

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

C.M.A. No.2604 of 2007

M/s. The Tamil Nadu Industrial
Investment Corporation Ltd.,
Branch Manager,
Special Recovery Branch,
94, Dr. Naniappa Road,
Coimbatore - 18. ... Appellant

versus

1. M/s. Coimbatore Piston (P) Ltd.,
represented by its Director,
Thiru K. Ramaswami
22, Kamaraj Nagar,
Trichy Road,
Coimbatore.
2. K. Ramaswamy
3. S. Ganesan
4. K. Ravi Manoharan
5. U. Venkatachalapathy
6. C. Balan ... Respondents

Civil Miscellaneous Appeal is filed under Section 32 (9) of the State Financial Corporations Act, 1951 against the order and judgment, dated 11.11.2002 of the First Additional District Judge cum Chief Judicial Magistrate, Coimbatore and made in T.S.F.O.P. No.120 of 1999.

For Appellant : Ms. Rita Chandrasekar
For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order and judgment, dated 11.11.2002 on the file of the learned First Additional District Judge cum Chief Judicial Magistrate, Coimbatore and made in T.S.F.O.P. No.120 of 1999.

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

The appellant is a financial institution and it had sanctioned Rs.32.85 lakhs towards term loan and Rs.4/- lakhs towards soft loan on 29.11.1998 to the first respondent. Out of which Rs.30.85 lakhs was disbursed towards term loan and Rs.3.98 lakhs towards soft loan. The said loan was sanctioned and disbursed to enable the first respondent to purchase machineries, land and construction of building in the name and style of Coimbatore Piston Private Limited. The said loan is repayable in 14 half yearly instalments with interest at 15.5% per annum and 3% per annum respectively. The agreement entered into between the parties also contain terms and conditions for imposition of penal interest in default of payment. To secure the loan amount, a deed of hypothecation, dated 15.03.1989 was executed by the first respondent by mortgaging the land and building owned by him to which the respondents 2 to 6 stood as guarantors. As the respondents did not repay the loan amount promptly and committed default in repayment, the appellant foreclosed the loan account on 26.03.1993 and exercised their option to take possession of the secured asset. Accordingly, after complying with the procedural formalities, the appellant brought the land and building hypothecated by the first respondent in a public auction on 03.05.1993 and the said properties were sold in favour of the prospective auction purchaser on 19.05.1994 and thereby realised a sum of Rs.14,52,000/- and credited the same to the loan account of the respondents. As the respondents did not respond to the notices sent by the appellant and left a huge amount as outstanding, the appellant has filed T.S.F.O.P. No.120 of 1999 under Section 31 (1) (a) of The State Financial Corporation Act, 1977 for recovery of the amount.

3. Before the Court below, the Original Petition was contested only by the fourth respondent and the other respondents namely 1, 2, 3, 5 and 6 were called absent and they were set ex-parte. However, the trial court proceeded to dismiss the Original Petition filed by the Corporation only on the ground of limitation. The Court below proceeded to hold that the appellant has realised some amount in the auction sale on 19.05.1994, however, the Original Petition was filed in the year 1999. The Court below has held that after realising some amount in the auction sale, it is not brought forth that any amount has been paid by the respondents towards the loan account. Therefore, the Court below held that the claim petition ought to have been filed in the year 1997 and the claim petition filed in the year 1999 is hopelessly barred by limitation. In view of such finding rendered by the court below, it has to be examined as to whether the claim made by the appellant is barred by the Law of Limitation or not.

4. The learned counsel appearing for the appellant would contend that some of the properties hypothecated by the respondents have been brought on auction sale and they were also sold to third party auction purchaser on 19.05.1994, whereby the appellant could realise, the portion of the loan amount payable by the respondents. Thereafter, the appellant made a demand for repayment of the balance outstanding amount under Ex. P7, dated 9.5.94 and another letter in Ex. P8, dated 15.06.1994. Therefore, the cause of action for filing the original petition arose on 15.06.1994 and within three years therefrom, the appellant has filed the application invoking Section 31 (i) (aa) of the State Financial Corporation Act on 30.04.1997 and it is well within the period of three years as contemplated under Section 137 of the Limitation Act. While so, the Court below erred in holding that the application filed by the appellant is hopelessly barred by limitation.

5. The learned counsel would further contend that the application was contested only by the 4th respondent and even according to him, the letters of demand sent by the appellant under Exs.P7 and P8 are not disputed and therefore, the application filed by the appellant before the Court below was well within the period of Limitation.

6. However, the Court below erroneously concluded that Ex.P6 is the basis for calculating the period of Limitation by ignoring the letters of demand issued by the appellant under Exs. P7 and P8. Thus, according to the learned counsel for the appellant, the right to institute the proceedings under Section 31 (i) (aa) arose from the date on which the appellant realised the part of the loan amount by resorting to auction sale of the hypothecated properties and from that, the date the application filed by the appellant is well within the period of Limitation.

7. It is not in dispute that the respondents availed loan amount from the appellant Corporation. It is also an admitted fact that the respondents committed default in payment of the loan amount. Therefore, invoking the terms and conditions of the agreement, the appellant Corporation has brought the land and machineries, hypothecated by the respondents for auction sale. The respondents did not challenge the auction proceedings. It is also an admitted fact that the land and building hypothecated by the respondents have been sold in favour of the auction purchaser and a part of the loan amount has been realised by the appellant Corporation and it was also given credit to the loan account of the respondents. After realising the amount in the auction sale, the appellant has issued letters demanding the balance outstanding amount. These letters were marked under Exs.P7 and P8. As there was no response to the letters of demand, the appellant invoked Sec 31

(i) (aa) of the State Financial Corporation and filed the instant application on 30.04.1997. Even if the letters of demand made under Exs.P7 and P8 are ignored, the fact remains that a part of the loan amount was realised in the auction sale on 19.05.1994, hence the cause of action for filing the claim petition under Section 31 (i) (aa) commences from that date and within three years therefrom, the Corporation has filed the application on 30.04.1997 and if these dates are taken into account or reckoned, it has to be held that the application filed by the Corporation is well within the period of limitation as contemplated under Section 137 of the Limitation Act, 1963. Therefore, on the short ground, the order passed by the Court below has to be set aside. Even in this appeal, except the arguments relating to Limitation, no other grounds have been seriously urged by the appellant. Further more, the respondents, inspite of service of notice, have not chosen to contest this appeal.

8. Under such circumstances, this Court has no hesitation to set aside the order passed by the Court below and to allow this appeal. Accordingly, the order dated 11.11.2002 in T.S. F.O.P. No.120 of 1999 passed by the the First Additional District Judge cum Chief Judicial Magistrate, Coimbatore is set aside and the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsi2

To

The First Additional District Judge cum
Chief Judicial Magistrate,
Coimbatore

+1 cc to M/s.Aiyar & Dolia, Advocate, S.R.No.50277

KS(CO)
SSM(09/01/2019)

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