HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.No.3366 of 2006

ORDER:

The brief averments in the writ petition are as follows:

The petitioner herein is a private limited company incorporated under the Companies Act, 1956 and involved in manufacture of Sponge Iron through iron ore, Lime stone and coal through its factory located at Bhogasamudram of Tadipatri Mandal, Anantapur. The 3rd respondent-A.P.Industrial Development Corporation Limited (for short " APIDCL) has earlier advanced term loans to M/s.Banjara Cements, Bhogasamudram Village for acquiring land, building, plant and machinery as per the terms and conditions of sanction. The said company suffered loss and committed default in repayment of the amounts lent by the 3rd respondent. In exercise of statutory rights conferred under Section 29 of State Financial Corporation Act (for short "the SFC Act"), 1951, the 3rd respondent seized the land, buildings and plant and machinery of M/s.Banjara Cements Limited. After seizure of the properties, the 3rd respondent who was one of the secured creditors of M/s.Banjara Cements has initiated recovery proceedings through sale of the said properties by advertising in the news papers for sale through open auction. The petitioner company purchased the same in the bid for total sale consideration of Rs.55.00 lakhs. The purchase of assets was done on out right purchase basis and a sale deed, dated 04-11-2003, was executed by the 3rd respondent in favour of the petitioner. Clause-5 of the sale deed covenants that the property had been transferred to the petitioner 'free from encumbrances, charges, claims or demands whatsoever' and the property was conveyed and transferred to the petitioner company absolutely by the 3rd respondent free from liabilities by virtue of Section 29 of the SFC Act. The petitioner company after purchase of the property from the 3rd respondent has installed new machinery in the old premises for manufacture of sponge iron. It is averred that the 5th respondent issued notice vide proceedings Rc.No.466/2005/C, dated 07-01-2006 directing the petitioner to attend on 23-01-2006 with a demand draft for Rs.2,08,396/- with 12% interest in order to hand over the same towards compensation under Revenue Recovery Act read with Section 31 of Workmen's Compensation Act (for short "W.C.Act") in W.C.No.18 of 2000 filed before the 1st respondent against M/s.Banjara Cements Limited. Aggrieved by the same, the present writ petition is filed.

The 3rd respondent filed counter denying the averments of writ affidavit saying that writ petition is liable to be dismissed as the petitioner failed to implead proper and necessary parties. It is stated that petitioner purchased the assets from the 3rd respondent Corporation-M/s.Banjara Cements Limited, which is still in existence and as such it is liable to pay the compensation. It is also stated that other financial institutions namely APSFC and UCO Bank, which had extended term loans along with the 3rdrespondent Corporation are also proper and necessary parties to the above writ petition. It is stated that the 3rd respondent extended a term loan of 113.80 lakhs and further sum of Rs.7.50 lakhs by way of investment in equity of M/s.Banjara Cements Limited. Apart from the 3rd respondent Corporation, APSFC and UCO Bank extended term loan of Rs.89.96 lakhs and Rs.28.62 lakhs to M/s.Banjara Cements Limited. As security for the term loans, M/s.Banjara Cements Limited has mortgaged the properties belonging to it, namely, land and building, plant and machinery in favour of the 3rd respondent-Corporation on 14-07-1988. The 3rd respondent had entered into a Pari-Paasu agreement dated 09-11-1988 with the said financial institutions whereunder the sale proceeds have to be appropriated proportionately in accordance with their respective dues between the 3rd respondent Corporation and said financial institutions and the said agreement is registered under Section 125 of Companies Act. When Banjara Cements failed to pay the loan installments to the financial institutions, the 3rd respondent seized the assets of the company on
05-02-1999 by exercising powers vested in it under Section 29 of the SFC Act. After advertising of sale for four times, the 3rd respondent

received an offer for Rs.55.00 lakhs from the petitioner and the 3rd respondent approved the said offer on 07-08-2002 and handed over the assets to the petitioner on 10-10-2003 after receiving the due approval of other financial institutions and after deducting expenses of
Rs.12.10 lakhs towards security, advertisement, valuation etc., from the total sale proceeds of
Rs.55.00 lakhs received from the said sale of the said assets, the balance amount of Rs.42.90 lakhs has been appropriated by the 3rd respondent-Corporation and the other financial institutions as follows:

Name of the Financial Institution	Principal Outstanding in lakhs	Prorata share in lakhs.
APIDC (3rd respondent)	Rs.113.60	Rs.20.99
APSFC	Rs.89.96	Rs.16.62
UCO Bank	Rs.28.62	Rs.5.29

It is stated that as on 31-08-2001 Rs.333.14 lakhs was total due from Banjara Cements Limited, which includes principal amount of Rs.113.60 lakhs, interest amount of Rs.201.50 lakhs and penal interest amount of Rs.18.04 lakhs. Out of the said amount, the 3rd respondent Corporation could recover only Rs.20.99 lakhs on the sale of the assets in question, leaving a balance amount of Rs.314.15 lakhs. As such, the 3rd respondent Corporation has suffered huge financial loss in the transaction. Banjara Cements Limited transferred the assets in question by way of mortgage in favour of the 3rd respondent-Corporation and other financial institutions way back in the year 1988 itself, that is much prior to the amounts falling due in the year 2000 towards compensation on account of death of an employee of M/s.Banjara Cements Limited, under the Workmen's Compensation Act, 1926. As per Clause 16(a) (b) of the Tender Form reads that the offerers should prior to submission of offer of the Tender form should satisfy themselves about the correctness of the description, measurements, boundaries of the fixed assets. No enquiries in this regard will be entertained after submission of the offer. No complaint of any defect or otherwise in the said properties or by reason of any error or fault in the description or any deficiency thereof in the particulars shall be entertained and there shall also lie no claim of whatsoever kind in respect thereof. The intending offerers should make all necessary search and enquiry in regard to quality, extent and all encumbrances of the property and they shall be deemed to offer with full knowledge of full encumbrances, inheritance risks, flaws and defects. Further if any defect is noticed either at the time of Tender Opening or at a later date, the Corporation shall not be held responsible for any compensation. The petitioner participated in the auction by submitting the Tender Form thereby duly accepting the terms and conditions and ultimately purchased the said assets from the 3rd respondent-Corporation. As such, it is not open for the petitioner to turn around and contend that the 3rd respondent Corporation is liable to pay the compensation. It is stated that M/s.Banjara Cements Limited, which is still in existence as per the records of the Registrar of Companies. Thus, sought for dismissal of the writ petition.

Additional Counter is filed stating that the claim made in the impugned notice is time barred, since the proceedings were initiated by the Assistant Commissioner of Labour in the year 2000 and the 5th respondent issued impugned notice on 07-01-2006 as limitation for recovery of debt is three years.

Counter is filed on behalf of 4th and 5th respondents stating that Assistant Commissioner of Labour, Anantapur requested the District Collector, Anantapur that an order was passed in W.C.No.18 of 2000 by the Deputy Commissioner of Labour, Kurnool on 08-08-2000 against the General Manager, M/s.Banjara Cements Limited, Bhogasamudram, Tadipatri Mandal, which is an opposite party in the said case to pay an amount of Rs.2,08,396/- within 30 days from the date of receipt of order and directed interest @ 12% per annum from the date of accident i.e. 13-03-1998 to Sri D.Subbaiah S/o.Chinna Chalamaiah, who is the 6th respondent and as the amount was not deposited requested the 4th respondent to recover amount with 12% per annum from the General Manager, Banjara Cements Limited based on particulars furnished by the applicant D.Subbaiah in the affidavit filed in W.C.No.18 of 2000 and also directed them to pay the said compensation. In reply, the petitioner submitted explanation stating that M/s.Sai Sindhu Sponge Iron Private Limited has purchased M/s.Banjara Cements Limited in public auction through Andhra Pradesh Industrial Development Corporation Limited, Hyderabad on 04-11-2003, and at the time of acquisition of property, informed that they would take care of the liabilities and stated that it is free from all encumbrances, charges, claims and demands . It is stated that the petitioner i.e. Sai Sindhu Sponge Iron Private Limited has purchased the property of M/s.Banjara Cements Limited., in public auction through APIDC, at present the petitioner-company is existing in place of M/s.Banjara Cements at Bhoghasamudram in Tadipatri Mandal. Moreover in land revenue records, M/s.Banjara Cements is noted in pattadar column and Sai Sindhu Sponge Pvt. Limited Bhogasamudram in enjoyer column in the adangal of Bhogasamudram village. Hence, the impugned notice was issued to the petitioner company i.e. Sai Sindhu Sponge Pvt. Limited, Bhogasamudram and directed them to remit an amount of Rs.2,08,396/- with 12% interest per annum and as per Section 14 of W.C. Act compensation to be first charge on the assets of transferred company. Since the 3rd respondent sold the property, it is liable to discharge such liability and as assets were received by the petitioner, the petitioner steps into shoes of the original company and cannot absolve from the liabilities. It is stated that Commissioner is competent to invoke action under Revenue Recovery Act read with Section 31 of W.C. Act and sought for dismissal of the petition.

Counter is also filed by the 6th and 7th respondents stating that the writ petition is not maintainable. It is also stated that son of the 6th respondent employed as Fitter of M/s.Banjara Cements Limited and died during the course of employment. On that, they filed claim petition under the Workmen’s Compensation Act and an amount of Rs.2,09,396/- was awarded on 08-08-2000 and as Banjara Cements Limited failed to pay the said compensation, they approached the management of factory which was mortgaged with APIDCL. It is submitted that as per Section14-A of the W.C.Act, the compensation awarded is the first charge on the assets of the Banjara Cements. Therefore, the petitioner is liable to pay the compensation.

Learned counsel for the petitioner submits that the petitioner has purchased assets from the 3rd respondent in public auction and the said property belonging to Banjara Cements Limited. As per the sale deed

dated 04-11-2003 executed by the 3rd respondent in favour of the petitioner discloses that the sale is free from all encumbrances. As such, the petitioner is not liable to pay compensation awarded against Banjara Cements Limited. The 3rd respondent in exercise of powers under sub-Section (5) of Section 29 of the S.F.C. Act shall be deemed to be the owner of such concern, for the purposes of suits, by or against a concern. He also submits that As Banjara Cements Limited is still in existence, the proceedings could have been initiated against the same, instead of the present petitioner.

Section 29: **Rights of Financial Corporation in case of default-**

(1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any installment thereof [or in meeting its obligations in relation to any gurantee 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 concern], as well as the [right to transfer by way of lease or sale] and realize the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(5) [Where the Financial Corporation has taken any action against an industrial concern] under the provisions of sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the names of [the concern].

Learned counsel for the 3rd respondent also submits that Banjara Cements have mortgaged the plant, machinery and immovable property including land in favour of UCO Bank, APSFC on 14-07-1988 by creating mortgage, which is prior to the date of award passed under W.C.Act and much prior to the accident in which the son of 6th and 7th respondents died. As such Section 14-A of the W.C.Act has no application to this case, since the assets belonging to Banjara Cements stood transferred in favour of 3rd respondent by way of mortgage on 14-07-1988. He also submits that the orders under W.C. Act passed in the year 2000, whereas the proceedings are initiated in the year 2005 and as such, the claim is beyond three years and barred by limitation. He further submits that the provisions of Limitation Act apply to the proceedings initiated under Revenue Recovery Act.

In support of his contention, he relied on the judgment of **State of Kerala and others v. Kalliyanikutty and another**[1] and in para Nos 8 and 10, the Supreme Court held as under:

> " Looking to the object of Section 71 we have to examine whether time-barred claims of the State Financial Corporation and the banks can be recovered under it. Is the object only speed of recovery or is it also enlargement of the right to recover? The respondent-institutions rely on the words "amount due" in Section 71 as encompassing time-barred claims also. Now, what is meant by the words "amounts due" used in Section 71 of the Kerala Revenue Recovery Act as also in the notifications issued under Section 71? Do these words refer to the amounts repayable under the terms of the loan agreements executed between the debtor and the creditor irrespective of whether the claim of the creditor has become time-barred or not? Or do these words refer only to those claims of the creditor which are legally recoverable? An amount "due" normally refers to an amount which the creditor has a right to recover. Wharton in Law Lexicon defines "due" as anything owing; that which one contracts to pay to another. In Black's Law Dictionary, 6th Edn. at page 499 the following comment appears against the word "due". "The word "due" always imports a fixed and settled obligation or liability; but with reference to the time for its payment there is considerable ambiguity in the use of the term, the precise signification being determined in each case from the context. It may mean that the debt or claim in question is now (presently or immediately) matured and enforceable, or that it matured at sometime in the past and yet remains unsatisfied, or that it is fixed and certain but the day appointed for its payment has not yet arrived. But commonly and in the absence of any qualifying expressions, the word "due" is restricted to the first of these meanings, the second being expressed by the term "overdue" and the third by the word "payable"." There is no reference in these definitions to a time-barred debt. In every case the exact meaning of the word "due" will depend upon the context in which that word appears.
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> The same reasoning would apply in the present case also. The Kerala Revenue Recovery Act does not create any new right. It merely provides a process for speedy recovery of moneys due. Therefore, instead of filing a suit, (or an application or petition under any special Act), obtaining a decree and executing it, the bank or the financial institution can now recover the claim under the Kerala Revenue Recovery Act. Since this Act does not create any new right, the person claiming recovery cannot claim recovery of amounts which are not legally recoverable nor can a defence of limitation available to a debtor in a suit or other legal proceeding be taken away under the provisions of the Kerala Revenue Recovery Act. In fact, under Section 70 of the Kerala Revenue Recovery Act, it is provided that when proceedings are taken under this Act against any person for the recovery of any sum of money due from him, such person may, at any time before the commencement of the sale of any property attached in such proceedings, pay the amount claimed and at the same time deliver a protest signed by himself to the officer issuing the demand or conducting the sale as the case may be. Sub-section (2) of Section 70 provides that when the amount is paid under protest, the officer issuing the demand or the officer at whose instance the proceedings have been initiated, shall enquire

> into the protest and pass appropriate orders. If the protest is accepted, the officer disposing of the protest shall immediately order the refund of whole or part of the money paid under protest. Under Sub-section (3) of Section 70, the person making a payment under protest shall have the right to institute a suit for the refund of the whole or part of the sum paid by him under protest."

As per the judgment cited supra relied on by the learned counsel for the 3rd respondent, the provisions of Limitation Act apply to the Revenue Recovery Act.

Learned counsel appearing for the 6th and 7th respondents submits that since the claim is made under Section 14-A of the W.C.Act, the petitioner is liable to pay compensation, since the petitioner stepped into shoe of Banjara Cements having purchased its assets. He submits that since the dues under W.C.Act were to be recovered as arrears of land revenue, Section 112 of Limitation Act applies and which provides 3 years of limitation for enforcing such claims. He also submits that by virtue of Section 69 of Indian Contract Act, the petitioner can pay and recover the same from Banjara Cements against which claim is made

by 6th and 7th respondents.

In this case it is to be seen that admittedly W.C.No.18 of 2000 is filed by 6th and 7th respondents before Deputy Commissioner of Labour, Kurnool against Banjara Cements Limited and award is passed on

08-08-2000. Admittedly, the petitioner is not a party to the said award. The properties sold by the 3rd respondent belonging to Banjara Cements Limited in public auction in respect of dues of Banjara Cements were purchased by the petitioner. Admittedly, the said properties were mortgaged by Banjara Cements in favour of 3rd respondent and other financial institutions on 14-07-1988 by way of mortgage.

Section 58 of Transfer of Property Act reads as under:

Section 58: 'Mortgage', 'mortgagee', mortgage-money' and 'mortgage-deed'-

> **a)** A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.
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> The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is

secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage deed.

Section 14-A of W.C.Act, which is invoked for issuance of impugned notice reads as follows:

Compensation to be first charge on assets transferred by employer:

" Where an employer transfers his assets before any amount due in respect of any compensation, the liability wherefor accrued before the date of the transfer, has been paid, such amount shall, notwithstanding anything contained in any other law for the time being in force, be a first charge on that part of the assets so transferred as consists of immovable property."

A reading of Section 14-A of W.C. Act goes to show that it does not apply to the facts of present case, since the assets of Banjara Cements are transferred in favour of 3rd respondent on 14-07-1988 by way of mortgage, much before the date of award. No other provision is brought to my notice to say that the petitioner company can be mulcated with liability of Banjara Cements Limited. More so, in this case when once Section 14-A of W.C. does not apply, the liability cannot be mulcated on the petitioner.

In view of the facts and circumstances of the case, I am of the opinion that the petitioner cannot be made liable to pay the compensation awarded against Banjara Cements Limited.

Accordingly, the writ petition is allowed. As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

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A.RAJASHEKER REDDY,J

25-02-2016
nvl

[1] (1999) 3 Supreme Court Cases 657