

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.26995 of 2008

Kothapalli Veerananarayana Prasad

...Petitioner

Vs.

A.P. State Financial Corporation and others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 26.10.2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment
may be marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wishes to
see the fair copy of the Judgment? Yes/No

CHALLA KODANDA RAM, J

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**+ WRIT PETITION No.26995 of 2008**

% 26-10-2018

Kothapalli Veerananarayana Prasad

...Petitioner

Vs.

\$ A.P. State Financial Corporation and others

... Respondents

!Counsel for the Petitioner : Sri G. Pedda Babu

Counsel for Respondent Nos.1 to 3 : Sri Y.N. Lohitha, learned Standing
Counsel for APSFC

Counsel for Respondent Nos.4 & 5 : GP for Revenue

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> Head Note:

? Cases referred:

AIR 1999 SUPREME COURT 1305

2000(2) ALD 560

2013(6) ALD 175

MANU/AP/2016/2014

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**WRIT PETITION No.26995 of 2008****ORDER:**

In this Writ Petition, petitioner challenges the notice, dated 04.11.2008 issued by the second respondent – Senior Branch Manager, Andhra Pradesh State Financial Corporation, Guntur, under Section 25 of the Andhra Pradesh Revenue Recovery Act, 1864 (for short 'the Act'), demanding him to pay Rs.881.19 lakhs on account of M/s. Srinivasa Ice & Cold Storage, Koppuravuru Village, Pedakakani Mandal, Guntur District, within 15 days from the date of receipt thereof, else, the property, details of which are mentioned therein, would be attached.

The averments mentioned in the writ affidavit are, in brief, as under:

The petitioner along with five others formed into a partnership firm, by name, M/s. Srinivasa Ice & Cold Storages, at Guntur; that in 1971, they borrowed a sum of Rs.4.72 lakhs from the first respondent – Andhra Pradesh State Financial Corporation (APSFC), Hyderabad, for establishing a cold storage unit by mortgaging the land admeasuring Ac.1.67 cents situated in D.No.58/3 of Koppuravuru Village, Tadikonda Mandal,

Guntur District, along with plant and machinery thereon; that their firm incurred losses in the said business and thus, they defaulted in repayment of the said loan amount; that thereupon, the respondent Corporation filed O.S.No.202 of 1974 against the said firm, partners and guarantors, in the Court of IV Additional Judge, City Civil Court, Hyderabad, for recovery of a sum of Rs.5,66,997.84ps.; that the respondent Corporation took possession of the land mortgaged including plant and machinery and sold the same by exercising their right under Section 29 of the State Financial Corporation Act, 1951 and realized a sum of Rs.3,00,000/- and credited the same to their loan account; that thereafter, the respondents had not taken steps for recovering the balance amount; that the petitioner was not aware of the developments in the suit; that while the things stood thus, the third respondent – Special Deputy Tahsildar, APSFC, Guntur, issued him a notice, dated 01.02.2006, under Section 52-A of the Act, asserting that a sum of Rs.5,41,56,115/- demanding the same to be paid within 15 days from the date of receipt thereof; that immediately, he got issued a legal notice on 17.02.2006 to the respondent Corporation specifically asserting that the respondent Corporation is not entitled to recover the same as the alleged debt is hopelessly time-barred; that the

respondent Corporation sent a reply notice, dated 10.03.2006 asserting that the debt is not time-barred and the outstanding debt is as per the books of accounts regularly maintained by the respondent Corporation; that he addressed number of letters to the respondent Corporation requesting for settlement of account; that once again, the fifth respondent – Tahsildar, Eddanapudi Mandal, Prakasam District, sent him a notice, dated 30.06.2007 by stating that the Corporation requested the fourth respondent – Collector, Prakasam District at Ongole, to give permission to attach the lands, situated at Ananthavaram Village, said to have been given as security, in default of repayment of the loan amount, and asking him to show cause therefor, within a period of one week, otherwise, the Corporation would take steps as mentioned above; that he submitted explanation thereto on 25.07.2007 asserting that the property that was mortgaged was already sold and the sale proceeds were appropriated to the loan amount and almost 30 years elapsed and if any amount is due, it would be a time-barred debt and they had not mortgaged any other property and thereby, requested to drop further proceedings and that the second respondent issued the impugned notice.

A counter-affidavit is filed by respondents 1 to 3 denying the allegations of the petitioner and stating that the provisions of the Limitation Act, 1963, has no application to the recovery proceedings initiated under the Act.

Heard learned counsel for the petitioner and learned Standing Counsel for APSFC appearing for respondents 1 to 3.

Learned counsel for the petitioner contends that with respect to the recovery proceedings under the Andhra Pradesh Revenue Recovery Act, 1864, the provisions of the Limitation Act, 1963, would apply and in support of the same, he relied upon the judgments of the Apex Court as well as this Court in **State of Kerala and others v. V.R.Kalliyankutty and another¹** and **N.A. Radha and others v. State of Andhra Pradesh and others²**; **The A.P. State Financial Corporation rep. by deputy General Manager v. Duvvuru Rajasekhar Reddy³** and **M. Mohammed Rafi v. The Andhra Pradesh State Financial Corporation⁴**.

This Court perused the aforecited judgments and considered the settled legal position, with respect to which, there is no dispute. In the circumstances, in the case on hand, the

¹ AIR 1999 SUPREME COURT 1305

² 2000(2) ALD 560

³ 2013(6) ALD 175

⁴ MANU/AP/2016/2014

proceedings initiated under the Act are required to be quashed outrightly. Further, the very initiation of the proceedings under the provisions of the Act would fall to the ground for the reason that having filed a suit for recovery of the dues and having obtained a judgment and decree, wherein the debt was crystallized, without taking recourse to such proceedings, the respondent Corporation could not have proceeded further against the petitioner, that too, invoking the provisions of Section 29 of the Act, beyond the period of limitation, for recovery of the amount in excess of the judgment and decree. In other words, the amount that could be claimed in relation to a particular defaulter would be limited to the amount that was crystallized in the judgment and decree.

Accordingly, this Writ Petition is allowed by setting aside the impugned notice.

Miscellaneous Petitions, if any pending, shall stand disposed of. There shall be no order as to costs.

CHALLA KODANDA RAM, J

26th OCTOBER, 2018.

Note: L.R. Copy be marked.

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