BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD) No.2038 of 2024
and W.M.P.(MD) No.2048 of 2024

Mrs.L.Bhuvaneshwari ... Petitioner

-vs-

The Authorised Officer,
Reliance Commercial Finance Limited,
Ampa Manor, No.107/2, 3rd Floor,
Nelson Manickam Road,
Chennai – 600 029. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records relating to the impugned Demand Notice dated 27.01.2022, issued by the Respondent under Section 13(2) of SARFAESI Act, 2002 and quash the same.

For Petitioner : Mr.G.Vairavasubramanian

O R D E R

[Order of the Court was made by D.KRISHNAKUMAR, J.]

This Writ Petition has been filed challenging the Demand Notice dated 27.01.2022, issued by the Respondent under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002).

2. According to the petitioner, the impugned notice has not furnished the details of the amount payable by the petitioner and therefore, the impugned notice is illegal. Therefore, the petitioner has come forward with this Writ Petition.

3. A perusal of Section 13(3A) of SARFAESI Act, 2002, clearly shows that if, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the

conclusion that such representation or objection is not acceptable or tenable, he shall communicate within fifteen days of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower. Therefore, when a specific provision is available under the Act to make representation or raises any objection, the petitioner has to approach the concerned authority with the representation or objections. However, without making any representation or objections, the petitioner has approached this Court with this Writ Petition.

4. Further, this writ petition is not maintainable in view of the following judgments:-

(i) In ***ICICI Bank Limited and Others Vs. Umakanta Mohapatra and Others*** reported in ***2019 (13) SCC 497***, the Hon'ble Supreme Court in paragraph Nos.2 & 3 has held as follows:

> "2. Despite several judgments of this Court, including a judgment by Hon'ble Mr. Justice Navin Sinha, as recently as on 30.01.2018, in Authorized Officer, State Bank of Travancore and Anr. v. Mathew K.C., MANU/SC/0054/2018 : (2018) 3 SCC 85, the High Courts continue to entertain matters which arise under the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 (SARFAESI), and keep granting interim orders in favour of persons who are Non-Performing Assets (NPAs). 3. The writ petition itself was not maintainable, as a result of which, in view of our recent judgment, which has followed earlier judgments of this Court, held as follows: 17. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. and Anr. MANU/SC/0639/1997 : (1997) 6 SCC 450, observing:

> 32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops".

(ii) In ***C.Bright Vs. The District Collector and Others*** reported in ***AIR 2020 SC 5747***, the Hon'ble Supreme Court in paragraph No.22 has held as follows:

"22. Even though, this Court in ***United Bank of India v. Satyawati Tondon and Ors. MANU/SC/0541/2010 : (2010) 8 SCC 110*** held that in cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which will ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Hindon Forge Private Limited has held that the remedy of an aggrieved person by a secured creditor under the Act is by way of an application before the Debts Recovery Tribunal, however, borrowers and other aggrieved persons are invoking the jurisdiction of the High Court Under Articles 226 or 227 of the Constitution of India without availing the alternative statutory remedy. The Hon'ble High Courts are well aware of the limitations in exercising their jurisdiction when affective alternative remedies are available, but a word of caution would be still necessary for the High Courts that interim orders should generally not be passed without hearing the secured creditor as interim orders defeat the very purpose of expeditious recovery of public money".

5. In view of the above, the writ petition stands dismissed with liberty to the petitioner to approach the respondent bank with representation / objections. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

[D.K.K., J.] **[R.V., J.]**
01.02.2024

Index : Yes / No
Internet : Yes / No
SJ

D.KRISHNAKUMAR, J.
and
R.VIJAYAKUMAR, J.

SJ

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