsel appearing for the petitioner has further submitted that they have been in possession of the property till date, therefore the action of the respondent initiating coercive measures under the SARFAESI Act is violation of the statutory protections afforded to



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MSMEs. Therefore, the impugned notices issued by the respondent-Bank is liable to be set aside.

5. The learned counsel appearing for the respondent-Bank strongly objected the aforesaid submissions made by the learned counsel for the petitioner and submitted that the respondent-bank after following due procedure as mandated under SARFAESI Act, had conducted E-auction on 21.06.2024 and sale certificate was also issued to the successful auction purchaser. The writ petitioner without challenging the same before the DRT, has approached this Court by way of this writ petition, which is not maintainable in law and the writ petition is liable to be dismissed on this sole ground alone.

6. Heard both sides and perused the materials available on record.

7. Admittedly, the petitioner was served with demand notice on 06.09.2022 and subsequently, sale notices and Possession Notice under Section 13 (4) of the SARFAESI Act, and E-auction was also conducted



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and sale certificate was also issued in favour of successful auction purchaser. The petitioner also not disputed the said fact. However, the petitioner has filed the present writ petition challenging the demand notice and sale certificate issued by the respondent-Bank, without exhausting the appeal remedy before the appropriate forum.

8. A similar issue has been decided by this Hon'ble Division Bench, in W.P.No. 21799 of 2024, dated 05.08.2024 wherein this Court by relying upon the recent decisions of the Hon'ble Supreme Court, has dismissed the writ petition observing that the petitioner is relegated to the remedy of preferring appeal against the notice. The relevant portion of the said judgment is extracted below;

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:

"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



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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]

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8. In such view of the matter, we are not inclined to interfere with the impugned possession notice and the petitioner is relegated to the remedy of preferring appeal against the said notice. The writ petition is, accordingly, dismissed.”

9. In the present writ petition, the petitioner has an effective alternative remedy available by filing an appeal before the Debts Recovery



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Tribunal under Section 17 of the SARFAESI Act. However, instead of pursuing this remedy, the petitioner has approached this Court, which is legally unsustainable and liable to be dismissed in light of the aforementioned decision of the Hon'ble Supreme Court. However, the petitioner is granted the liberty to work out remedy in the manner known to law.

10. In the result, the writ petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

(D.K.K., A.CJ.) (P.B.B.J.)

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