THE HONOURABLE SRI JUSTICE A.V. SESHA SAI

WRIT PETITION No.5523 of 2008

ORDER:

The demand notices issued by the 2nd respondent-Deputy Tahsildar (Revenue Recovery) A.P. State Financial Corporation, Kadapa Branch, Jayanagar Colony, Kadapa District *vide* proceedings dated 11.06.2007 and 09.07.2007 under Section 52 of the A.P. Revenue Recovery Act, 1864 demanding Rs.6,80,27,343/- and the Gazette Notification No.544, dated 16.02.2008 issued by the 3rd respondent are under challenge in the present writ petition.

Heard Sri G.Tuhin Kumar, learned counsel for the petitioner and Sri Y.Vivekananda, Standing Counsel for respondent-Corporation apart from perusing the material available on record.

Dr.Vijaya Chandra Reddy Poly Nursing Home Private Limited borrowed a sum of Rs.44.60 lakhs from the respondent-State Financial Corporation (hereinafter called Corporation) on 23.07.1990. The said clinic committed default in payment of amounts advanced by the respondent-Corporation. By virtue of the impugned notices, dated 11.06.2007 and 09.07.2007, the 2nd respondent demanded a sum of Rs.6,80,27,343/- under Section 52 of the A.P. Revenue Recovery Act, 1864. On 06.02.2008, the 2nd respondent issued a demand notice prior to the attachment of the immovable property. *Vide* letter, dated 14.02.2008, the respondent-Corporation while stating that the petitioner herein executed an agreement of guarantee for the loan sanctioned to the clinic and while indicating therein that the other guarantors had approached the Corporation and settled their share of liability as per the norms of the Corporation, advised the petitioner to submit his proposal without prejudice to the right of recovery under the Revenue Recovery Act. Subsequently, the Tahsildar, Gudur Mandal published a sale notice in Kurnool District gazette on 16.02.2008 proposing to sell the property indicated therein. In the above background, the present writ petition came to be instituted.

This Court while ordering rule nisi on 14.03.2008 granted interim stay of further proceedings in pursuance of gazette notification, dated 16.02.2008 in W.P.M.P.No.7163 of 2008. In response to the rule nisi issued by this Court, a counter-affidavit deposed by the Senior Branch Manager for the A.P. State Defendant Corporation, Kadapa Branch has been filed, denying the averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

It is contended by the learned counsel for the petitioner that the impugned action on the part of the respondent authorities is highly illegal, arbitrary and unreasonable and the impugned claim is barred by limitation and the proceedings impugned in the present writ petition are totally one without jurisdiction. It is further contended that though the loan was advanced as long as back on 23.07.1990 and despite the fact that the poly clinic was closed in the year 1995, the respondent authorities kept quiet till 11.06.2007 i.e., the date on which the respondents issued notice to the petitioner herein and as such, the impugned action is barred by limitation. In support of his contentions and submissions, learned counsel for the petitioner placed reliance on the judgment of this Court in **N.A.Radha and others v. State of Andhra Pradesh and others**[1].

On the contrary, it is vehemently contended by Sri Y.Vivekananda, learned Standing Counsel for respondent-Corporation that there is neither illegality nor exists any infirmity in the impugned action and the contention of the learned counsel for the petitioner that the claim is barred by limitation is neither sustainable nor tenable. In support of his submission, learned Standing Counsel relies on judgment of the Hon'ble Apex Court in **Deepak Bhandari v. Himachal Pradesh State Industrial Development Corporation Limited**[2].

Now the issues that arise for consideration of this Court are:

1) Whether the impugned action on the part of the respondent authorities in invoking the provisions of the Revenue Recovery Act is sustainable and tenable?

2) Whether the impugned demand notices and gazette notification are valid or not?

The information available before this court manifestly discloses that the respondent-Corporation advanced the loan to the clinic admittedly in the year 1990. Even as per the counter affidavit filed on behalf of the respondents, the proceedings under Section 29 of the State Financial Corporation Act were initiated and secured assets were seized on 02.05.1999 and the sale of the same was completed by 28.03.2002. It is to be noted that in the instant case for the first time on 11.06.2007 and thereafter on

[1] 2000(2) ALD 560
[2] (2015)5 SCC 518

09.07.2007, the respondent authorities issued notices to the petitioner under Section 52 of the Revenue Recovery Act.

While dealing with identical issues, this Court in **N.A.Radha's** case (supra 1) placing reliance on earlier judgment of the Apex Court in State of **Kerala v. Kaliyani Kutty**[3], at paras 7, 15 and 16 held as under:

> "7. In view of the decision of the Supreme Court in State of Kerala v. Kaliyani Kutty, AIR 1999 SC 1305, proceedings under the Act cannot lie for recovery of amounts that are barred by limitation, the question that arises is whether the claim of the respondent-Corporation is barred by limitation and whether this question would be adjudicated in these proceedings.
>
> 15. Considering the provisions of Section 19 of the Indian Limitation Act, 1908 (which is in terms in para materia Section 18 of the Limitation Act) and Section 25(3) of the Contract Act, this Court held in the aforesaid judgment that-
>
> Under the Limitation Act an acknowledgment made in writing signed by the party and addressed to a person other than the person entitled to the property or right would save a subsisting debt, but Section 25(3) of the Contract Act contemplates a promise made in writing and signed by the person in favour of the creditor. The latter postulates a novation of the contract while the former provides for mere acknowledgement. In order to bring a deposition within the meaning of a fresh contract, the necessary ingredients of proposal and acceptance' with the consciousness of the purpose for which the contract is being entered into have to be clearly brought out.
>
> It is well settled that, in determining whether a particular statement is an acknowledgment or promise, the language of the document has to be considered in every case. If it amounts to an acknowledgement, the writing would not be useful for the plaintiff under Section 25(3) of the Contract Act. The statement attributed to the petitioner and reproduced in the preceding paras, appears to be nothing more than an acknowledgement. It is to be borne in mind that the said statement was made in the course of the cross-examination obviously with the intention of showing the motive which had led the petitioner to appear as a witness against the respondent. In other words, it was elicited to damage and destroy the evidentiary value of his deposition. A statement made in those circumstances cannot be placed on the same pedestal as a fresh contract, which to

[3] AIR 1999 SC 1305

my mind involve a deliberate undertaking to renew time-barred claim. Further, if the statement is to be taken on its face value it is no more than a proposal or an offer. Admittedly, it has not been made to respondent and there is nothing on record to show that the respondent has accepted this offer so as to bring it within the definition of a contract. It cannot be urged from the subsequent notices that passed between the parties that the offer has been accepted nor could it be said that the advocate who was representing the respondent in the suit was an agent of the respondent and was competent to accept the offer on his behalf. On a consideration of these facts, I am not inclined to agree with the lower Court that the statement made by the petitioner came within the purview of Section 25(3) of the Contract Act.

16. In view of the decision above with which I am in respectful agreement, in view of the clear provisions of Section 18 of the Limitation Act as well as on first principles this Court is of the considered view that the letter of the petitioners 1 and 3 dated 18.10.1998 does not and cannot in law constitute acknowledgment of a debt within the meaning of Section 18 of the Limitation Act."

Even as per the decision cited by the learned Standing Counsel for respondents in **Deepak Bhandari's** case (supra 2), the Hon'ble Apex Court at para 27 categorically held that when the Corporation takes steps for recovery of the amount by resorting to the provisions of Section 29 of the Act, the limitation period for recovery of the balance amount would start only after adjusting the proceeds from the sale of assets of the industrial concern.

In the instant case, admittedly the sale of the secured assets was completed by 28.03.2002. Therefore, the limitation needs to be calculated from the said date. Even if the limitation is computed from the said date, the three years period would come to end in the year 2005 itself. Therefore, it can safely be concluded that in the present case, in view of the ratio laid down in the above judgments, the claim is barred by limitation and as such no proceedings can be initiated under the provisions of Revenue Recovery Act for the same.

For the above reasons, the Writ Petition is allowed, setting aside the impugned notices, dated 11.06.2007 and 09.07.2007 issued by the 2^{nd} respondent and the gazette notification, dated 16.02.2008 issued by the 3^{rd} respondent. No costs.

Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A.V. SESHA SAI, J

10^{th} July, 2017.
ssp