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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

WP No.10872 of 2021

and WMP Nos.11508 and 11509 of 2021

Maximus Arc Limited,
A company incorporated under Companies Act 2013,
Having registered and corporate office at,
59 A-18/1A-5A, 3rd Floor, Sri Plaza,
Teacher's Colony, Patamata,
Vijayawada - 520 008,
Rep.by its Assistant Vice President,
Shri.K.Hari Krishna ...Petitioner

Vs.

1. Sri Devi Karumariamman Educational
Trust, Rep. by its Trustee,
Mr.J.Kumaran.

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

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records on the file of the Debt Recovery Appellate Tribunal, Chennai with respect to the order dated 03.03.2021 in M.A.No.6 of 2020 to the extent that it directs the Petitioner to pay a sum of Rs.42,50,000/- (Rupees Forty Two Lakhs Fifty Thousand only) and consequently, quash the same.

For the Petitioner : Mr.Nithyaesh Natraj
for Nithyaesh and Vaibhav

For the Respondents : Mr.M.Velmurugan
for RR 1 to 6



ORDER

The Petitioner along with Central Bank of India had made an application in O.A. No. 496 of 2016 before the Debts Recovery Tribunal-II, Chennai ('DRT' in short) under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 ('RDB Act' in short) for the recovery of the debt due from the Respondents under the term loan and other credit facilities that had been availed. A final order dated July 29, 2019 came to be passed in O.A. No. 496 of 2016 holding that the Petitioner and Central Bank of India are entitled to recover a sum of Rs. 79.95 crores and Rs. 55.58 crores respectively from the Respondents. Though O.A. No. 496 of 2016 had been disposed, an application for appointment of receiver in I.A. No. 287 of 2018 filed under Section 19(18)(a) of the RDB Act continued to be on file even thereafter. The Respondents had sought to invoke Section 19(25) of the RDB Act in M.A. No. 203 of 2019 in I.A. No. 287 of 2018 for a direction to Central Bank of India to transfer a sum of Rs. 3.41 crores received from certain other banks from the account of the Respondents and utilize them for the purpose of running their educational institutions, which was granted by order dated June 19, 2020 passed by the DRT. In the appeal in M.A. No. 6 of 2020 preferred by the Petitioner against that order before the Debt Recovery Appellate Tribunal, Chennai ('DRAT' in short) under Section 20 of the RDB Act, it was accepted in the order dated March 3, 2021 that the Petitioner does not have any obligation to advance any further amount to the borrowers, but it was however concluded that a sum of Rs. 42.50 lakhs had to be transferred to 85 beneficiaries named by the Respondents as one-time help. The instant Writ Petition assails the aforesaid orders passed by the DRT and the DRAT.

2. The Parliament had enacted the RDB Act with an avowed object of creating an exclusive forum with a speedy mechanism to effectually adjudicate and recover the debts due to banks and financial institutions across the country. It would assume significance to notice here that it is only the bank or financial institution concerned which is entitled to approach the DRT by way of an application under Section 19 of the RDB Act to seek relief for recovery of its debt due. It is by way of exception that the borrower could make a counter-claim or set-off in defence under Section 19(6) of the RDB Act, but the DRT is not bound to decide the same and in a given case, may relegate the borrower to a regular suit in terms of Section 19(11) of the RDB Act to work out the borrower's rights in an independent action under common law in that regard.

3. It is not the case of the Respondents that they had raised any counter-claim against the Petitioner in this matter



in O.A. No. 496 of 2016 so as to be entitled at that advanced stage of the legal proceedings to seek any direction to transfer any further amount after the liability of the Respondents for the debts due had been determined. The Petitioner's dues had to be recovered without brooking any further delay. In such circumstances, there was absolutely no scope for the DRT to entertain such claim, much less grant the same. By no stretch of imagination, could the DRT have exercised such bizarre authority in contravention of settled legal principles. The DRAT, on appeal, which rightly arrived at the conclusion that the Petitioner cannot be forced to advance any further amounts to the Respondents, grossly erred in directing a sum of 42.50 lakhs to be paid as a humanitarian gesture, and such quirky approach cannot be countenanced. Inasmuch as the DRT and DRAT have apparently exceeded the authority conferred under the relevant statute, the impugned orders cannot be sustained and they are accordingly set aside and M.A. No. 203 of 2019 shall stand dismissed.

4. Since Learned Counsel for the Respondents now fairly accepts that the Respondents were not entitled to the relief that they had claimed, this Court is inclined to recall that part of the common order dated March 2, 2021 passed in connected matters between the same parties in W.P. Nos. 31943, 31953, 31956 of 2019 insofar as it directs the Respondents to pay a sum of Rs. 2 lakhs to the Petitioner as costs for the misadventure in which they had indulged abusing the legal process.

In the upshot, W.P. No. 10872 of 2021 is disposed on the aforesaid terms. Consequently, W.M.P. Nos. 11508 and 11509 of 2021 are closed. The parties shall bear their respective costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra
To

The Debt Recovery Appellate Tribunal,
Chennai.

+1 cc to M/s.Nithyaesh and Vaibhav, Advocate Sr.No. 51819
+1 cc to Mr.M.Velmurugan, Advocate Sr.No.51353

W.P.No.10872 of 2021

AJS[co]
NSK 11/10/2021



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