

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

MISCELLANEOUS FIRST APPEAL NO. 1634 OF 2017 (SFC)
C/W

MISCELLANEOUS FIRST APPEAL NO. 1250 OF 2017 (SFC)

IN MFA NO. 1634/2017

BETWEEN:

SRI DAYANAND SAGAR
S/O H.C.CHANNAIAH,
AGED ABOUT 27 YEARS,
R/AT NO.1114, M.C.ROAD,
MANDYA

...APPELLANT

(BY SMT. APARNA N., ADV. FOR
SMT. BHAVANA G.K., ADV.)

AND:

1. KARNATAKA STATE FINANCIAL
CORPORATION,
HAVING ITS HEAD OFFICE AT NO.1/1,
THIMMAIAH ROAD, BENGALURU-560001
MANAGER
2. KARNATAKA STATE FINANCIAL
CORPORATION,
HAVING ITS HEAD OFFICE AT NO.1/1,
THIMMAIAH ROAD, BENGALURU-560001
REPRESENTED BY ITS DEPUTY GENERAL MANAGER

Digitally
signed by
RAKSHA
Location:
High Court
of Karnataka

(RECOVERY)

3. MADHU PAPER MILLS PVT. LTD.
A COMPANY REGD. UNDER
COMPANIES ACT, 1956,
SY.NO.58 AND 59, RANGANATHAPURA VILLAGE,
T.N.PURA TALUK
MYSORE DISTRICT (IN LIQUIDATION)
REP. BY THE OFFICIAL LIQUIDATOR,
4TH FLOOR, D AND F WING, KENDRIYA SADAN,
KORAMANGALA, BENGALURU-560034
4. M.K.GOLAPAKRISHNA
S/O K. KEMPEGOWDA,
NO.201, KEMPEGOWDA STREET,
OLD TOWN, MANDYA
ALSO AT
NO.438, 28TH CROSS,
3RD BLOCK, JAYANAGAR,
BENGALURU-560041

(SINCE DEAD BY LRS)

- 4A M.G.MADHUKAR
S/O M.K.GOPALAKRISHNA
AGED ABOUT 59 YEARS
R/AT GARDEN APPARTMENTS
AN GIA TAN PHU A3A-09
295 TAN KI TAN QUY
HO CHI MINH CITY, VIETNAM

(AMENDED VIDE ORDER DATED 23.03.2023)

...RESPONDENTS

(BY SRI. VINAYA KUMAR G.S., ADV. FOR R1 & R2;
SRI. JAGADEESH GOUD PATIL, ADV. FOR R3;
SRI. S.R.HEGDE HUDLAMANE, ADV. FOR R4)

THIS MFA IS FILED U/S 32(9) OF STATE FINANCIAL
CORPORATION ACT, 1951, AGAINST THE ORDER DATED

16.12.2016 PASSED IN MISC. PETITION NO.28/2001 ON THE FILE OF THE C/C. I ADDITIONAL DISTRICT JUDGE, MYSURU, ALLOWING PETITION FILED UNDER SECTION 31(1)(AA) AND SECTION 32 OF THE STATE FINANCIAL CORPORATION ACT, 1951.

IN MFA NO. 1250/2017

BETWEEN:

1. SRI M K GOPALAKRISHNA
AGE:MAJOR
S/O K KEMPEGOWDA
(SINCE DECEASED BY HIS L.R.)

1(A) M.G.MADHUKAR
S/O M.K.GOPALAKRISHNA
AGED ABOUT 56 YEARS
AT PRESENT R/O GARDEN APARTMENT
A3A-09 295 TAN KI TAN QUY
HO CHI MINH CITY, VIETNAM

(AMENDED AS PER COURT ORDER DATED 23.03.2023)

...APPELLANT

(BY SRI. S R HEGDE HUDLAMANE, ADVOCATE)

AND:

1. KARNATAKA STATE FINANCIAL CORPORATION
A BODY CORPORATE ESTABLISHED UNDER
THE SFC ACT 1951 (CENTRAL ACT NO.LXIII OF 1951)
HAIVNG ITS HEAD OFFICE AT NO.1/1
THIMMAIAH ROAD
BENGALURU-506 001

2. KARNATAKA STATE FINANCIAL CORPORATION
A BODY CORPORATE ESTABLISHED UNDER
THE SFC ACT 1951 (CENTRAL ACT NO.LXIII OF 1951)

HAIVNG ITS OFFICE AT NO.1/1
THIMMAIAH ROAD
BENGALURU-560 001

BOTH R1 & R2 ARE REP.BY ITS DEPUTY GENERAL
MANAGER (RECOVERY)

3. M/S MADHU PAPER MILLS PVT. LTD.
A PRIVATE LIMITED INCORPORATED
UNDER THE COMPANIES ACT, 1956
AND HAVING ITS PLACE OF BUSINESS
AT SY.NO.58 & 59
RANGANATHAPURA VILLAGE
T. NARASIPURA TALUK
MYSURU DISTRICT (IN LIQUIDATION)
REPRESENTED BY THE OFFICIAL LIQUIDATOR
4TH FLOOR D & F WING
KENDRIYASANDA
KORAMANGALA
BANGALORE-560 034
4. SRI DAYANANDA SAGAR
AGE: MAJOR
R/O NO.1114, M C ROAD
MANDYA, MANDYA DISTRICT-570 001

...RESPONDENTS

(BY SRI. VINAYA KUMAR G.S., ADV. FOR R1 & R2;
SRI. JAGADEESH GOUD PATIL, ADV. FOR R3;
SMT. APARNA N., ADV. FOR
SMT. BHAVANA G.K., ADV. FOR R4)

THIS MFA IS FILED U/S 32(9) OF THE STATE FINANCE
CORPORATION ACT, 1951, AGAINST THE ORDER DATED
16.12.2016 PASSED IN MIS.PETITION NO.28/2001 ON THE
FILE OF THE C/C. I ADDITIONAL DISTRICT JUDGE,
MYSURU, ALLOWING THE PETITION FILED U/S 32 OF THE
STATE FINANCIAL CORPORATIONS ACT.

THESE MISCELLANEOUS FIRST APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 03.08.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
AND
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)

Miscellaneous First Appeals No.1634/2017 and 1250/2017 are filed challenging Order dated 16.12.2016 passed in Miscellaneous Petition No.28/2001 by the I Additional District Judge, Mysuru, ('Trial Court' for short), wherein the trial Court allowed the Miscellaneous Petition filed by the respondent-Karnataka State Financial Corporation ('KSFC' for short) under Section 31(1)(aa) read with Section 32 of the State Financial Corporations Act, 1951 ('SFC Act' for short) and directed the appellants-guarantors to pay a sum of Rs.4,00,19,992.70 as on 10.06.2000 with future interest at the rate of 16.5% per annum. Aggrieved by the said Order, the present appeals have been preferred by the guarantors.

2. We have heard Smt. Aparna N., learned counsel for Smt. Bhavana G.K appearing for the appellant in MFA No.1634/2017 and respondent No.4 in MFA No.1250/2017, Shri. S.R Hegde Hudlamane learned counsel appearing for respondent No.4 in MFA No.1634/2017 and the appellants in MFA No.1250/2017; Shri. Vinaya Kumar G.S learned counsel appearing for respondents No.1 and 2 in both the appeals, Shri Jagadeesh Goud Patil learned counsel appearing for respondent No.3 in both the appeals.

3. The brief facts of the case are as follows: -

The parties are referred as per their rankings before the trial Court.

Respondent No.1 in the Miscellaneous Petition was the principal borrower from KSFC, M/s Madhu Paper Mills Pvt. Ltd. and respondents No.2 and 3 were the Directors of the Company. The Karnataka State Financial Corporation-petitioner sanctioned a term loan of Rs.30 lakhs vide sanction letter dated 28.07.1976 for setting up a mini paper mill, and an additional term loan of Rs.22.55 lakhs vide sanction letter dated 23.03.1987.

In relation to these loans, the following documents were executed- a Mortgage Deed dated 03.10.1977, a supplemental agreement dated 01.03.1978, a Modified Mortgage Deed dated 26.03.1988, a further Modification Deed dated 30.07.1988, and a Hypothecation Deed dated 26.03.1988 executed by respondent No.1 and two Deeds of Guarantee dated 03.10.1977 and 26.03.1988 executed by respondents No.2 and 3.

Respondent No.1- Company made a reference before the Board for Industrial and Financial Reconstruction (BIFR) under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 and by order dated 10.10.1996 in Case No.39/1989, the BIFR held that the Company should be wound up under Section 20(1) of the Sick Industrial Companies (Special Provisions) Act. The Company's appeal, Appeal No.86/87, was dismissed by the Appellate Authority for Industrial and Financial Reconstruction by Order dated 26.02.1998. The assets of the Company were taken over by Karnataka State Industrial Investment and Development Corporation Limited (KSIIDC)

in exercise of powers under Section 29 of the SFC Act on 29.06.1998. Thereafter, this Court passed an order on 21.07.2000 in Co.P.No.70/1997 directing that respondent No.1 Company be wound up, and an Official Liquidator was appointed.

The Corporation issued a legal notice dated 17.08.2000 calling upon the guarantors to pay the amount claimed, and thereafter filed Miscellaneous Petition No.28/2001 under Section 31(1)(aa) read with Section 32 of the SFC Act seeking recovery of Rs.4,00,19,992.70/- as on 10.06.2000 with future interest at 16.5% per annum compounded quarterly with effect from 11.06.2000 till payment.

The trial Court by order dated 25.10.2004, decided the preliminary issues of jurisdiction and limitation in favour of the Corporation. The appellant challenged that order in W.P.No.5169/2005, and this Court set aside the order dated 25.10.2004 and remitted the matter for fresh consideration on the said points. Thereafter, on 25.01.2010, the trial Court dismissed the Miscellaneous Petition on the grounds of limitation and discharge of the guarantee. The Corporation

filed MFA No.2272/2010, wherein this Court by Order dated 11.03.2016 allowed the appeal, set aside the order dated 25.01.2010, and remanded the matter with liberty to both parties to adduce further evidence and rebuttal evidence, clarifying that the order in the MFA would not bear on the final adjudication of Miscellaneous Petition No.28/2001. Pursuant to the remand, PW-1 was recalled and further cross-examined and additional documents were marked from the appellant's side. By order dated 16.12.2016 the trial Court allowed the Miscellaneous Petition with costs, directing respondents No.2 and 3 to pay Rs.4,00,19,992.70/- due as on 10.06.2000 with future interest at 16.5% per annum with compound interest on quarterly rests with effect from 11.06.2000 till realisation, and issuing a Recovery Certificate accordingly.

On limitation, the trial Court relied on the observations of this Court in MFA No.2272/2010, wherein this Court relied on the case of ***Syndicate Bank v. Channaveerappa Beleri*** reported in **(2006) 11 SCC 506**. The Apex Court had held that a claim may be time barred against the principal debtor

but could still be enforceable against the guarantor, and that where the demand is made against the guarantor while the claim is a live claim, limitation runs from the date of such demand and refusal. The trial Court held that the Demand Notices produced by respondent No.2 as Ex.R12 to R51, from years 1986 to 1992, had been issued only against the Company and not against respondents No.2 and 3. Further, it was held that the Corporation's notice at Ex.P8 dated 17.08.2000 was the first demand invoking the personal guarantee of respondents No.2 and 3. On this reasoning, even applying Article 137 of the Limitation Act, 1963, time began to run only from Ex.P8, and the petition filed in 2001 was well within three years and not barred by limitation. On the issue of personal liability of the guarantors, the trial Court held that this Court's observation in MFA No.2272/2010 that public money was involved and could not be dealt with superficially was binding on both sides. Further, the seizure of the Company's assets by KSIIDC could not discharge the personal guarantors and that being continuing guarantees, respondents No.2 and 3 could not

escape their liability. Therefore, allowed the petition with costs. Aggrieved thereby, the appellants - guarantors have filed the present appeals.

4. The learned counsel appearing for the appellant in MFA No.1634/2017 contended that the petition is barred by limitation. It is also contended that PW-1 has admitted in cross-examination that demand notices had been issued to the appellants in the appeal, time and again from 1979 and that they had failed to pay the amount. PW-1 has further admitted that demand for payment was made from the year 1988 and continued once in three months, and even in further cross-examination after remand, the issue of notice has been admitted. Despite the opportunity, PW-1 has not stated anything to indicate that no notice was issued to the appellants till Ex.P8 was issued. The trial Court ought to have accepted the admission of PW-1 that demand notice invoking the guarantee had been issued to the appellants in the year 1988 itself, and that the claim is accordingly barred by limitation. However, the trial Court has held that this

Court has already decided the point of limitation and held the same against the appellant, which was bad in law.

5. It is further contended that the trial Court has not considered the fact that the appellants, being the guarantors, are entitled to know the value realised from the sale of the plant and machinery of the respondent-Company hypothecated to the Corporation. The claim initiated suppressing those materials entitles the appellants to have their guarantees discharged. The Company was under liquidation before the Company Court, and the respondent-Corporation ought to have obtained leave from the Company Court to proceed against the Company and the Guarantors for adjudication of the debt.

6. It is further contended that the trial Court ought to have noticed that if the creditor does any act which is inconsistent with the right of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged. In the instant case, the respondent-Company offered several

properties as security, and the appellants being the guarantors have lost their right over those properties by reason of the act of the Corporation. It is further contended that in view of the continuous default by the Company and the Guarantors, the Right to Sue accrued to the respondent - Corporation in the year 1988, and Ex.P8 will not save limitation for the purpose of filing the petition. Article 137 of the Limitation Act is applicable to the facts of the case. The Miscellaneous Petition filed in the year 2001 is therefore clearly barred by limitation, and this aspect has not been considered by the trial Court.

7. It is further contended that the trial Court has misconstrued the order passed by this Court in MFA No.2272/2010. This Court had clearly reiterated the ratio laid down by the Apex Court in ***Syndicate Bank's case*** (supra), however, the trial Court observed that all these demand notices were actually issued against the Company and against the appellants, and that though this petition may be time barred against the respondent- Company, it is not time barred as against the appellants. It is contended

that limitation once begun in respect of a particular transaction will not save the limitation for the purpose of filing a petition against the guarantors. The demand notice to the guarantors was served in the year 1988, and the claim petition is accordingly time barred, so far as the appellants are concerned. It is further contended that the trial Court has not considered the fact that the order in MFA No.2272/2010 states that it shall not have any bearing at the time of final adjudication.

8. The learned counsel appearing for the appellant in MFA No.1634/2017 places the reliance on the following decisions:-

- ***Kailash Nath Agarwal and Others v. Pradeshiya Industrial and Investment Corporation of U.P. Ltd. and Another*** reported in **(2003) 4 SCC 305;**
- ***Maharashtra State Financial Corporation v. Ashok K. Agarwal and Others*** reported in **(2006) 9 SCC 617;**
- ***R.N. Shetty and Another v. Karnataka Industrial Investment and Development Corporation Ltd., Bengaluru*** reported in **2005 SCC OnLine Kar 66;** and

- ***Karnataka State Financial Corporation v. M/s Madhu Paper Mills Private Ltd. and Others***
Order dated **11.03.2016** passed in **MFA No.2272/2010 (SFC).**

9. The learned counsel appearing for the appellant in MFA No.1250/2017 raises similar contentions. It is contended that PW-1 admitted in cross-examination, both before and after remand, that demand notices had been issued to the appellants from 1979 onwards, that proceedings under Section 29 of the SFC Act were initiated in 1988, and that demand notices were being issued at three-month intervals from 1988, therefore, the right to sue accrued to the respondent - Corporation in 1988. It is further contended that once limitation begins in respect of the transaction, it cannot be revived by treating the Guarantee Deeds as continuing guarantees with time running from Ex.P8 - Notice. On PW1's admission of continuous default and continuous demand till 1988, and in view of Ex.R12 to Ex.R53, Article 137 begins to run from the year 1988 and not from the year 2000.

10. It is further contended that the Corporation has placed no material regarding the sale proceeds of the properties hypothecated and mortgaged by the respondent-Company, that the debt has not been adjudicated, and that the appellants as guarantors are entitled to know the value realised from the sale of the plant and machinery of the respondent-Company hypothecated to the Corporation. The claim initiated while suppressing this material entitles them to have the guarantee discharged. Under Section 139 of the Indian Contract Act, where the creditor does any act inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety against the principal debtor is thereby impaired and the surety is discharged. In the instant case, the respondent Company offered several properties as security, and the appellant and Respondent No. 4 as guarantors have lost their right over those properties by the act of the Corporation. The guarantee accordingly stands discharged.

11. It is further contended that the claim petition filed before the trial Court is not supported by any Authorisation or Letter of Authority issued by the respondent- Corporation to invoke the proceedings under Section 31(1)(aa) of the SFC Act, that the person authorised to file the petition had no authority to present it, and that the Miscellaneous Petition ought to have been dismissed on this ground alone.

12. The learned counsel appearing for the appellant in MFA No.1250/2017 places reliance on the following decisions:-

- ***Kailash Nath Agarwal and Others v. Pradeshiya Industrial and Investment Corporation of U.P. Ltd. and Another*** reported in **(2003) 4 SCC 305;**
- ***Maharashtra State Financial Corporation v. Ashok K. Agarwal and Others*** reported in **(2006) 9 SCC 617;**
- ***R.N. Shetty and Another v. Karnataka Industrial Investment and Development Corporation Ltd., Bengaluru*** reported in **2005 SCC OnLine Kar 66;**
- ***The Maharashtra State Financial Corporation v. M/s Jaycee Drugs and Pharmaceuticals Pvt. Ltd.*** reported in **AIR 1991 Bombay 96;**

- ***The Karnataka State Financial Corporation and Others v. Smt. Jaya Menon and Others*** reported in ***ILR 2004 KAR 2735***; and
- ***K.P Khemka and Another v. Haryana State Industrial and Infrastructure Development Corporation Ltd. and Ors.*** reported in ***2024 INSC 396***.

13. The learned counsel appearing for the respondent- Corporation contended that under the Deeds of Guarantee, the appellants undertook that the guarantee shall be enforceable against the guarantors, that a written intimation from the Corporation to the Company that a default or breach has occurred shall be treated as final and conclusive proof of the facts stated therein. It is further contended that the guarantee shall be a continuing one for all amounts that may from time to time become due and payable and remain unpaid.

14. It is further contended that the SFC Act is a special and self-contained enactment which provides remedy and procedure for recovery of the public money advanced by it, that Section 46-B of the SFC Act provides that its provisions shall be in addition to and not in derogation of

any other laws for the time being applicable to industrial concerns, and that by virtue of Section 46-B the SFC Act would override the provisions of the Limitation Act, which is a general law, with the result that Article 137 of the Limitation Act does not apply to the petition. It is further contended that as per the terms and conditions of the Guarantee Deeds these guarantees are continuing guarantees which subsist until the liability of the Company is discharged, that under clauses 14, 15 and 16 the guarantees are expressly continuing, and that under clauses 2, 3, 4 and 12 the guarantee deeds provide for no release of the guarantor by virtue of forbearance. On these terms, it is contended that the notice at Ex.P8 dated 17.08.2000 was the first invocation of the personal guarantee of the appellants, and the time began to run only from that date, therefore, the petition was well within time. On maintainability, the Corporation contended that leave under Section 446(1) of the Companies Act was not necessary as it was invoking a special provision to enforce the personal guarantee. Reliance is placed on the observation of this

Court in MFA No.2272/2010 that public money was involved and that the petition could not be disposed of on a superficial assessment of evidence.

15. We have considered the contentions advanced. The only question which requires to be considered in these appeals is whether the respondent- Corporation had recalled the loan and invoked the guarantee on any date before 17.08.2000 i.e., the date of Ex.P8. Ex.P4 would clearly show that the guarantee is a continuing guarantee. The terms provided in Ex.P4 for its invocation are as under:-

"1. If at any time default shall be made by the company in the payment of the Principal sum of Rs. 22,55,000/- (Rupees twenty two lakhs fifty five thousand only) and interest, commitment charges and / or other moneys for the time being due to the Corporation under the security documents the Guarantors on demand shall pay to the Corporation the whole of such principal sum, interest, commitment charges and/or other moneys, which shall then be due to the Corporation as aforesaid and will indemnify and keep indemnified the Corporation against all loss of principal sum interest, commitment charges or other moneys secured under the security documents and all costs charges and expenses whatsoever (as between attorney and client) which the Corporation may incur by reason of any default on the part of the Company or in

filing any legal proceedings against the Company and/or the Guarantors for the recovery of the aforesaid amounts.

3. *x x x x x*

4. *x x x x x*

5. *The Guarantors hereby agree and give consent to mortgage on Pari-Passu or second charge basis, release etc. of any of the assets by the Company from time to time as may be approved by the Corporation or to the transfer of any of its assets from one unit to the other or to the release or leasing out by the Corporation of any or whole of the assets charged to the Corporation on such terms and conditions as the Corporation may deem fit and this may be treated as a standing and continuing consent for each and every individual act or transfer of any such assets of the Company. The Guarantors hereby declare and agree that no separate consent for each such transfer or release of any of such assets would be necessary in future."*

16. The contention of the learned counsel for the appellants is that Ex.R7 amounts to a notice for taking over the undertaking under Section 29 of the KSFC Act and Ex.R51 amounts to a loan recall notice under Section 30 of the Act. The learned counsel for the respondent, on the other hand, contends that as on the date of Ex.R7, the property in question was under orders of takeover by the

KSIIDC and that the communications stated in Ex.R7 cannot be an order under Section 29 of the SFC by any means. Further, it is contended that Ex.R51 is only a demand notice issued to the Company intimating the amount in default as on date and will not qualify as a notice under Section 30 of the SFC Act.

17. It is pertinent here to refer to the provisions of the statute. We therefore reproduce the relevant provisions of Sections 29 and 30 of the SFC Act as under:-

"29. Rights of Financial Corporation in case of default.—

- (1) *Where any industrial concern, which is under a liability to Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof [or in meeting its obligations in relation to any guarantee given by the Corporation] or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the [right to take over the management or possession or both of the industrial concerns], as well as the [right to transfer by way of lease or sale] and realise the property pledged,*

mortgaged, hypothecated or assigned to the Financial Corporation."

"30. Power to call for repayment before agreed period.—*Notwithstanding anything in any agreement to the contrary, the Financial Corporation may, by notice in writing, require any industrial concern to which it has granted any loan or advance to discharge forthwith in full its liabilities to the Financial Corporation,—*

- (a) if it appears to the Board that false or misleading information in any material particular was given by the industrial concern in its application for the loan or advance; or*
- (b) if the industrial concern has failed to comply with the terms of its contract with the Financial Corporation in the matter of the loan or advance; or*
- (c) if there is a reasonable apprehension that the industrial concern is unable to pay its debts or that proceedings for liquidation may be commenced in respect thereof; or*
- (d) if the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance is not insured and kept insured by the industrial concern to the satisfaction of the Financial Corporation or depreciates in value to such an extent that, in the opinion of the Board, further security to the*

satisfaction of the Board should be given and such security is not given; or

- (e) if, without the permission of the Board, any machinery, plant or other equipment, whether forming part of the security or otherwise, is removed from the premises of the industrial concern without being replaced; or*
- (f) if for any reason it is necessary to protect the interests of the Financial Corporation."*

18. The appellants have produced the series of demand notices at Ex.R12 to Ex.R51 to contend that these were demand and recall notices under Section 29 and Section 30 of the SFC Act. We notice that upon a reading of both provisions, a notice under Section 29 of the SFC Act must be one issued by the Corporation to the industrial concern for the takeover of its assets, and that a notice under Section 30 SFC Act must be one recalling the entire loan and requiring immediate discharge of the liability. The notices which are produced and relied on do not contemplate the making of a demand upon the guarantors and do not operate as an invocation of the personal guarantee.

Therefore, the contention that the guarantee stands invoked by the issuance of the said notices cannot be accepted.

19. We also notice that the demand notices at Ex.R12 to R51 are addressed to the Company alone and are demands upon the principal debtor. Apart from showing the amount and the interest which is in default as on the date, there is no mention in those notices recalling the loan or intimating the guarantors that their guarantee is being invoked in any manner. As a matter of fact, the demand notices show only the calculation of the principal and the interest which is in default and does not have any provisions with regard to recall at all. There is no reference to the sureties in those notices and the sureties are also not put on any notice.

20. The Apex Court in ***Syndicate Bank's case*** (supra), held that a guarantor's liability turns entirely on the terms of the guarantee, and where the guarantee is payable on demand, limitation begins to run only when the demand is made and the guarantor fails to comply. The relevant paragraphs of the case read as follows:-

"9. A guarantor's liability depends upon the terms of his contract. A "continuing guarantee" is different from an ordinary guarantee. There is also a difference between a guarantee which stipulates that the guarantor is liable to pay only on a demand by the creditor, and a guarantee which does not contain such a condition. Further, depending on the terms of guarantee, the liability of a guarantor may be limited to a particular sum, instead of the liability being to the same extent as that of the principal debtor. The liability to pay may arise, on the principal debtor and guarantor, at the same time or at different points of time. A claim may even be time-barred against the principal debtor, but still enforceable against the guarantor. The parties may agree that the liability of a guarantor shall arise at a later point of time than that of the principal debtor. We have referred to these aspects only to underline the fact that the extent of liability under a guarantee as also the question as to when the liability of a guarantor will arise, would depend purely on the terms of the contract.

11. *But in the case on hand, the guarantee deeds specifically state that the guarantors agree to pay and satisfy the Bank on demand and interest will be payable by the guarantors only from the date of demand. In a case where the guarantee is payable on demand, as held in Bradford [(1918) 2 KB 833] and Hartland [(1863) 1 H&C 667], the limitation begins to run when the demand is made and the guarantor commits breach by not complying with the demand.*

In the instant case, we are of the opinion that Ex.P8 dated 17.08.2000 is the first demand on the guarantors and the limitation began to run from that date. Therefore, we find no grounds to interfere with the findings of the trial Court.

21. The appellants have placed reliance on clauses 9, 12 and 13 of Ex.P4 - Deed of Guarantee, contending that on a reading of these clauses the demand notices at Ex.R12 to Ex.R51 addressed to the respondent-Company operate as demands upon the guarantors. We notice that on a perusal of these clauses there is nothing to indicate invocation of guarantee upon demand or that guarantee will be invoked when notice is issued upon the Company. The learned counsel appearing for the appellant in W.A.No.1634/2017 has also placed reliance on the decision of a Co-ordinate Bench of this Court in ***KSIIDC v. Madhu Paper Mills Ltd*** Order dated **27.02.2025** in ***MFA No.8628/2012***, to contend that the demand notices at Ex.R12 to Ex.R51 addressed to the respondent-Company must be treated as notices to the guarantors as well. We notice that in the above-mentioned case, the observation is expressly confined

to a notice under Section 30 of the SFC Act, on the reasoning that a notice under Section 30 of the SFC Act issued to a an Industrial Concern, is a notice issued to the guarantors as well. However, in the instant case, the demand notices at Ex.R12 to Ex.R51 are not notices under Section 30 of the SFC Act but only demands for repayment, and do not recall the entire loan. Therefore, the decision of the Co-ordinate Bench is distinguishable in the instant case.

22. The appellants have also contended that they stand discharged of their liability under Section 139 of the Indian Contract Act on the ground that the assets of the respondent-Company given as security have been taken over and sold, and the amounts realised have not been furnished to the guarantors, thereby impairing their eventual remedy against the principal debtor. In the instant case, the creditor to whom the appellants stood as guarantors is the respondent-KSFC, in whose favour the Deeds of Guarantee at Ex.P2 and Ex.P4 were executed and to whom the loan amount is owed. The takeover of the assets and the subsequent sale were done not by the respondent-KSFC but

by KSIIDC. It is also pertinent to note that KSIIDC has not been made a party to the present proceedings. The takeover and sale of the assets were not carried out by the respondent-KSFC, therefore, the contention regarding the discharge of liability of the guarantors stands rejected.

23. In the above circumstances, we are of the opinion that the contention that loan recall notices had been issued in the year 1988 and that the guarantee was invoked in the year 1988 cannot be accepted. We therefore find that the first notice issued to the guarantor or invoking the guarantee is under Ex.P8. In the circumstances, the finding of the trial Court that the petition under Section 31(1)(aa) of the SFC Act is filed well within time from the invocation of guarantee is the correct conclusion.

24. The Miscellaneous First Appeals therefore, fail and are accordingly ***dismissed***.

All pending Interlocutory Applications shall stand *disposed of* in both the matters.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**

PN*/cp*