



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE K. V. ARAVIND

MISCELLANEOUS FIRST APPEAL NO. 8628 OF 2012 (SFC)

Between:

Karnataka State Industrial
Investment and Development Corporation,
Now known as Karnataka State Industrial and
Infrastructure Development Corporation Ltd.,
Khanija Bhavan, No.49, Race Course Road,
Bengaluru-560 001
By its Deputy Manager

...Appellant

(By Sri V.S.Arbatti, Advocate)

And:

1. Madhu Paper Mills (P) Ltd.,
Having its Registered Office at
Sanjaya Theatre Building,
Mysore City, (under liquidation),
Represented by its Official Liquidator,
Kendriya Sadan Building,
F Wing, Koramangala
Bengaluru-560 034.
2. Sri Dayananda Sagar
S/o H.C.Chennaiah, Major,
R/o No.1114, M C Road, Mandya
3. Sri M.K.Gopalakrishna
S/o Kempegowda,

Digitally signed
by VEERENDRA
KUMAR K M
Location: HIGH
COURT OF
KARNATAKA



R/o No.25/41, 7th Block
Jayanagar, Bengaluru-560 011.

...Respondents

(By Sri V.Jayaram, Advocate for R1;
Sri G.Krishna Murthy, Senior Counsel for
Smt. Bhavana G.K., Advocate for R2
Vide order dated 03.10.2023 appeal against
R3 abated)

This MFA is filed u/s 32(9) of the State Financial Corporations Act, against the order dated 05.03.2012 passed in Misc.No.38/2010 on the file of the Principal District and Sessions Judge, Mysore, dismissing the petition as barred by law filed u/s 31(1) (aa) of the State Financial Corporations Act.

Date on which the appeal was reserved for judgment	21.01.2025
Date on which the judgment was pronounced	27.02.2025

This MFA, having been heard & reserved, coming on for pronouncement this day, judgment was delivered therein as under:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE K. V. ARAVIND

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR)

This is an appeal preferred under Section 32 (9) of the State Financial Corporation Act ('SFC Act' for short). The material facts that led to this appeal being filed are as below:



2. The appellant initiated action under Section 31 (1) (aa) of SFC Act to recover a sum of Rs.2,98,30,100.04 with interest from the respondents 2 and 3 who were sureties to the loan granted by the appellant to the first respondent. Initially, a sum of Rs.30 Lakhs was sanctioned to the first respondent in the year 1981, and at that time itself respondents 2 and 3 stood as sureties by executing an irrevocable deed of continuing guarantee. The first respondent having become a defaulter approached the BIFR in the year 1989. The BIFR directed the appellant to sanction a further sum of Rs.25 Lakhs, and it was sanctioned also. Rs.66.26 Lakhs was the sum that had accrued towards interest on the original loan amount of Rs.30 Lakhs, and it was funded, however penal interest of Rs.8,47,627.67 was waived. Again the respondent became a defaulter. The BIFR declared the first respondent a sick company and ordered for its winding up. In the



meantime the appellant initiated action under Section 29 of the SFC Act against the first respondent and thereafter by issuing a notice dated 29.12.2000, invoked the deed of guarantee executed by respondents 2 and 3. According to the appellant, the respondents 2 and 3 did not receive the notice and they did not discharge their obligation also. This resulted in a petition being filed under Section 31(1)(aa) of the SFC Act on 8.6.2001 before the City Civil Court, Bengaluru. The petition was later on transferred to District Court, Mysuru, as it was the Court which had territorial jurisdiction.

3. The second respondent filed statement of objections prominently contending that the petition under Section 31(1)(aa) was time barred. The District Judge, Mysuru, held an enquiry, and by his order dated 5.3.2012 in Mis.No.38/2010, dismissed



the petition holding it as barred by limitation.
Hence this appeal.

4. We heard the argument of Sri Venkatesh S Arbatti, learned advocate for the appellant and Sri G.Krishna Murthy, learned Senior Advocate, who argued on behalf of learned advocate Smt.Bhavana G K, for respondent No.2.

5. The main points urged by Sri Venkatesh S Arbatti are these: The respondents do not dispute their suretyship for the loan transaction and the execution of a deed of continuing guarantee. The first respondent became a defaulter, not even a single pie was repaid. There was restructuring of loan due to intervention of BIFR, and even thereafter the first respondent failed to repay the sum borrowed by it. On 29.6.1998, the appellant took over the assets of the first respondent by exercising power under Section 29 of the SFC Act. On 21.7.2000, the BIFR passed an order declaring



the first respondent a sick company and it should be wound up. On 29.12.2000, a notice was issued under Section 30 of the SFC Act recalling the loan amount. Petition under Section 31(1)(aa) of the Act was filed on 08.06.2001 at City Civil Court, Bengaluru which was later on transferred to District Court, Mysuru. The petition was filed within three years according to Article 137 of the Limitation Act from the date of recalling of the loan amount under Section 30 of SFC Act.

5.1. Before proceeding under Section 31(1)(aa) of the Act, the appellant had taken recourse to action under Section 29 of the SFC Act. And since the action under Section 31(1)(aa) of the Act against the sureties was for the balance that remained after adjustment of dues under Section 29 of the Act, period of limitation has to be reckoned from the date of closure of proceeding under Section 29, and thus seen, the petition was



filed within three years from 29.06.1998, which was the date on which the assets of the first respondent were taken over under Section 29 of the Act. The order impugned therefore suffers from legal infirmity and requires to be set-aside and the matter, remanded to the District Court for adjudication on merits.

6. But Sri G.Krishna Murthy argued in this way: Ex.P3 is the Deed of Guarantee executed by respondents No.2 and 3. Clauses 2 and 4 of Ex.P3 stipulate that guarantors are treated as principal debtors and any notice issued to respondent No.1 should be treated as intimation to the guarantors. 13.02.1988 was the first date of accrual of accrual of cause of action. As per Exs.R3 to R8, the appellant issued many demand notices to respondent No.1. The subsequent events such as the first respondent approaching the BIFR, sanction of Rs.25 lakhs for rehabilitation of the



first respondent etc., did not extend the period of limitation. And in Ex.R10 there is a reference to notice dated 15.05.1998, issued by the appellant demanding repayment of Rs.1,65,60,463/- which was the sum due as on 20.03.1998. Even if limitation is calculated from 15.05.1998, the petition having been filed on 08.06.2001, was time barred.

6.1. Sri G.Krishna Murthy also highlighted certain other points that there was no prohibition under the SICA to initiate recovery proceedings against the guarantors. It was very much known to the appellant that the first respondent was unable to pay the amount as long back as 1989 when it took a decision to approach the BIFR. On 29.03.1993, additional amount was sanctioned; but it was not released as security was not furnished. 10.10.1996 was the date when the BIFR recommended for winding up. On



26.02.1998, the AIFR confirmed the order of BIFR to wind up the first respondent company. Then on 15.05.1998, the appellant issued notice to the company to pay the overdue amount as on 20.03.1998. Therefore there was a delay of 12 years from the date when the right to sue first accrued; 8 years from the failure of rehabilitation; 5 years from the date when the first respondent was recommended to be wound up and 3 years 24 days from the date of notice to the first respondent.

7. Now the question to be answered is,

Whether the District Judge is justified in dismissing the petition under Section 31(1)(aa) of SFC Act as time barred?

8. Before answering this question, reference may be made to Sections 29(1) and 31 of SFC Act to gather their ambit of applicability. Section 29



authorizes a financial corporation to take over the management or possession or both of an industrial concern when the latter makes any default in repayment of loan or advance or any installment or fails to comply with terms of its agreement with the financial corporation. This Section also empowers financial corporation to transfer either by way of lease or sale to realise the property pledged, mortgaged, hypothecated or assigned to it. Section 31 is another remedy made available to the financial corporation and it can be exercised in the following circumstances, namely an industrial concern

(1) *In breach of any agreement makes any default*

(i) *In repayment of any loan or advance or any installment thereof*

(ii) *In meeting its obligations in relation to any guarantee given by the corporation, or*



- (2) *Otherwise fails to comply with the terms of its agreement with the financial corporation, or*
- (3) *Where the financial corporation requires immediate repayment of any loan or advance under Section 30 and industrial concern fails to make such repayment.*

9. As it is clear that two remedies are available to a financial corporation, it can choose the remedy and there is no bar to invoke the two provisions simultaneously as both remedies are distinct. However, if a financial corporation initiates action for the remedy under Section 31 (1)(a) or (b), or both, it cannot take recourse to Section 29, as both are same, but difference lies in mode of action in the sense if Section 29 is without judicial intervention, Section 31 is a proceeding that takes place before a District Judge. Section 31(1)(aa) provides for action against sureties, and pendency of action under Section 29 is not a bar to



proceed against sureties. Once an action under Section 29 is initiated and a certain sum is realized, for the balance action against sureties under Section 31(1)(aa) is permitted. It is to be noted here that Section 29 does not empower the financial corporation to go against sureties, that empowerment is given to financial corporation only under Section 31(1)(aa).

10. The begging question in this appeal is with regard to limitation. It is now settled by a catena of decisions that limitation for initiation under Section 31 is 3 years in accordance with Article 137 of the Limitation Act, and the starting point of time is when the right to apply under Section 31 arises. Discussing the issue as to which of the two Articles, Article 136 or Article 137 is applicable in relation to proceeding under Section 31, the Supreme Court in the case of ***Maharashtra State Corporation vs Ashok K***



Agarwal and Others [(2006) 9 SCC 617] has held :

"5. Section 31 of the Act contains special provisions for enforcement of claims by State Financial Corporations. It is by way of a legal fiction that the procedure akin to execution of decrees under the Code of Civil Procedure has been permitted to be invoked. But one cannot lose sight of the fact that there is no decree or order of a civil court when we are dealing with applications under Section 31 of the Act. The legal fiction at best refers to a procedure to be followed. It does not mean that a decree or order of a civil court is being executed, which is a sine qua non for invoking Article 136. The proposition set out in the case of Gujarat State Financial Corporation (supra) found support in M/s. Everest Industrial Corporation and Others v. Gujarat State Financial Corporation 1987 (3) SCC 597. Again in Maganlal etc. vs. Jaiswal Industries Neemach & Ors. 1989 (3) SCR 696 this court noticed that an order under Section 32 is not a decree stricto-sensu as defined in Section 2(2) of the Code of Civil Procedure, the financial Corporation could not be said



to be a decree holder. This makes it clear that while dealing with an application under Sections 31 and 32 of the Act there is no decree or order of a civil court being executed. It was only on the basis of a legal fiction that the proceedings under Section 31 are treated as akin to execution proceedings. In fact this Court has observed that there is no decree to be executed nor there is any decree holder or judgment debtor and therefore in a strict sense it cannot be said to be a case of execution of a decree. Article 136 of the Limitation Act has no application in the facts of the present case. Article 136 specifically uses the words "decree or order of any civil court". The application under Sections 31 and 32 of the State Financial Corporation Act is not by way of execution of a decree or order of any civil court.

6. Article 137 of the Limitation Act applies in the facts of the present case. When Article 137 is applied, the application moved by the appellant- Corporation on 2nd January, 1992 for proceeding against the sureties i.e. the respondents herein, was clearly barred by time and the courts below



were correct in holding so. To recall the facts of the present case, the notice demanding repayment of the amount of loan was issued against the borrower, that is, M/s. Crystal Marketing Private Limited on 8th March, 1983 and the application under Sections 31 and 32 of the State Financial Corporation was filed against the said borrower on 25th October, 1983. The liability of sureties had crystalised then.”

11. Sri Venkatesh Arbatti did not dispute applicability of Article 137 of the Limitation Act, but he based his argument with reference to another judgment of the Supreme Court in **Deepak Bhandari vs Himachal Pradesh State Industrial Development Corporation [(2015) 5 SCC 518]**, where it was held that the contract of indemnity executed by guarantors was independent, and right to claim for the balance arose under the contract of indemnity when the sale proceeds were found insufficient. Sri G.Krishna Murthy submitted that **Deepak Bhandari** was not applicable in as much



as petition under Section 31 against the guarantors was filed for the balance that remained after exhausting remedy under Section 29, but in the present case, guarantee was invoked under Section 30 of SFC Act, and therefore starting point of limitation was from the day when notice under Section 30 was issued.

12. In ***Deepak Bhandari***, there is a reference to ***Maharashtra State Financial Corporation vs Ashok Agarwal*** and it has been observed that the question that arose there was which of the two Articles namely 136 or 137 of the Limitation Act was applicable, but did not discuss the issue in regard to starting date for counting the period of limitation. And the facts in that case show that financial corporation, i.e., Himachal Pradesh State Industrial Development Corporation instituted a suit invoking deed of indemnity executed by the guarantor, it did not take action



under Section 31 of SFC Act. In those set of circumstance it was held that the case would fall under Article 55 of the Limitation Act and the right to sue on a contract of indemnity guarantee would arise when the contract was broken. Thus it is clear that the appellant cannot seek assistance from **Deepak Bhandari**. Given a careful reading to Section 31 it figures out that invocation of Section 30 of SFC Act is, as has been already referred, one of the circumstances for initiating proceeding under Section 31 before the District Judge. That means if notice under Section 30 is issued to the industrial concern, it is a notice issued to guarantors too. This meaning can be ascribed, for Section 31 provides for action not only against industrial concern, but also against guarantors for one or more of the reliefs envisaged in that Section. In this view if notice was issued under Section 30, starting point would be date of notice.



13. In this case, the undisputed facts are that,

- (i) As per clause 2 of Ex.P3, the 'Deed of Guarantee' the corporation i.e., appellant shall be entitled to treat the guarantors as principal borrowers for all the due repayment and covenants*
- (ii) Clause 4 stipulates that any action taken by the appellant against the company and an intimation in writing sent to the company by the appellant that a default or breach has occurred shall be treated as final and conclusive proof as to the facts stated therein and be binding on the guarantors.*
- (iii) Exs.R3 to R8 are the demand notices to respondent No.1-company for the amount due. Issuance of notices is not disputed. Exs.R3 to R5 bear the date*



15.6.1988 and Exs. R6 to R8 bear the date 15.9.1988.

(iv) In Ex.R10 there is a reference to notice dated 15.05.1998, issued by the appellant demanding repayment of Rs.1,65,60,463/- which was the sum due as on 20.03.1998.

(v) 29.6.1998 was the date of passing a resolution by the appellant to invoke Section 29 of SFC Act.

(vi) On 29.12.2000 appellant issued legal notice to respondents 2 and 3 invoking guarantee deed.

Though guarantee deed was invoked on 29.12.2000, neither that date nor the date of passing of a resolution to invoke Section 29 i.e., 29.06.1998 can be considered as starting point of limitation. 15.06.1988 was the date to be



reckoned for counting, and thus seen, petition, having been filed on 8.6.2001 was time barred.

14. Therefore the conclusion is that the impugned order does not suffer from legal infirmity. The appeal deserves to be dismissed and ordered accordingly.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K. V. ARAVIND)
JUDGE

CKL
List No.: 1 Sl No.: 1