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W.P.(MD) No.3060 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2024

CORAM:

THE HONOURABLE **MR.JUSTICE D.KRISHNAKUMAR**

AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.P.(MD)No.3060 of 2024

and

W.M.P.(MD)No.3039 of 2024

M.Philip

... Petitioner

-Vs-

1.The Centralised Receipt and Processing Centre,
Reserve Bank of India, Fort Glacis,
Chennai-600 001.

2.M/s.Vistaar Financial Services Private Limited,
Plot No.59 & 60-23, 22nd Cross,
29th Main, BTM Layout 2nd Stage,
Bengaluru-560076.

3.The Branch Manager,
State Bank of India,
Nagercoil, Kanyakumari District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent pertaining to its impugned order in RBI/CMS/N202324023375286/2023-24, dated 27.12.2023 and to quash the same



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and consequently, to direct the 1st respondent to take appropriate action against the 2nd respondent for the illegalities committed by them within a time frame that may be fixed by this Court.

For Petitioner : Mr.S.C.Herold Singh

For R3 : Mr.G.Radhakrishnan

ORDER

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

Challenging the SARFAESI proceedings initiated by the 1st respondent, the petitioner has filed this Writ Petition.

2.Though the petitioner is having an efficacious alternative remedy before the Debts Recovery Tribunal, without exhausting the said remedy, he has approached this Court by filing this Writ Petition. 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



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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”.



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(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”.



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3. In view of the above, this Writ Petition is dismissed. However, the petitioner is at liberty to approach the jurisdictional Debts Recovery Tribunal to seek his remedy. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

[D.K.K., J.] & [R.V., J.]

13.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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Note: Registry is directed to return the original order to the petitioner, after replacing the same with a xerox copy.



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AND

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