HON'BLE SRI JUSTICE A.V.SESHA SAI

Writ Petition No.19218 of 2006

ORDER:

The issue which this Court is called upon to adjudicate in the present Writ Petition, filed under Article-226 of the Constitution of India, is whether the claim of the respondents for recovery of the amount from the petitioner under the Andhra Pradesh Revenue Recovery Act is permissible and whether the same is barred by time.

The respondents-the State Financial Corporation Limited sanctioned a term loan to the petitioner for establishment of an industry, vide sanction letter bearing Ref.No.AFC/LN/88-89/2738A, dated 26.7.1988. On the ground that the petitioner failed to repay the loan amount, the State Financial Corporation Limited seized the petitioner's industry on 27.6.1991, sold its machinery on 23.5.1992 for a sum of Rs.2,70,000/- and also sold its land and building on 21.01.2000 for Rs.80,000/- and executed a sale deed, vide document bearing No.485, dated 22.01.2001, in favour of the auction purchaser.

It is significant to note that a notice under Section-52-A of the Revenue Recovery Act was initially issued to the petitioner on 20.8.1997 indicating therein a sum of Rs.3,76,861/- as the outstanding amount. The said notice was challenged in Revision before the State Government and the said Revision ended in dismissal in the year 2001. Subsequently, once again the second respondent issued a notice under Section-52-A of the Revenue Recovery Act to the petitioner, vide Ref.No.AFC/SDT/RR ACT/2005-06/4430, dated 17.12.2005 indicating therein a sum of Rs.20,83,832/- as the outstanding amount. This Writ Petition challenges the validity and legal sustainability of the said notice.

This Court on 20.9.2006 in WPMP.No.24189 of 2000 granted interim suspension of the impugned notice. Thereafter, on 30.4.2008, the said interim order was made absolute subject to the petitioner paying the principle amount of Rs.1,30,247/- within a period of six weeks from that date.

A counter-affidavit is filed on behalf of the respondents denying the allegations and averments made in the affidavit, filed in support of the Writ Petition, and in the direction of justifying the impugned notice.

Heard Sri V.S.R.Anjaneyulu, learned counsel for the petitioner, and Sri V.Sreemannarayana, learned Standing Counsel for the respondents-the State Financial Corporation Limited apart from perusing the material available before the Court.

It is contended by the learned counsel for the petitioner that the impugned notice is highly arbitrary, unreasonable, violative of Article-14 of the Constitution of India, opposed to the very spirit and object of the State Financial Corporation Act and barred by limitation. To bolster his submissions and contentions, the learned counsel for the petitioner relied upon the judgment of this Court in ***Daka Venkatrami Reddy Vs. Central Bank of India, Ongole***[1].

On the contrary, it is vehemently contended by the learned Standing Counsel for the respondents-the State Financial Corporation Limited that there is no illegality nor there exists any procedural infirmity in the impugned action of the respondents and in the absence of the same, the present Writ Petition is not maintainable under Article-226 of the Constitution of India and the petitioner is not entitled to any relief. Learned Standing Counsel further submitted that the contention of the petitioner that the claim is barred by limitation is neither sustainable nor tenable in the eye of law. In support of his contentions and submissions, learned Standing Counsel for the respondents relied on the following judgments of the Hon'ble Apex Court:

> ***"1. Punjab Financial Corporation Vs. Surya Auto Industries***[2]
> ***2. Deepak Bhandari Vs. Himachal Pradesh State Industrial Development Corporation Limited***[3]

[1] 2000(2) ALD 565
[2] (2010) 1 SCC 297
[3] (2015) 5 SCC 518

3. Himachal Pradesh Financial Corporation Vs. Pawna and Others[4]."

In the above background, the issue framed above needs to be considered.

According to the learned counsel for the petitioner, the claim of the respondents is barred by limitation and the said time barred debt, if any, cannot be recovered under the provisions of the Revenue Recovery Act.

On the other hand, the learned Standing Counsel for the State Financial Corporation Limited strongly and strenuously opposed the said contention.

In order to consider the said aspect, certain facts are required to be noted. There is no dispute that the State Financial Corporation Limited sanctioned a term loan to the petitioner on 26.7.1988, took possession of the petitioner's industry on 27.6.1991 and by that time, the petitioner alleged to have committed default. According to the State Financial Corporation Limited, as averred in the counter-affidavit, the machinery was sold in public auction on 23.5.1992 which fetched Rs.2,70,000/-, the land and the building was also sold for Rs.80,000/- in the public auction held on 21.02.2000 and a sale deed was executed in favour of the auction purchaser on 22.02.2001. There is also no dispute that earlier, the State

[4] (2015) 5 SCC 617

Financial Corporation Limited issued a notice to the petitioner under Section-52-A of the Revenue Recovery Act on 20.8.1997 and as against the same, the petitioner filed a Revision, which, even as per the State Financial Corporation Limited, was dismissed on 04.12.2001. There is absolutely no plausible explanation forthcoming from the respondents as to why they kept quiet till the year 2005 without initiating any further action against the petitioner. It is not even the case of the respondents that the petitioner acknowledged the debt later.

In this context, it would be apt and appropriate to refer to the judgments cited by the learned counsel for the petitioner.

In *Daka Venkatrami Reddy* (1st supra), this Court, relying upon the judgment of the Hon'ble Apex Court in *State of Kerala Vs. V.R.Kalliyanikutty*[5], categorically held that the subject debt therein was barred by limitation and the question of recovery under the provisions of the Revenue Recovery Act would not arise.

Coming to the judgments cited by the learned Standing Counsel for the respondents-the State Financial Corporation Limited, in *Punjab Financial Corporation* (2nd supra), the Hon'ble Supreme Court had no occasion to deal with the aspect of limitation aspect and the same would not render any assistance to the petitioner.

[5] AIR 1999 SC 1305

The judgment of the Hon'ble Supreme Court in ***Deepak Bhandari*** (3rd cited) also would not render any assistance to the respondents as the claim in the instant case is barred by limitation as the sale of machinery and lands of the petitioner took place in the years 1992 and 2000 respectively and that, after dismissal of the Revision filed by the petitioner in the year 2001, the respondents did not initiate any further action till the year 2005.

The judgment of the Hon'ble Supreme Court in ***Himachal Pradesh Financial Corporation*** (4th cited) also would not render any assistance to the respondents as in the instant case, the question is whether the recovery of amount under the provisions of the Revenue Recovery Act is barred by limitation or not.

For the aforesaid reasons, the Writ Petition is allowed declaring the action of the respondents in initiating proceedings under Section-52-A of the Revenue Recovery Act against the petitioner as impermissible and barred by limitation. Consequently, the impugned notice vide Ref.No.AFC/SDT/RRACT /2005-06/4430, dated 17.12.2005, is set aside.

As a sequel to disposal of the Writ Petition, the Miscellaneous Petitions pending, if any, shall stand disposed of.

JUSTICE A.V.SESHA SAI

27th June 2017
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