

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12..11..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.3437 of 2012

and

M.P.No.1 of 2012 & W.M.P.No.29954 of 2017

S.Arumugam

... Petitioner

-Versus-

1.The Tamil Nadu Industrial Investment Corporation Ltd.,
Rep. by its Branch Manager,
DDDC Building (Upstairs),
Pennagaram Road,
Peenagaram,
Dharmapuri-636 702.

2.M/s.K.A.V. Spinning Mills P Ltd.,
Rep.by its Managing Director,
S.No.37/1, Kadathur Post,
Pappireddipatti Taluk,
Dharmapuri District.

3.The Principal District Judge,
Dharmapuri.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus forbearing the First respondent from proceeding against the petitioner under Section 31(aa) of The State Financial Corporation Act, for the recovery of the loan availed by the 2nd respondent on the strength of the personal guarantee executed by the petitioner, erstwhile Director of the 2nd respondent.

For Petitioner

: Mr.Sengottuvel
for Mr.M.Sivavarthanan

For Respondent(s)

: Mr.P.Narayanamoorthy for R1
Mr.K.Gandhikumar for R2

ORDER

This writ petition has been filed seeking a direction to the 2nd respondent in the nature of mandamus forbearing from initiating a proceedings against the petitioner under Section 31 (aa) of The State Financial Corporation Act.

2. According to the petitioner, he is one of the Directors of the 2nd respondent company. The 2nd respondent company had obtained a loan of Rs.41,25,000/- from the 1st respondent and had subsequently committed default in repayment loan. Earlier, the 1st respondent had initiated a proceedings for recovery of the loan dues under Section 29 of The State Financial Corporation [hereinafter referred to as "the Act"] as against the total outstanding of Rs.5,31,89,797/- and the hypothecated property was sold for Rs.63,50,000/-. As the sale proceeds of the hypothecated property was not sufficient to realize the money actually due to the 1st respondent, in order to recover the balance the 1st respondent has initiated a proceedings under Section 31(aa) of the Act against the petitioner, who stood as surety. The liability was crystallized in the year 2000. If at all, the 1st respondent wanted to recover the dues, they ought to have filed an application within a period of three years under Article 137 of The Limitation Act. The application filed in the year 2007 is hopelessly barred by limitation and hence application filed by the 1st respondent is not at all maintainable. Hence, this writ petition.

3. Per contra, the learned counsel appearing for the 1st respondent contended that even though the liability was crystallized in the year 2000, earlier, the 1st respondent had initiated a proceedings under Section 29 of the Act against the hypothecated property and the sale proceedings was not sufficient to realize the loan amount, therefore, issued a notice in the year 2011. Now, the 2nd respondent sought to recover the remaining loan dues from the petitioner, who stood as surety for the re-payment of loan. Therefore, the limitation starts only from the date on which the hypothecated property was brought for auction.

4. I have considered the submissions carefully.

5. This writ petition has been filed mainly on the ground that the application filed by the 1st respondent under Section 31(aa) of the Act is barred by limitation. According to the petitioner, when the liability was crystallized in the year 2000, the 1st respondent ought to have filed appropriate application within a period of three years and therefore, the

application filed in the year 2009 is hit by limitation.

6. It is the settled law that the issue of limitation is a mixed question of law and fact. The issue raised in this writ petition with regard to limitation involves a disputed question of fact which cannot be resolved in a writ proceedings. In view of the rival submissions made, this court is of the considered view that such a disputed question of fact cannot be decided in this writ petition. If at all, the petitioner has got any grievance that the application filed under section 31(aa) of the Act by the 2nd respondent is barred by limitation, it is always open to him to approach the concerned court in the manner known to law raising his objections including the limitation and also his liability, and he cannot maintain the writ petition. Thus, the writ petition deserves only to be dismissed.

7. In the result, this writ petition is dismissed, however, the petitioner is given liberty to approach the jurisdictional court in the manner known to law and raise all the objections including the issue of limitation and his liability. If any such application is filed, it is for the court concerned to decide the same on merits and in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Insp cell)

//True Copy//

Sub Assistant Registrar

kmk

1.The Branch Manager,
The Tamil Nadu Industrial Investment
Corporation Ltd., DDDC Building (Upstairs),
Pennagaram Road, Peenagaram,
Dharmapuri-636 702.

2.The Principal District Judge,
Dharmapuri.

+1cc to Mr.M.Sivavarthanan, Advocate SR.93985
+1cc to Mr.P.Narayanamoorthy, Advocate SR.93937

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SAI (CO)
CB(03/12/2019)