IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2018

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH
and
THE HON'BLE MR. JUSTICE M.V. MURALIDARAN

W.P. No.36800 of 2015

T. Ashok Surana ... Petitioner

vs.

Small Industries Development Bank of India
represented by its Authorised Officer
Overseas Towers
756 L Anna Salai (Opp. TVS)
Chennai 600 002 ... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of declaration declaring that the respondent bank's right for recovery of dues from the petitioner is barred by application of Article 137 of the Limitation Act.

For petitioner Mr. T. Ashok Surana - Party in person
For respondent Mr. C.P. Hemkumar
for M/s. Ganesh and Ganesh

ORDER

(Order of the Court was made by P.N. PRAKASH, J.)

This writ petition has been preferred seeking a writ of declaration declaring that the respondent bank's right for recovery of dues from the petitioner is barred by application of Article 137 of the Limitation Act.

2 Tetrahedron Ltd. had availed loan from the respondent bank. For the said loan, the petitioner, being its Managing Director, had stood as a guarantor. Owing to the default made by Tetrahedron Ltd., the respondent bank had issued a notice under Section 13(2) of the SARFAESI Act on 21.04.2011 to Tetrahedron and also to the petitioner for Rs.85,34,178.18. According to the petitioner, the guarantors repaid Rs.119.25 lakhs on various dates in 2011 itself, of which, Rs.73,51,750/- was adjusted towards this due. While so, it is the case of the petitioner that the respondent bank has not issued possession notice under Section 13(4) of the SARFAESI Act and hence, the present writ petition seeking the above prayer.

3 Heard the petitioner, who appeared as party in person and Mr. C.P. Hemkumar, learned counsel representing M/s. Ganesh & Ganesh, learned counsel on record for the respondent bank.

4 The petitioner contended that this Court should give a ruling that Article 137 of the Limitation Act would apply to such proceedings and therefore, the bank has forfeited its rights to enforce the provisions of the SARFAESI Act.

5 However, the learned Standing Counsel for the respondent bank submitted that the bank has no idea of enforcing the provisions of the SARFAESI Act as against the petitioner, inasmuch as the debt of the bank is secured.

6 Be that as it may, this Court cannot decide a legal issue in void. In other words, the question of limitation has to be decided on the facts obtaining in each case.

7 The petitioner further submitted that if a declaration as prayed for by him is granted by this Court, it will be of use to millions of borrowers in this country. Be it noted that this writ petition cannot be treated as a Public Interest Litigation for this Court to declare a law without facts at hand. Whenever a proceedings is initiated by the respondent bank, it is always open to the petitioner to plead limitation as a defence and it is for the Court to decide as to whether the action initiated by the bank is barred by limitation or not.

In the ultimate analysis, this writ petition stands dismissed as being devoid of merits, however, sans costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

cad
To

The Authorised Officer
Small Industries Development Bank of India
Overseas Towers
756 L Anna Salai (Opp. TVS)
Chennai 600 002

W.P. No.36800 of 2015

SP(03/12/2018)