O.P.No.284 of 2019

P.VELMURUGAN.,J

This Original Petition has been filed by the petitioner to direct the respondents 1 to 4 to pay a sum of Rs.3,08,24,940.00 (Rupees Three Crores Eight Lakhs Twenty Four Thousand, Nine hundred and Forty only) as on 30.11.2018 to the petitioner/Corporation with interest at the rate of 19.25% per annum, compounded half yearly, from the date of petition till the date of realization in full.

2. The petitioner is the Tamil Nadu Industrial Investment Corporation Limited. The first respondent is the borrower and second and third respondents are guarantors.

3. The Petitioner/Corporation has sanctioned a term loan of Rs.5.30 Lakhs and also working capital loan of Rs.2.39 lakhs to the first respondent. As per terms and conditions of the agreement, the first respondent has to repay the term loan amount in 24 quarterly monthly installments and working capital term loan has to be repaid in 18 quarterly installments. The first respondent had executed a deed of hypothecation, thereby hypothecating the purchase of machinery and raw materials from and out of the financial assistance of the petitioner/ Corporation. The first respondent had also executed deeds of guarantee dated 22.10.1993 and 16.10.1996. Since the first respondent failed to repay the amount, the petitioner took possession of the property and brought

it for public auction. Since the auction offer was very low, the sale could not be materialized.

4. In the meanwhile, husband of the second respondent filed a suit in O.S.No.541 of 2008 before the Principal District Munsif Court, Kancheepuram against the petitioner and obtained an order of stay. Subsequently, the suit was dismissed in the year 2015. Thereafter, the petitioner has taken steps to bring all the mortgaged properties to sale so as to realize the said amount. The limitation for invoking personal guarantee is three years from the date of default. Section 29 of the State Financial Corporation Act clearly gives power to the Corporation to take over the custody of the property for possession and to bring to public auction and realize the amount from the date of realization of the amount, if any balance is due. Period of Limitation for invoking personal guarantee is three years and it is barred by limitation, in view of the decision of the Hon'ble Supreme Court, vide judgment reported in *2015 (3) SCC (Civ) 123 [Deepak Bhandari Vs. Himachal Pradesh State Industrial Development Corporation Limited]* in which, it is clearly stated as to how the limitation can be calculated in the cases invoking Section 31(1)(aa) of State Financial Corporation Act. However, in this case, the respondents did not appear and they were set ex-parte on 04.02.2020 and the evidence also was recorded.

5. The learned counsel for the petitioner submitted that mortgaged property could not be brought to sale. One of the respondents approached the District Munsif Court and obtained an order of stay and due to that, the petitioner/Corporation could not proceed with the sale in the year 2015. The suit in O.S.No.541 of 2008 was dismissed on 24.03.2015. After that the petitioner Corporation has filed this present Original Petition.

6. Though the petitioner has stated that the mortgaged property has not been brought to sale in the year 2015, there is limitation period of 12 years for bringing the mortgaged property for sale. Hence, the petitioner is not entitled to invoke the personal guarantee beyond three years. So, in this case, present petitioner filed both personal guarantee as well as the sale of the schedule mentioned property. Since the respondents are defaulters, they created a mortgage on the property by depositing the title deeds, the petitioner/Corporation is entitled to bring the mortgaged property to sale and realize the money. As far as personal guarantee is concerned, the petition is barred by limitation. The petitioner is permitted to bring the mortgaged property to sale to realize the amount due.

7. In the result, the petition is partly allowed. No costs.

25.04.2022

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