

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE T.P.VIVEKANANDA

MISCELLANEOUS FIRST APPEAL NO. 6694 OF 2021 (SFC)

BETWEEN:

1. M/S. AWANTHI HOTELS
A PARTNERSHIP FIRM
REGISTERED UNDER THE INDIAN
PARTNERSHIP ACT, 1932
HAVING ITS PLACE OF BUSINESS
AND OFFICE AT NO. 162 AND 164
SY. NO.122/1, CHANNASANDRA VILLAGE
HOSKOTE TALUK
BANGALORE-560 067
2. SRI. P.B. ANANTHA RAO
S/O LATE KASHINATH BALU
AGED ABOUT 75 YEARS
R/AT CHANNASANDRA VILLAGE
KADUGODI POST
BIDARAHALLI HOBLI
BENGALURU SOUTH TALUK
BENGALURU DISTRICT-560 062

ALSO AT NO.48/47
LFC ROAD, PENANDOOR ROAD
NEAR AYODHYA PRINTING PRESS
ELAMAKKARA-682 026
3. SRI. VISHWANATH C
S/O LATE CHIKKAMUNIYAPPA
AGED ABOUT 44 YEARS
R/AT 167/3, "LAKSHMI VENKATESHWARA
NILAYA", CHANNASANDRA

KADUGODI POST
BENGALURU-560 067

...APPELLANTS

(BY SRI: G KRISHNAMURTHY, SR COUNSEL FOR
SRI: B SHARATH KUMAR, ADV FOR APPELLANT NOS.1 & 2;
SRI: VISWANATHA SETTY V, ADV FOR APPELLANT NO.3)

AND:

1. KARNATAKA STATE FINANCIAL CORPORATION
A BODY CORPORATE ESTABLISHED
UNDER THE STATE FINANCIAL
CORPORATION ACT, 1951
(CENTRAL ACT NO.LXIII OF 1951)
HAVING ITS HEAD OFFICE AT NO.1/1
THIMMAIAH ROAD
BENGALURU-560 052
REPRESENTED BY ITS MANAGER (LEGAL)
RECOVERY - II

SMT. PUSHPALATHA
W/O SRI. P.B. ANANTHA RAO
(SINCE DECEASED)

SRI. P.B. MANOJ KUMAR
S/O SRI. P.B. ANANTHA RAO
(SINCE DECEASED)

SRI. P.B. ANANTHA RAO

SMT. PUSHPALATHA (DEAD)

2. SMT. ASHA MANOJ KUMAR
W/O SRI. P.B. MANOJ KUMAR
AGED ABOUT 36 YEARS
R/AT NO.162, NEAR THIRUMALA BAKERY
NEW CHANNASANDRA EXTENSION
KADUGODI POST
BANGALORE-560 067

3. SMT. CHANDRIKA BAI
C/O M.L. NAGARAJA
Q.NO.F:2, KEB QUARTERS
4TH CROSS, 7TH MAIN, HAL II STAGE
INDIRANAGAR
BENGALURU-560 008

...RESPONDENTS

(BY SRI: P S MALIPATIL, ADV FOR R1;
SRI: VENKATESH P. DALWAI, ADV FOR R3
VIDE ORDER DATED 21.11.2023, APPEAL
AGAINST R2 STANDS DISMISSED;)

THIS MFA IS FILED UNDER SECTION 32(9) OF STATE FINANCIAL CORPORATION ACT, 1951, AGAINST THE ORDER DATED 30.10.2021 PASSED IN MISC.PETITION NO.41/2010 ON THE FILE OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL DISTRICT, BENGALURU, ALLOWING PETITION FILED UNDER SECTION 31(1)(aa) AND SECTION 32 OF THE STATE FINANCIAL CORPORATION ACT, 1951.

THIS MFA, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 01.09.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **T.P.VIVEKANANDA J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE T.P.VIVEKANANDA

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE T.P.VIVEKANANDA)

This appeal is filed under Section 32(9) of the State Financial Corporation Act, 1951 (for short 'the Act'), challenging the order dated 30.10.2021 in Misc. Petition No.41 of 2010 passed by the Principal District and Sessions Judge, Bengaluru Rural District, Bengaluru, whereby, the petition filed by respondent No.1 - KSFC under Section 31(1)(aa) of the Act, has been allowed, entitling the KSFC to recover a sum of Rs.76,54,991/- along with interest at 21%per annum from the appellants/respondents.

2. The facts of the case in brief are as follows:

Appellant No.1 had approached the KSFC for financial assistance and the KSFC has sanctioned term loan of Rs.27 lakhs on 05.10.1997 for establishment of a hotel. As a security for the loan, the appellants have executed Deed of Mortgage dated 22.11.1997 in respect of the property bearing site Nos.1, 2 and 3 of Sy.No.122/1, Katha Nos.162, 163 and 164 of Channasandra Village, Kadugodi Post, Hosakote Taluk measuring East to West 90 feet and North to South 40 feet

together with the building thereon including the plant and machinery.

3. In addition, the appellant No.2 and Respondent Nos.2 have also executed the Deed of Guarantee dated 22.11.1997 offering the personal guarantee for repayment of the loan. The borrower/appellants have defaulted in repayment of loan, which resulted in KSFC initiating action under Section 29 of the SFC Act. On 08.11.2002, KSFC took possession of the secured assets/primary security i.e., mortgaged property.

4. It is submitted at the Bar that the primary security i.e., plant and machinery were sold by the KSFC. However, the realization from the sale of plant and machinery was not sufficient to meet the liability of the borrower. Therefore, KSFC has invoked personal guarantee of the appellant No.2. Since the guarantors did not comply with the demand made by KSFC, which resulted in the KSFC initiating proceedings under Section 31(1)(aa) of the Act against the guarantors invoking the Deed of Guarantee and for recovery of sum of Rs.76,54,991/- together with interest at 21% per annum compounded at quarterly basis from 10.03.2004 till realization. The said petition was numbered as Misc Petition No.41 of 2010.

5. Initially, the petition filed by KSFC came to be dismissed on the ground of limitation on 06.02.2013. Challenging the said order, KSFC had approached this Court in MFA No.2499 of 2013. The said appeal came to be allowed holding that the petition filed by KSFC is not barred by limitation and the matter was remanded to the Trial Court for fresh consideration. Upon remand, the Trial Court having considered the matter afresh, allowed the petition by the impugned order.

6. The contention of the appellants in the present appeal is that the KSFC has not proved the enforcement of liability against the appellants. The relief granted by the Trial Court by the impugned order is in the nature of money decree, which is not the scope of proceedings under Section 31(1)(aa) of the Act. The relief that could be granted under the aforesaid provision is in respect of determined amount and the proceedings under the aforesaid provision could be in the nature of execution and not the determination of the amount itself.

7. We have noticed that during the pendency of MFA No.2499 of 2013, appellant No.2 had executed registered sale

deed dated 11.12.2017 in favour of one Sri C Nagaraj, conveying the afore detailed property. The said Sri C Nagaraj has executed a registered gift deed dated 19.07.2023 in favour of Sri Vishwanath C, who is his brother. The donee/transferee has filed an application for his impleadment in this appeal. The said application having been allowed he was brought on record as appellant No.3.

8. Similarly, the KSFC has also brought the aforesaid property for sale pursuant to the public auction Notification dated 10.11.2021. Smt Chandrika Bai, who had offered a sum of Rs.1,07,59,000/- to purchase the aforesaid property, emerged as a successful bidder and the sale was confirmed in her favour through communication dated 31.01.2022 and absolute sale deed has also been executed. Pursuant to the said sale deed, appellant No.3 had filed an application to implead the purchaser Smt Chandrika Bai as party respondent No.3 in the present appeal. The said application having been allowed by order dated 06.12.2024, respondent No.3 was brought on record. The fact of sale of the property in question by appellant No.2 in favour of Sri C Nagaraj during the pendency of the MFA 2499 of 2013 was not brought to the notice of this Court and the fact of KSFC selling the very same

property through public auction was also not brought before this Court till 2023. The aforesaid transactions have been brought on record only through an application filed by appellant No.3 to implead himself in the present proceedings.

9. The contention of appellant No.3 is that the very same property was initially mortgaged to Syndicate Bank (now Canara Bank). The said Bank has initiated proceedings before the DRT in OA No.580 of 2001 for recovery of sum of Rs.34,28,384/-. The said OA was decreed. Since KSFC was not arrayed as party to the said proceedings, it had preferred ASA No.325 of 2007 challenging the order passed in OA No.580 of 2001. While considering the said appeal, the DRT has observed that KSFC had the first charge over the property in question, even if the Syndicate Bank brings the property for sale, it has to first discharge the liability of KSFC and accordingly, disposed of the appeal with a direction to the Syndicate Bank to continue the proceedings initiated under SARFAESI Act and pay off the entire loan due to KSFC at the first instance and appropriate remain sale realization, if any, to its dues. Though the said order of DRT was challenged by the Syndicate Bank in RA(SA) No.13 of 2009 before the DRAT,

however, withdrew the said appeal by filing a memo reporting that the matter is settled.

10. Learned counsel for respondent No.3 contends that the property in question was mortgaged to KSFC and there is a charge over the property, the sale of the same by appellant No.2 in favour of Sri C Nagaraj during the pendency of MFA No.2499 of 2013 cannot have precedence over the auction sale conducted by KSFC and the sale deed executed by it in favour of respondent No.3.

11. When there was a charge created on the property in question, appellant No.2 had no right and authority to deal with the said property without the leave of KSFC i.e., charge holder. Therefore, the sale deed executed by appellant No.2 in favour of Sri C Nagaraj and the deed of gift executed by Sri C Nagaraj in favour of appellant No.3 is of no consequence and the said transaction is *non est* in the eye of law. It is also contended that the above appeal is initially filed by the borrower and one of the guarantor i.e., appellant No.2. Once appellant No.2 had conveyed the property to appellant No.3, he has lost his right to prosecute the above appeal. If the borrower loses his right to prosecute the appeal, appellant No.3 being the so called

transferee of the property in question, which was mortgaged to KSFC, has no *locus* to continue the proceedings, therefore, the appeal is liable to be dismissed. Accordingly, he seeks for dismissal of the appeal.

12. After the appeal was heard and reserved for judgment, this Court found it necessary to look into the Trial Court records in order to verify as to whether the property which has been sold in public auction by the KSFC was mortgaged or the said property was a primary security or collateral security offered by the guarantors. Accordingly, by order dated 07.09.2026 Trial Court records were called for. In addition, the original documents produced by appellant No.3 pursuant to the order dated 09.11.2023 passed by this Court was also directed to be placed on record. Accordingly, the Trial Court records and the original documents are placed on record.

13. On perusal of the Trial Court records and the records of this appeal, it is seen that at the time of sanction of loan to appellant No.1, as a security for the loan, the afore detailed property has been mortgaged by appellant No.1 represented by P B Anantha Rao, V V Pushpalatha and P D Manoj Kumar being the partners of the borrowers/appellant

No.1 herein who were the respondents in the Trial Court. The said mortgage was registered as Document No.8383/97-98 in Book No.1, Volume 1411 on 22.11.1997 in the office of the Sub-Registrar. In addition to the Deed of Mortgage, the aforesaid three Directors have also executed Deed of Guarantee standing as guarantors to the loan sanctioned in favour of appellant No.1/partnership firm.

14. Though the original Deed of Mortgage dated 22.11.1997 was not produced before the Trial Court and marked in evidence, however, a photocopy of the same is available in the Trial Court records. The copy of the sale deed executed by KSFC in favour of respondent No.3 herein discloses that due to default in repayment of the loan by the appellant, the KSFC took over the possession of the aforesaid property(mortgaged property) in exercise of power under Section 29 of the SFC Act on 08.11.2002 and the same was brought to sale only in the year 2021 through auction Notification dated 10.11.2021 and the said property was sold in favour of respondent No.3. The delay in bringing the property for sale appears to be due to the reason of dispute between KSFC and the Syndicate Bank. Therefore, it is clear that the sale of the aforesaid property has no bearing on the

claim of KSFC in the Misc.Petition No.41 of 2010, because the said proceedings is initiated to recover the dues by invoking the Deed of Guarantee dated 22.11.1997 executed by three partners of the borrower/appellant No.1 herein.

15. All the parties to the present appeal were under the impression that the KSFC has brought the aforesaid property for sale in order to execute the impugned order. The said assumption is contrary to the factual narration at paragraph No.13 & 14 above.

16. The sale of the aforesaid property by the KFSC through public auction and the execution of absolute sale deed in favour of respondent No.3 cannot become the subject matter of the present appeal. In as much as the subject matter of the present appeal is confined only to consider as to whether the KSFC is entitled to invoke the personal guarantee of the three partners named above who stood as guarantors to the loan availed by appellant No.1 - partnership firm. The claim of the KSFC before the Trial Court is that respondent Nos.2 to 4 therein, are jointly and severally liable to pay a sum of Rs.80,60,137/- which was due as on 10.06.2004 with future interest at 21% per annum. In order to realize the said

amount, the KSFC has sought for attachment and injunction in respect of the petition schedule properties. The petition schedule properties are different from the afore detailed property/mortgaged property.

17. The Trial Court, based on the oral evidence and documentary evidence has come to the conclusion that the KSFC has proved the sanction of loan of Rs.23.40 lakhs and the outstanding dues as on 10.06.2004 was Rs.80,60,137/-. The KSFC has produced and marked as Ex.P6 - the statement of accounts as on 10.06.2004. The contents of Ex.P6 is not disputed and no evidence was led in to disprove the contents of the said document. The only contention urged was that though loan amount of Rs.27 lakhs was sanctioned, the actual disbursed amount was only Rs.25.20 lakhs. It is to be noticed that non-disbursement of Rs.1.80 lakhs would not make any much difference insofar as the outstanding due as on 10.06.2004. Therefore, no grounds are made out by the appellants to interfere with the impugned judgment.

18. As noticed above, the appellant No.2 has sold the aforesaid property in favour of one Sri C Nagaraj, in turn, he has executed the gift deed dated 19.07.2023 in favour of

appellant No.3. It is needless to observe that appellant No.2 had no right to alienate the aforesaid property when the same was taken over by the KSFC in exercise of power under Section 29 of the SFC Act. Since the mortgage was registered, it was reflected in the encumbrance register, therefore the transferee of appellant No.2 cannot be considered as a bonafide purchaser.

19. Having considered the contentions advanced and on perusal of the records, we find no merit in the present appeal and there are no good grounds to interfere with the impugned order. If appellant No.3 or his transferor have any grievance against appellant No.2 herein, or against the Syndicate Bank (Canara Bank), the same will have to be redressed in appropriate proceedings. Therefore, we did not find it necessary to consider the application for impleading the Canara Bank as party to these proceedings.

20. In the result,

(i) The appeal is ***dismissed***.

(ii) In the light of the fact that during the pendency of the present appeal, the secured asset/mortgaged property has been sold by respondent No.1 in favour of respondent No.3 for a sum of Rs.1,07,59,000/-, the KSFC would be entitled to

recover the amount determined in the impugned order from the guarantors after giving deduction of Rs.1,07,59,000/-.

(iii) Appellant No.3 or his transferor are at liberty to initiate any appropriate proceedings for redressal of their grievance as against appellant No.2 and the Canara Bank.

Registry is directed to return the original documents produced by appellant No.3 along with memo dated 09.11.2023 in favour of appellant No.3 on proper identification.

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

**Sd/-
(T.P.VIVEKANANDA)
JUDGE**

BGN