

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.05.2019

CORAM :

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN
and
THE HONOURABLE MR. JUSTICE P.D.AUDIKESAVALU

C.R.P. No.1790 of 2019
and

C.M.P. No.11733 of 2019

1. M/s.Sri Devi Karumariamman Educational Trust,
No.5, Chellammal Complex,
Arcot Road, Janaki Nagar,
Valasaravakkam,
Chennai - 600 087.
Represented by its Trustee Mr.J.Kumaran

2. G. Jayaraman
3. J. Kumaran
4. J. Jayalakshmi
5. J. Anandhi
6. J. Nirmala

.... Petitioners

Vs.

1. Central Bank of India,
Mid Corporate Branch,
48/49, Montieth Road,
Egmore, Chennai - 600 008,
Rep by its Chief Manager,
Ujjal kumar Moitra

2. Bank of India,
Mid Corporate Branch,
Tarpore Towers,
826, Annasalai, Chennai,
Represented by Assistant General Manager

.... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the constitution of India to exercise the supervisory power of this Hon'ble High Court over Debt Recovery Tribunal II, Chennai to set aside the order dated 16.05.2019 dismissing I.A. No. 547 of 2019 in OA. No. 496 of 2016 and direct the DRT

II, Chennai to eschew the proof affidavit filed by Mr. Madasamy, the Assistant General Manager filed on behalf of the 1st respondent/applicant Bank in OA. No. 496 of 2016 and proceed with the final disposal of the OA.496/2016 as provided under law.

For Petitioners : Mr. P.H. Aravindh Pandian
Senior Counsel
for Mr. Pushpakaran

For Respondents : Mr. N.V. Srinivasan
for M/s. N.V.S. Associates (for R1)

Mr. V. Karthick,
Senior Counsel
for M/s.Nithyaesh Nataraj (for R2)

O R D E R

(Order of the Court was made by P.D. AUDIKESAVALU, J.)

The Civil Revision Petition arises out of the order dated 16.05.2019 passed in I.A. No. 547 of 2019 in O.A. No. 496 of 2016 on the file of the Debt Recovery Tribunal-II, Chennai.

2. The Respondents have instituted the application bearing O.A. No. 496 of 2016 under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993, in Debt Recovery Tribunal-II, Chennai against the Petitioner for recovery of debt of Rs. 136,29,48,050.76/-, which is the amount due under the credit facilities availed by the First Petitioner and the repayment of which has been personally guaranteed by the Second to Fifth Petitioners. The Petitioners had filed C.R.P. No. 1753 of 2019 before this Court for a direction to the Presiding Officer, Debt Recovery Tribunal-II, Chennai for disposing of the application bearing I.A. No. 494 of 2019 for cross examination of the bank witness on merits before proceeding with the final hearing of O.A. No. 496 of 2016. When that Civil Revision Petition came up for hearing during the vacation sitting of this Court on 08.05.2019, this Court with the consent of the parties disposed the matter holding as follows:-

"2. When the matter is taken up for hearing, Mr. Aravindh Pandian, Learned Senior Counsel appearing for the Petitioners would submit that there is an I.A. filed for the purpose of cross examination of the witness and that he wanted to examine the Assistant General Manager, Central Bank of India,

Mid Corporate Branch, Chennai.

3. Mr. N.V. Srinivasan, Learned Counsel appearing for the First Respondent/Bank would submit that he has no objection for cross examination of the Assistant General Manager, Central Bank of India, Mid Corporate Branch, Chennai, however, submitted that as two officers of the Bank are due to retire by the end of this month, a decision on merits could be arrived at after cross examination is over and that this Court may fix the time limit.

4. Mr. Nithyaesh Natraj, Learned Counsel appearing for the Second Respondent/Bank would submit that the matter is pending from the year 2016 and that the Petitioner is adopting dilatory tactics and avoiding payment of debt due to the Bank.

5. It is trite that when the Applicants are disputing the entries in the Statement of Accounts as incorrect, they should be given an opportunity to cross examine the witness of the Bank [vide (i) M/s. Agnite Education Ltd., -vs- State Bank of India and others (W.P. No. 8985 of 2017 and W.M.P. No. ;9896 of 2017) and (ii) UCO Bank -vs- A. Jaffar Alikhan and others (C.R.P. (PD) Nos. 399 to 401 of 2016 and C.M.P. Nos. 2159 to 2161 of 2016)].

6. Taking note of the consent made by the First Respondent/Bank that they are willing to produce the witness for the purpose of cross examination and that the Petitioners are also willing to cross examine the said witness, the Assistant General Manager, Central Bank of India, Mid Corporate Branch, Chennai is directed to appear before the Debts Recovery Tribunal and his cross examination shall be completed on or before 17.05.2019. The final arguments shall be concluded on or before 24.05.2019 so that the order could be passed by the Tribunal on or before 31.05.2019."

In furtherance to the aforesaid order passed by this Court, the matter was taken up for hearing before the Debt Recovery Tribunal-II, Chennai on 13.05.2019, 14.05.2019 and 16.05.2019 on which dates, one Mr. G.S. Suresh, Chief Manager of the First Respondent was cross examined by the Learned Counsel for the Petitioners instead of the Assistant General Manager as directed by this Court. It requires to be noticed here that this Court had specifically directed the Assistant General

Manager of the First Respondent, who had filed the proof affidavit to be cross examined, but instead of doing so, the said Mr. G.S. Suresh had entered the witness box without filing any proof affidavit in the matter. The certified copy of the order dated 08.05.2019 in C.R.P. No. 1753 of 2019 was furnished to the parties on 14.05.2019 and hence on the hearing on 15.05.2019, the Learned Counsel for the Petitioners on realizing that the witness who had not filed the proof affidavit had been cross examined, sought for eschewing the evidence of Mr. Madasamy, Assistant General Manager of the First Respondent who had filed the proof affidavit by an application in I.A. No. 547 of 2019. The Debt Recovery Tribunal-II, Chennai by order dated 16.05.2019, dismissed the said application on the ground that the said Mr. Madasamy, Assistant General Manager of the First Respondent was also present in Court and was ready for cross examination, but the Learned Counsel for the Petitioners refused to cross examine him. Aggrieved thereby, the present Civil Revision Petition has been filed.

3. The Learned Senior Counsel appearing for the Petitioners referring to Rule 12(9) of the Debts Recovery Tribunal (Procedure) Rules, 1993, strenuously urged that when the said Mr. Madasamy, Assistant General Manager of the First Respondent had filed the proof affidavit did not submit himself for cross examination despite undertaking before this Court, his evidence ought to have been eschewed and the Tribunal erred in rejecting the application filed by the Petitioners in that regard. Though there is considerable force in the submission made the Learned Senior Counsel for the Petitioners, it also requires to be noticed as pointed by the Debt Recovery Tribunal-II, Chennai that the said Mr. Madasamy, Assistant General Manager of the First Respondent has been present on 16.05.2019 for cross examination and the Learned Counsel for the Petitioners could have cross examined him on that date. As such, we are not inclined to interfere with the order of the Debt Recovery Tribunal-II, Chennai in this Civil Revision Petition declining to invoke Rule 12(9) of the Debts Recovery Tribunal (Procedure) Rules, 1993, to eschew his evidence. However, we find it shocking that the First Respondent has chosen to depute a person who had not filed proof affidavit to be cross examined and such conduct of the First Respondent, which is a public institution, has to be strongly deprecated and we impose costs of Rs. 25,000/- to be paid by the First Respondent to the Learned Counsel for the Petitioners by way of demand draft on or before 23.05.2019, for the same. Having due regard to the submission of the Learned Counsel for the Respondents that the said Mr. Madasamy, Assistant General Manager of the First Respondent,

who has filed proof affidavit, is still ready to subject himself for cross examination, the Learned Senior Counsel for the Petitioners in response to our specific query, informed that the Learned Counsel for the Petitioners would cross examine the said witness on 23.05.2019 before the Debt Recovery Tribunal-II, Chennai, when the matter is posted for next hearing.

4. Recording the said submission, we permit the Learned Counsel for the Petitioners to cross examine the said Mr. Madasamy, Assistant General Manager of the First Respondent, who has filed proof affidavit, on 23.05.2019 and subsequently on day to day basis till his cross examination is completed in full and dispose the Civil Revision Petition on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.Mr.Ujjal Kumar Moitra,
Chief Manager,
Central Bank of India,
Mid Corporate Branch,
48/49, Montieth Road,
Egmore, Chennai - 600 008.

2.Assistant General Manager,
Bank of India,
Mid Corporate Branch,
Tarpore Towers,
826, Annasalai, Chennai.

3.The Presiding Officer,
the Debit Recovery Tribunal-II, chennai.

+2ccs to Mr. Pushpakaran, Advocate SR.No. 44142

+1cc to M/s. N.V.S. Associates , Advocate SR.No. 44139

C.R.P. No.1790 of 2019

A.SK(22/05/2019)