

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.07.2019

Delivered on : 06.08.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No.2251 of 2019

and

C.M.P.Nos.14929 and 14930 of 2019

Maximus ARC Limited,
a Company Incorporated under
Companies Act, 2013
having Registered and Corporate Office at
59A-18/1A-5A, 3rd Floor,
Sri Plaza, Teachers Colony,
Patamata, Vijayawada 520 008.
rep. by Assistant Vice President,
Shri K.Hari Krishna

Appellant

Versus

1. Anna University, Chennai,
rep. by its Vice Chancellor,
Kotturpuram, Chennai 600 025.
2. Devi Karumariamman Educational Trust,
rep. by its Trustee Mr.J.Kumaran,
having office at No.5, Chellammal Complex,
Janaki Nagar, Arcot Road,
Valasaravakkam, Chennai 600 087.

Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order of this court dated 12.7.2019 in W.P.No.13326 of 2019.

W.P.No.13326 of 2019:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the 1st respondent to disaffiliate the colleges of the 2nd respondent and to prevent and restrain admission of student in the 2nd responden colleges form this academic year 2019-20.

For appellant : Mr.P.S.Raman, Senior Counsel for
Mr.Nithyaesh and Vaibhav

For R1 : Mr.M.Vijayakumar
For R2 : Mr.AR.L.Sundaresan, SC for
Mr.C.Harsharaj

JUDGMENT

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

The Appellant, Maximus ARC Limited, an Asset Reconstruction Company as defined under Section 3 of the SARFAESI Act, 2002, has filed the present intra-court Appeal against the order dated 12.7.2019 of the learned Single Judge dismissing its Writ Petition No.13326 of 2019 which was filed by the Appellant/Petitioner seeking a Mandamus direction to the Respondent, Anna University to disaffiliate Respondent No.2 Sri Devi Karumariamman Educational Trust Colleges and prevent and restrain Respondent No.2 Engineering College to admit the students in the Respondent College for the Academic Year 2019-2020 .

2. The learned Single Judge dismissed the Writ Petition of the Appellant/Petitioner with the following observation:-

"20. Shri Devi Karumariamman Educational Trust which is the 2nd respondent in this Writ Petition has established Engineering College, Medical College and Management Institute. For expansion of Engineering College it has borrowed loan of Rs.15 crores from Central Bank of India on 29.07.2008. It has mortgaged several properties including land and building of its Engineering College. Again on 06.01.2011 borrowed a further sum of Rs.10 crores as term Loan-II and Rs.61.30 crores as Term Loan-III. Like wise from Bank of India, the trust had sanctioned loan of Rs.50 crores. Later both Central Bank of India (CBI) and Bank of India (BOI) together as consortium had jointly entered into a memorandum of agreement on 16.05.2012 with the 2nd respondent/Trust. The 2nd respondent has redeposited all his title documents already encumbered with Central Bank of India and Bank of India with intent to create security by way of joint equitable mortgage. The 2nd respondent has failed to pay the dues to these two banks, so these two banks have jointly filed O.A.No.496 of 2016 before the Debt Recovery Tribunal-II, Chennai, for recovery of

Rs.136,29,48,050.76/- under various heads of loan and interest payable. The petitioner has entered into the scene after the assignment agreement with Bank of India, one of the applicant in O.A.No.496 of 2016, pending before the DRT-II, Chennai. The petitioner claims through this assignment agreement deed, that it has entered the shoes of Bank of India.

21. Be it as it may, the question before this Court whether this will entitle the petitioner to file the present Writ Petition and seek prayer of disaffiliation of the College administered by the 2nd respondent on the ground it has lost financial stability. Any time the land and building on which the college stands will be put to auction for recovery of dues. In such event, the students undergoing their studies in the 2nd respondent Engineering College will be put to peril.

22. The learned counsel for the petitioner harp heavily on the observation by the Hon'ble Supreme Court made while considering the Civil Appeal arising from the interim order passed in this Writ Petition. While, the Hon'ble Supreme Court made the above observation, the view of University the first respondent was not available before the Supreme Court.

23. When this matter was under consideration by this Court, during the course of the hearing, this Court sought the view of the University about the financial stability of the College and how the interest of the students will be protected if by an event the College is closed midway of their Course. In response to the query the Registrar, Anna University has filed a sworn affidavit, which reads as below:

3. I humbly submit that as per the procedure the 1st respondent have granted affiliation periodically after due inspection following norms and guideline with respect of infrastructure facilities and other criteria as stipulated under regulations. The above said affiliation has been granted on basis of approval granted by the AICTE.

4. I humbly submit that the 1st respondent has specifically directed to answer whether the interest of the students are protected under the regulations of Anna

University, and the 1st respondent would make alternative arrangement for the admitted students to pursue their curriculum, if any Judicial order regarding the closure of colleges run by the 2nd respondent herein. The 1st respondent submit that the interest of the students will be protected by way of alternative arrangements with coordination of the Government of Tamil Nadu and Directorate of Technical Education.

5. I humbly submits that in so far the financial stability concern, college has made prescribed deposit before the AICTE as per their norms.

24. The doubts expressed by the Hon'ble Supreme Court in its order, are clarified through the above affidavit filed by the Registrar, Anna University so from the affidavit of the University which is the affiliating authority, the Engineering College run by the 2nd respondent Trust is financially stable. It has complied all necessary facilities required under the regulation. In case of any eventuality of closure, the students will be accommodated in other Colleges.

25. Therefore, the petitioner contention that the 2nd respondent/Trust is in bad financial condition and its properties will soon be put to auction and the college will be closed are all imaginative and preposterous. Even if such circumstances arise in future, if the Engineering College is functional, the land and building will be with added value and may fetch higher price in the auction. Further the probability of restructuring and turn around is also possible if the college is functional. The petitioner cannot prematurely draw inference that the 2nd respondent/Trust can never pay its debt and recover from its financial crisis and the only way is to put the Engineering College land and building into auction.

26. On the other hand even if the worst happens, then the University has given assurance that the students will be distributed to other colleges in co-ordination of Government and Directorate of Technical Education.

27. Even if there is some diversion of funds as observed by the receiver in its report to the DRT, closing down the college cannot be solution for it. The cure suggested by the petitioner is worst then the disease. For pilferage of funds, the source need not be stopped. It will be like killing the goose for its Golden Egg.

28. Based on wishful presumption of bankruptcy, Court should not close an Education Institute which is otherwise eligible to admit students. For the said reason, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed."

3. The learned counsel for the Appellant, Mr.Nithyaesh Natraj has urged before us that the Respondent No.2 Trust is a defaulter against whom a Decree has been obtained by the Appellant Company under SARFAESI Act as the Respondent Trust had committed defaults in payment of the loan taken from Bank of India, whose Assignee the Appellant is, for setting up Medical College, Engineering College and College for Management Studies in O.A.No.496 of 2016 filed before DRT II, Chennai. The Petitioner/Appellant is assigned the debt by the said Bank of India under Assignment Deed dated 21.2.2019 and therefore entitled to proceed under the provisions of the SARFAESI Act, 2002 for realisation of the dues from Respondent No.2 Trust.

4. The learned counsel further submitted that the Appellant/Petitioner has rights to ensure that the security interest of the Bank is not encumbered or alienated or misused by the defaulting borrower and therefore, the writ petition filed by the petitioner seeking the mandamus direction to prevent the Respondent Engineering College to admit further students for the Academic Year 2019-2010 was perfectly justified and he submitted that the Medical College situated on the land, which forms part of the mortgaged asset, has already been closed down by Respondent No.2 Trust.

5. He further urged that the learned Single Judge has erred in relying upon an Affidavit filed by the Registrar of Anna University that even if such students are admitted in the Engineering College which has the approval from AICTE and such Engineering College is required to be closed down the Anna University will ensure the transfer of the students to some other approved Engineering Colleges without causing any loss to the students of such Engineering courses. He further submitted that the Respondent Trust is diverting the funds received from

the Students upon such fresh admissions and it is a fraud played upon by them and to check such pilferage of funds also, fresh admission of the students deserves to be stopped.

6. Per contra, Mr.A.R.L.Sundaresan, learned Senior Counsel appearing for the Trust vehemently opposed the submissions and submitted that the Engineering College building as well as the land on which such building is situated is not even the security mortgaged with the Appellant Company or even the Assignor, Bank of India and therefore, the Appellant, a Reconstruction Company, does not have locus standi to seek a mandamus direction to prohibit the admissions of the students in the Engineering College of the Respondent Trust. He denied the allegations of any diversion of funds and seriously disputed the locus standi of the Appellant Company to file the Writ Petition of this nature. He submitted that the proceedings under the SARFAESI Act are independent and that is not the issue before this court and the right of the Respondent Trust to file Objections against the Execution of the Decree in favour of the Appellant Company or the lender bank under SARFAESI Act cannot be curtailed or cut short by resort to filing such a Writ Petition for such extraneous and oblique purposes and this is nothing but an abuse of process of law of this court. He strongly supported the order passed by the learned Single Judge and submitted that the students of the Engineering College cannot be disturbed by the Appellant Company, whose right to recover the dues, if any, of the Assignor Bank of India is independent and he cannot seek the execution of the Decree in the present writ petition by completely throttling the ongoing educational activity in the Engineering College, which is not even the subject matter of security or mortgage with the lender, Bank of India.

7. The learned counsel for the Anna University, Mr.Vijayakumar also supported the stand of the Respondent Trust in this regard and reiterated the stand taken before the learned Single Judge and filed a copy of G.O.Ms.No.326 dated 15.11.2017 laying down the guidelines of transfer of students, if the institution like Engineering College in the present case, is for some reason or the other closed down. He, therefore, submitted that the interest of the students is not likely to be prejudicially affected by such admission of the Students in the Academic Year 2019-2020 and the Engineering College of Respondent Trust is duly approved by AICTE.

8. Having heard the learned counsel for the parties, we are of the considered opinion that the present Appeal filed by the Appellant Company has no merit and it deserves to be dismissed.

9. We make it clear that we are not either seized of any matter under the provisions of SARFAESI Act for which the Appellant/Petitioner Company may be holding a Decree or as Assignee against the Respondent Trust and if the Appellant Company has a right as Assignee of the Bank of India to recover the dues from the Respondent Trust under the provisions of the SARFAESI Act, this order is in no way intended to affect their right to do so.

10. We are of the clear and considered opinion that the prayer made in the Writ Petition filed by the Appellant/Petitioner Company seeking a mandamus direction to the first respondent Anna University to disaffiliate the Engineering College of the Second Respondent Trust and to prevent and restrain admission of the students in the Engineering College of the Second Respondent Trust for the Academic year 2019-2020 is misconceived. The Appellant/Petitioner Company has no locus standi to seek such a mandamus direction from the court in the extra ordinary jurisdiction of this court, way beyond the recovery procedure under the SARFAESI Act.

11. We are of the opinion that the present writ appeal filed by the Appellant Company is for tangent and oblique purposes beyond the scope of their entitlement under the provisions of SARFAESI Act and therefore, no such relief as prayed for by them in the writ petition can be granted by the writ court and therefore, the learned Single Judge was perfectly justified in dismissing the Writ Petition filed by the Appellant/Petitioner Company.

12. The reason is obvious. The Respondent Trust may have reasonable and valid objections to the execution of the Decree obtained from DRT under the provisions of SARFAESI Act. Whether the land or part of land on which the Engineering College of the Respondent Trust is situated, forms part of mortgaged asset of the Bank of India or not, whether the building construction on such land is also a mortgaged asset or not, are questions of fact, which the Appellant/Petitioner Company, as Assignee of the Bank of India will have to establish before realising its dues through the process of SARFAESI Act which as already indicated above, we are not touching. To prevent such an exercise before Debts Recovery Tribunal or Recovery Officer under SARFAESI Act or to give a short shrift to the execution proceedings under the provisions of SARFAESI Act, the petitioner/Appellant Company, an Assignee of the Bank of India cannot be permitted to outreach and overreach the process of the court and seek all assets of the said Trust whether they are part of security interest or

not, including one like Engineering College in the present case, to keep them free from any encumbrance and have peaceful and vacant possession thereof, so that even that can be sold for recovery, irrespective of the objections of the Respondent Trust in that regard.

13. The Appellant is not Assignee of the other Bank viz., the Central Bank of India, who financed the construction of the Engineering College in question nor the said Central Bank of India is making any such prayer. That Bank has not filed this Writ Petition, nor has joined this lis to support the present Appellant Company, the Assignee of Bank of India only.

14. Whether the land and the other Building of Medical College constructed thereon, as claimed to be in the security of the Bank of India will fetch sufficient value in the auction to satisfy their outstanding loan and demand is also a thing of future. The Respondent Trust says it has far more market value than the outstanding dues of the Appellant/its Assignor, Bank of India. It is only that if the realisation of those secured assets falls short of the outstanding amount, then, a question of proceeding against the other assets of the Trust may or may not arise in law. But, without examining those aspects of the matter by the competent Tribunal, the Petitioner/Appellant cannot claim a sweeping and all pervasive right over all the assets of the Trust and even to stop its ongoing educational activities in other educational institutions like Engineering College in the present case. Such outlandish outreach of the Appellant/Petitioner Company by seeking a writ of mandamus direction for de-affiliating the Engineering College from the parent Anna University is too much to be brought within the sweep and scope of the SARFAESI Act under which Act only the Appellant/Petitioner claims or can claim any right against the secured assets only.

15. The learned counsel for the Appellant/Petitioner, Mr.Nithyaesh Natraj, upon specific question from court, clearly admitted before the court that only a part of the land over which the Engineering College has been constructed by the Respondent Trust is in the security of Bank of India of which the Appellant/Petitioner is the assignee and not the Building of Engineering College itself.

16. Therefore, admittedly, as per the Appellant/Petitioner itself, the part of the land and the whole of the building of the Engineering College is not even the secured asset for which

Appellant/Petitioner Company can proceed against the Respondent Trust under the provisions of the SARFAESI Act atleast for now. Therefore, we fail to understand as to what distant, intangible and oblique purpose, the Appellant/Petitioner wants to achieve by seeking this kind of writ of mandamus viz., to disaffiliate the Engineering College from Anna University to stop the ongoing educational activities even though otherwise in law, it is fully entitled to do so having been approved by AICTE upon payment of their prescribed fee, etc., and entitled to get the inflow of all students in the ongoing Session of 2019-2020 also.

17. The reliance placed by the learned counsel for the Appellant on the observations made by the Hon'ble Supreme Court in the order dated 18th June 2019 in Civil Appeal No.5094 of 2019 (arising out of SLP(C) No.13554 of 2019) are being relied upon out of context. The Hon'ble Supreme Court did not decide the question of locus standi of the Appellant/Petitioner to file such a writ petition at all but only expressed its concern for the interest of students that their future will be put to jeopardy, if the Engineering College is closed in the process under SARFAESI Act. Neither the fact of the building of Engineering College not being under the charge of the Appellant/Petitioner Company was brought to the notice of the Hon'ble Supreme Court, nor the stand of the Anna University and G.O.Ms.No.326 dated 15.11.2017 was brought to the notice of the Hon'ble Supreme Court on 18.6.2019 and which fully safeguards the interest of the students in case of such contingency, which too is not imminent or likely to happen in view of the admission of the Appellant/Petitioner itself before us that part of the assets in which the Engineering College is being set up and run by the Respondent Trust is not even the subject matter of the mortgaged assets or security of the assignor Bank of India and consequently of the Appellant/Petitioner Company. Even taking an extreme case, suppose the land and building of Respondent Trust are purchased in open auction under SARFAESI Act by another Educational Institution to run the Engineering and Medical Colleges, will the interest of students suffer? The answer has to be in negative. It is like tenanted property being sold. The change of ownership of property does not result in automatic eviction of the tenant in the property. Likewise, the students also cannot be thrown out on account of recovery action against the Borrower/owner of the property.

18. Therefore, the very approach of the Appellant/Petitioner Company, without any locus standi to seek such a direction from the court under Article 226 of the Constitution of India being misconceived, the reliance placed on the said observations of the Hon'ble Supreme Court showing concern for the students while

directing the learned Single Judge to decide the present Writ Petition in the aforesaid SLP order expeditiously, is also misplaced. The learned Single Judge in accordance with the Hon'ble Supreme Court's directions dated 18.6.2019, disposed of the Writ Petition within one month on 12.7.2019 against which the present Appeal has been filed by the Appellant/Petitioner.

19. The unholy effort of the Appellant/Petitioner Company to abuse the process of the courts to the maximum is also reflected by its approach to the Hon'ble Supreme Court again by way of fresh SLP(Civil) Diary No.25069 of 2019 against interlocutory order dated 16.7.2019 passed in this case, which, upon being mentioned before Hon'ble Supreme Court on 18.7.2019, was directed to be listed before the appropriate Bench of Hon'ble Supreme Court as per Roster on 26.7.2017 and on 26.7.2017 after some arguments, Mr.S.Ganesh, learned Senior Counsel appearing for the Appellant/Petitioner Company, withdrew the said SLP itself. The said SLP was directed against the interlocutory order dated 16.7.2017 passed by this court in the present Writ Appeal by which it only postponed the hearing of the matter for hearing the parties on the question of locus standi of the Appellant/Petitioner Company and making it clear that this court would refrain from interfering in any manner with the proceedings undertaken by the Appellant Company under the provisions of SARFAESI Act, but for protecting the interest of the students for whom a concern was expressed by the Hon'ble Supreme Court in its order dated 18.6.2019, this court only called upon the Respondent University to give details as to how they intend to protect the interest of the students who may be admitted in the Engineering College in the Academic Year 2019-2020 and both Anna University and the Trust were directed to file their Affidavits. The Trust filed its Affidavit and Anna University filed a copy of G.O.Ms.No.326 dated 15.11.2017 which gives guidelines for transfer of students.

20. This only indicates that just to give a cloak of genuineness and bona fides to the writ petition, which was, otherwise, wholly not maintainable at the instance of the Appellant/Petitioner, an Asset Reconstruction Company, the Appellant/Petitioner has kept its shuttle visits to Apex Court open by frequently invoking the extra ordinary jurisdiction of the Supreme Court under Article 136 of the Constitution of India, even against the innocuous interlocutory order passed in the present Writ Petition as well as Writ Appeal. This is nothing but an abuse of process of Courts resulting in wastage of precious public time of courts, by such luxurious and ill-conceived petitions, preventing them from devoting their time to other genuine long pending cases of poor people.

21. We, therefore, do not find any merit in the present Writ Appeal and the same is liable to be dismissed. Accordingly, it is dismissed. No order as to costs. The connected Miscellaneous Petitions are also dismissed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

ssk.
To:

1. Anna University, Chennai,
rep. by its Vice Chancellor,
Kotturpuram, Chennai 600 025.

+2 Ccs to M/s. Nithyaesh & Vaibhav, Advocate sr 67393
+1 CC to Mr.M. Vijaya Kumar, Advocate sr 67169
+2 Ccs to Mr.C. Harsha Raj, Advocate sr 66955

W.A.No.2251 of 2019

GMR(CO)
SP(17/09/2019)