

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.31538 of 2018 and  
W.M.P.No.36751 of 2018

Revathi

.. Petitioner

v.

1 The Authorized Officer  
Indian Bank, Villianur Branch  
No.57, East Maada Veethi  
Villianur, Pondicherry-605 110

2 N.Suresh

3 M/s.Esskay Traders ,  
Represented by its Proprietor ,  
No.1 School Street ,  
Thennal Post ,  
Villupuram District .. Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus, forbearing the 1st respondent from proceed with any further action under SARFAESI Act on the property comprised in R.S.No.236/2 at Odiampet Village, Villianur Taluk, Pondicherry District, by considering the representation of the petitioner herein dated 19.10.2018.

For Petitioner : Mr.R.Nalliyappan

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ORDER

(Order of the Court made by M.DURAISWAMY, J.)

The above Writ Petition has been filed by the petitioner to issue a Writ of Mandamus, forbearing the 1st respondent from proceeding under the SARFAESI Act on the property comprised in R.S.No.236/2 at Odiampet Village, Villianur Taluk,

Pondicherry District, by considering the representation of the petitioner herein dated 19.10.2018.

2. Admittedly, the respondent-bank issued possession notice, which was published in a Tamil Daily on 08.07.2018. The petitioner, without challenging the same before the Debts Recovery Tribunal under section 17 of the SARFAESI Act, has filed the present Writ Petition for the relief stated above.

3.1. The Hon'ble Supreme Court of India, in the judgments reported in 2018 (3) Supreme Court Cases 85 [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.], and 2018 (1) Supreme Court Cases 626 [Agarwal Tracom Private Limited Vs. Punjab National Bank and others] 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.

3.2 In a recent decision of the Supreme Court dated 05.10.2018 in ICICI Bank Limited v. Umakanta Mohapatra, Civil Appeal Nos.10251 - 10265 of 2018 arising out of SLP (C) Nos.16758 - 16772 of 2015, the Supreme Court has referred to the decision in Authorized Officer, State Bank of Travancore and Anr. vs. Mathew K.C., (2018) 3 SCC 85, 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI') and keep granting interim orders in favour of persons who are Non-Performing Assets. Further, the Apex 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.

4. The ratio laid down by the Hon'ble Apex Court in the above referred judgments is applicable to the present case.

5. Since the petitioner has filed the present Writ Petition without challenging the possession notice dated 07.07.2018, which was published on 08.07.2018, without approaching the Debts Recovery Tribunal under section 17 of the SARFAESI Act, we are not inclined to entertain the Writ Petition. In view of the same, the Writ Petition is dismissed. It is open to the

petitioner to challenge the possession notice dated 07.07.2018 before the Debts Recovery Tribunal, in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

Rj

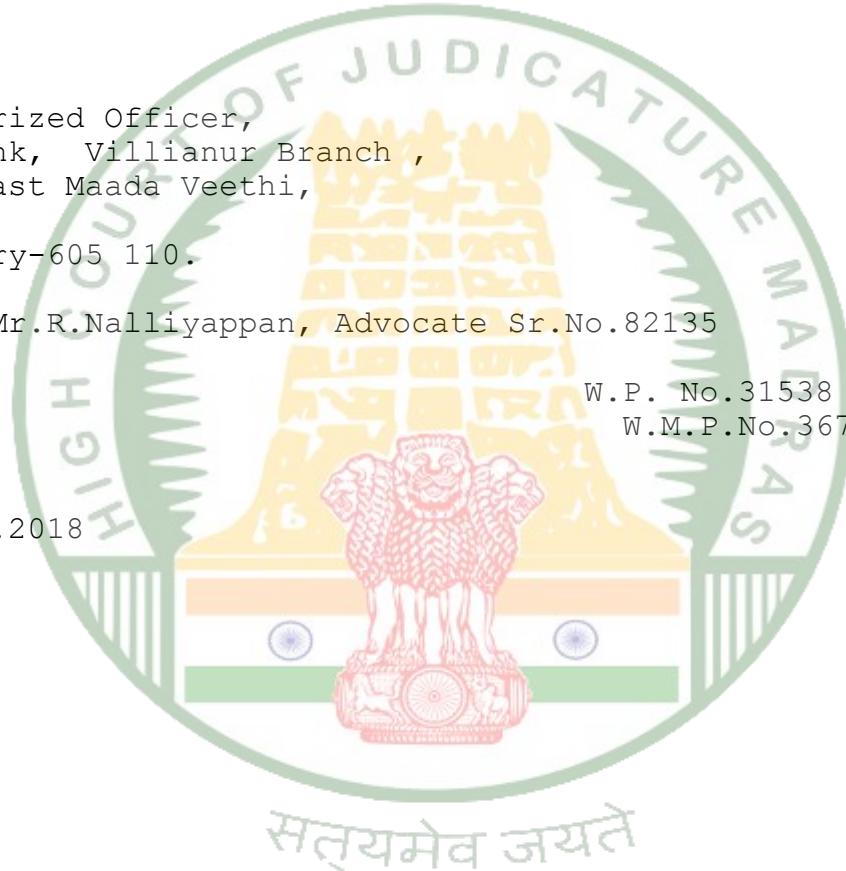
To

The Authorized Officer,  
Indian Bank, Villianur Branch,  
No.57, East Maada Veethi,  
Villianur,  
Pondicherry-605 110.

+1 cc to Mr.R.Nalliyappan, Advocate Sr.No.82135

W.P. No.31538 of 2018 and  
W.M.P.No.36751 of 2018

MR (CO)  
CSL/18.12.2018



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