

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2021

CORAM :

**THE HON'BLE MR. JUSTICE M.DURAI SWAMY
AND
THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

**W.P.No.27644 of 2021 and
W.M.P.Nos.29183 & 29185 of 2021**

R.Ganesan

.. Petitioner

Vs.

- 1.M/s.ASREC (India) Limited,
Room No.3, III Floor,
Wellington Estate, 53,
Ethiraj Salai, Egmore,
Chennai – 600 008.
- 2.Kum Kum Malhotra
- 3.Viswanatha Menon
- 4.Sharada Menon
- 5.The Karur Vysya Bank Ltd.,
Main Branch, Kumaran Road,
Tirupur – 640 601.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of certiorarified mandamus to call for the records relating to the proceedings of the learned Chief Judicial Magistrate of Tiruppur District at Tiruppur in Crl.M.P.No.542/2020

11.11.2021 quash the same and consequently direct the 1st respondent to deseal the premises described as Schedule B in the order of the learned Magistrate in Crl.M.P.No.542/2020.

For Petitioner : Mr.R.N.Amarnath

ORDER

(ORDER OF THE COURT WAS MADE BY M.DURAI SWAMY, J.)

The petitioner, who is the third party to the SARFAESI proceedings has filed the Writ Petition challenging the order passed by the Chief Judicial Magistrate of Tiruppur District at Tiruppur in Crl.M.P.No.542/2020 dated 11.11.2021 and to quash the same and to consequently direct the 1st respondent to deseal the premises described as Schedule B in the order of the learned Magistrate in Crl.M.P.No.542/2020.

2.The petitioner has challenged the order passed, under Section 14 of the SARFAESI Act, by the Chief Judicial Magistrate in Crl.M.P.No.542 of 2020 in this Writ Petition without exhausting the remedy available to him under Section 17 of the SARFAESI Act.

3.The Hon'ble Supreme Court in *The Authorized Officer, State*

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.

4. In a recent decision of the Supreme Court 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.*, cited supra, the High Courts continue to entertain matters which arise under the SARFAESI Act and keep granting interim orders in favour of persons who are 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 and Recovery of Debts Due to Banks and Financial Institutions Act, is not maintainable.

5.In the case on hand, the petitioner has filed the Writ Petition without exhausting the alternate remedy by way of an appeal available to him under Section 17 of the SARFAESI Act. Following the ratio laid down by the Supreme Court in the above referred judgments, we are not inclined to entertain the Writ Petition. Accordingly, the Writ Petition is dismissed. However, it is open to the petitioner to challenge the order passed in CrI.M.P.No.542 of 2020 dated 11.11.2021 before the Debt Recovery Tribunal in accordance with law, raising all the grounds available to him. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Index : Yes/No
va

[M.D., J.] [J.S.N.P., J.]
23.12.2021

M.DURAI SWAMY, J.

and
J.SATHYA NARAYANA PRASAD, J.
va

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