

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.NOS.31943, 31953 AND 31956 OF 2019

1. Sri Devi Karumariamman Educational Trust
No.5, Chellammal Complex
Arcot Road, Janaki Nagar
Valasaravakkam, Chennai - 600 087.
rep. by its Trustee, Mr.J.Kumaran
2. G.Jayaraman
3. J.Kumaran
4. Jayalakshmi
5. J.Anandhi
6. J.Nirmala

... Petitioners
in All WP's

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. Maximus ARC Limited*
A company incorporated under
Company's 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 Assistant Vice President, Shri
Mr.K.Hari Krishna
*(substituted for Bank of India)

... Respondents
in All WP's

2. The story is the usual, though everyone tries to give a different twist to the same. The petitioners have defaulted in repaying the credit facilities obtained from the respondent secured creditors. That is nothing unusual. In fact, it is a trait of the upwardly mobile in this country. The petitioners blame the myriad other happenings in the cosmos as having impeded their endeavour to honour the transactions with the secured creditors. The secured creditors claim that a sum in excess of Rs.200 crore is due and owing, though the certificate issued by the Debts Recovery Tribunal is for an amount in excess of Rs.130 crore only.

3. It is more likely than not that steps taken by the secured creditors under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 have been successfully warded off by citing the mere pendency of the petitions in this Court. More than 16 months has been spent without the matter being taken up after the initial date.

4. The petitioners complain that the Debts Recovery Tribunal failed to appreciate that the claim before it or that the application in support thereof did not disclose the most elementary and fundamental of facts. The petitioners claim that the Security Interest (Enforcement) Rules, 2002 were followed in the breach and the secured creditors acted in flagrant disregard of Rule 9 thereof. The petitioners say that the Debts Recovery Tribunal misread the evidence adduced on behalf of the secured creditors and failed to appreciate the anomalies that came out in course of the cross-examination of one of the creditors' witnesses.

5. When a forum authorised to entertain a matter has entertained the same and adjudicated thereupon and an appellate remedy is provided for any person aggrieved by the order passed by the original forum, it is such appellate remedy that must be pursued ahead of invoking any extraordinary jurisdiction under Article 226 of the Constitution. Whatever may be addressed in this jurisdiction could have been carried to the appellate authority and it is no excuse to say that the appellate remedy is hedged with an onerous condition, since an appeal is a creature of statute and conditions may be imposed in allowing the right of appeal to be exercised.

6. There is no case of breach of the principles of natural justice made out since the petitioners herein were heard before the Debts Recovery Tribunal and there is no doubt that the hearings were stretched to the extent possible to delay the inevitable. The order impugned dated July 29, 2019 runs into nearly 60 pages. It deals with several aspects upon indicating the issues involved. The expansive contentions of the

petitioners herein appear also to have been dealt with and given considerable thought in course of the judgment.

7. In this extraordinary jurisdiction of judicial review exercised under Article 226 of the Constitution, this Court is concerned with the decision-making process rather than the decision itself. There was a fair procedure under which protracted hearings were afforded to the petitioners and the petitioners' contentions were given due consideration before the final conclusions were drawn in the impugned order. Sufficient reasons also appear to have been indicated in the order impugned, though the validity thereof need not be gone into so that the petitioners are not prejudiced. However, in situations of the present kind where a group of litigants think that they can chart out their own course as they please, if there is an element of prejudice suffered because of the arrogant failure to abide by the route mandated by statute, there can be little sympathy.

8. There is no basis to these petitioners approaching this Court in this extraordinary jurisdiction and this attempt was nothing but a desperate attempt to take advantage of the Court's delay and ward off the inevitable while trying to dodge the deposit of the certificate amount or a substantial part of the debt found to be due.

W.P.Nos.31943, 31953 and 31956 of 2019 are dismissed. The petitioners will pay costs assessed at Rs.2 lakh to the secured creditors for this misadventure. However, this order will not prevent the petitioners from approaching the appellate authority, as long as the petitioners are able to sufficiently explain the delay. Consequently, W.M.P.Nos.32192 to 32194, 32204 and 32206 of 2019 are closed.

Sd/-

सत्यमेव जयते
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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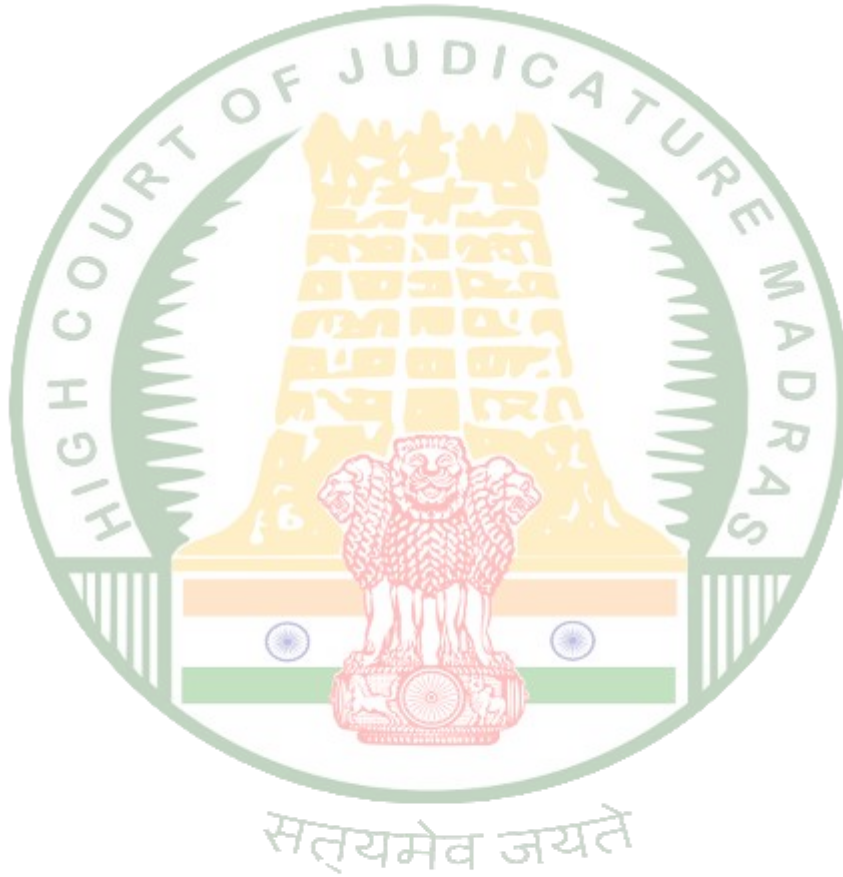
To:

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

2. The Assistant Vice President,
Shri Mr.K.Hari Krishna,
Maximus ARC Limited,
59 A-18/1A-5A, 3rd Floor,
Sri Plaza, Teacher's Colony,
Patamata, Vijayawada - 520 008.

W.P.Nos.31943, 31953 and 31956 of 2019

RV(CO)
CS/25/03/2021



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