

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.3883 OF 2007

ORDER:

This Writ Petition is filed questioning the letter bearing No.AFC/HB/PRACT/2006-2007 dated 09.02.2007 issued by the respondent-Corporation threatening invocation of provisions of Andhra Pradesh Revenue Recovery Act and demanding payment of time barred debt of Rs.13,44,95,487/-.

The facts of the case, in brief, are that petitioner's friend by name S.V.Bhadrappa has floated a Company under the name & style of M/s.Anand Synthetic Marbles Private Limited in the year 1985 being engaged in the manufacturing of synthetic marbles. Petitioner was taken as Director of the said Company. In said Company, S.V.Bhadrappa was the Managing Director and a major stakeholder. While so, the Company approached Andhra Pradesh State Financial Corporation (for short 'Corporation') for financial assistance and Corporation sanctioned the term loan of Rs.29.30 lakhs and soft loan of Rs.0.70 lakhs vide letter dated 24.07.1985. Said loan was to be repaid in 8 years in 15 equal half year instalments. While disbursing the amounts, the Company has hypothecated the entire machinery and mortgaged the unit with Corporation. For three years, the petitioner was continued in the said Company and thereafter he resigned to the post of 'Director'. After a lapse of eight years, notice under Section 52-A of Andhra Pradesh Revenue Recovery Act, 1864, vide letter No.AFC/MBNR/RRACT/SDT/95-96/2494 Dated 29.01.1996 demanding payment of Rs.83,96,756-70 ps. within a period of 15 days therefrom, was issued to the petitioner. Petitioner gave a

reply to the said letter. Thereafter, Corporation kept quiet for more than four years and again issued another notice demanding payment of Rs.83,36,550/- vide letter dated 10.07.2000. In reply to the same, the petitioner gave legal notice dated 29.08.2000 stating that the Corporation cannot invoke the provisions of Andhra Pradesh Revenue Recovery Act since the debt was a time barred debt. Having received the said notice, again the respondents kept quiet for six more years and thereafter gave another notice dated 12.10.2006 demanding payment of Rs.12,16,41,560/-. Again the petitioner gave reply to the said notice. However, without considering the same, the Corporation again issued the impugned notice dated 09.02.2007 seeking payment of Rs.13,44,95,487/-. A reply legal notice dated 12.02.2007 was issued by the petitioner. It is urged that since the debt is a time barred debt and as the same cannot be recovered legally, the officials of the Corporation were threatening the petitioner and his family members by making phone calls. Hence, questioning the impugned notice, the present writ petition is filed.

The respondent-Corporation filed a counter affidavit stating that as the Company committed default in repayment of the loan amount, the assets of the Company were sold and the sale was completed on 25.02.1994. Thereafter, the borrower Company as well as its Directors including the petitioner were demanded to pay the balance amount of the term loan after deducting the sale consideration received. Since they failed to make payment, the Corporation was constrained to issue Notice dated 29.01.1996 under Section 52 of Andhra Pradesh Revenue Recovery Act (for short 'the Act'). *In spite* of receiving the said notice, the Directors

of the Company including the petitioner have neglected to make payment except making oral assurances to pay the loan amount. As on 28.02.2007, the Company was liable to pay Rs.13,45,56,294/-. Further, while availing the loan, the Directors of the Company including the petitioner gave personal guarantee for the loan taken by the Company. As such, even though the petitioner was ceased to be the Director of the Company, his liability will not be absolved until the loan amount is fully discharged. Hence, the respondents got every right to seek enforcement of the personal guarantee of the petitioner.

This Court on 02.03.2007 issued *Rule Nisi*, however, no interim order was passed. In response to the *rule nisi* issued by this Court, a counter affidavit deposited by the General Manager of the respondent-Corporation has been filed denying the averments made in the affidavit filed in support of the writ petition and justifying the action of the respondents in issuing the impugned notice.

Learned counsel for the petitioner would contend that the impugned action of the respondents in trying to recover the time barred debts under threat of issuing recovery proceedings under Section 52 (A) of the Act is highly illegal and arbitrary. He would further contend that the first respondent had extended loan facility to the Company by name M/s.Anand Synthetic Marbles Private Limited, the Company had given loan of Rs.29.30 lakhs and again a soft loan of Rs.0.70 lakhs was sanctioned on 24.07.1985 and thereafter additional term loan of Rs.1.60 lakhs was sanctioned on 24.10.1985. When the Company and its Directors failed to repay the loan amount even after receipt of the notice for payment of the

outstanding loan amount, the respondents seized the assets of the Company on 13.06.1989 under Section 29 of the State Financial Corporation Act (for short 'SFC Act') and the same were sold in public auction as per law on 25.02.1994. After adjusting sale consideration, the respondents again issued notice dated 29.01.1996 under Section 52 (A) of the Act for realization of the balance loan amounts. As a follow-up action, the respondents issued legal notice on 09.02.2007 demanding payment of Rs.13,44,95,487/-. Therefore, the limitation starts from the date of sale of the secured assets on 25.02.1994 and adjusting the sale consideration towards the loan amounts due. Thus, the three years limitation period would expire on 24.02.1997 and as such the debt is time barred. He placed reliance on the judgment of this Court in **N.A.Radha and others vs. State of Andhra Pradesh**¹.

Sri Y.N.Vivekananda, learned Standing Counsel for the respondent-Corporation, would contend that there is neither illegality nor infirmity in the impugned action of the respondent-Corporation. He vehemently argued that the contention of the petitioner's counsel that the claim is barred by limitation is neither sustainable nor justifiable. In support of his contentions, he placed reliance in **Deepak Bhandari vs. Himachal Pradesh State Industrial Development Corporation Limited**².

Perusal of the evidence available on record would disclose that the respondent-Corporation initially advanced loan on 18.07.1985 and thereafter sanctioned an additional term loan on 24.10.1985. In the counter of the respondent, it is stated that the assets of the Company were seized on 13.06.1989 under Section

¹ 2000 (2) ALD 560

² (2015) 5 SCC 518

29 of the SFC Act and the same were sold in public auction on 25.02.1994. After adjusting the sale consideration, the demand notices were issued and finally the impugned notice was issued on 09.02.2007.

While dealing with identical issues, this Court in **N.A.Radha Case (1 supra)** placing reliance on judgment of the Apex Court in **State of Kerala vs. 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 provision 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 acknowledgement 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 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

³ AIR 1999 SC 1305

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 (2 supra)***, 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 facts and circumstances of the case, in considered view of this Court, it is found that the first respondent had extended loan facility to the Company by name M/s.Anand Synthetic Marbles Private Limited of Rs.29.30 lakhs, soft loan of Rs.0.70 lakhs and an additional term loan of Rs.1.60 lakhs for manufacturing of granite tiles. The loan advanced was secured by way of equitable mortgage of land and buildings of the Company. The Directors of the Company including the petitioner, being one of the Directors of the Company, had given personal guarantee for the loan received by the Company. *In spite* of several notices for repayment of the loan amount, either the Company or its Directors failed to repay the loan amount. As such, the assets of the

Company were seized on 13.06.1989 under Section 29 of the SFC Act and the same were sold in public auction as per law on 25.02.1994 and the assets were handed over to the purchaser. After adjusting the sale consideration, the borrower Company and its Directors including the petitioner were demanded to pay the balance amount of the loan amounts. When they failed to make payment of the loan amounts, the respondent issued notice under Section 52 (A) of the Act vide notice dated 29.01.1996. *In spite of* notices, the loan amounts could not be paid. Hence, again on 10.07.2000 and 12.10.2006, notices were issued demanding payment of the outstanding loan amounts. In that process, the impugned notice was also issued on 09.07.2007 demanding payment of Rs.13,44,95,487/-.

In the instant case, admittedly, the sale of secured assets was completed on 25.02.1994. Therefore, the limitation period of three years to recover the balance amounts was expired on 24.02.1997. Hence, in view of the ratio laid down in the judgments referred supra, the claim of the Corporation is barred by limitation and as such no proceedings could be initiated under the provisions of the Andhra Pradesh Revenue Recovery Act.

For the reasons stated above, the Writ Petition is allowed setting aside the impugned notice dated 09.02.2007 issued by the respondent-Corporation.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

31st January, 2018
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