O.P.No.388 of 2012	
RESERVED ON:	**19.04.2022**
PRONOUNCED ON:	**27.04.2022**

P.VELMURUGAN.,J

This Original Petition has been filed by the petitioner to determine the liability and direct the respondents 1 to 4 herein to pay jointly and severally a sum of Rs.100,79,159.09/- (Rupees One Crore Seventy nine thousand one hundred and fifty nine and nine paise only) to the Petitioner/Corporation with interest at the rate of 18.75% per annum from the date of the petition till the date of realization in full and to order sale of 'A' schedule properties herein towards the realization of the abovesaid sum and to enforce the liability of the respondents towards the realization of the abovesaid sum.

2. Petitioner is the Tamil Nadu Industrial Investment Corporation Limited. The first respondent is the borrower and the respondents 2 to 4 are the guarantors.

3. Facts of the case is in brief, are that the first respondent approached the Petitioner/Corporation to sanction a loan for the purchase of one Tanker Lorry from M/s.Sundaram Motors, Chennai. The petitioner/Corporation also sanctioned transport loan for a sum of Rs.4,54,000/- [Rupees Four lakhs and Fifty four thousand only] during the year 1996 towards the chasis, body building, etc., The petitioner/Corporation issued a loan sanction order to the first respondent in the same year. The first respondent hypothecated the Tanker lorry bearing Reg.No.TN-02-C-2867, for which the respondents 2 to 4 mortgaged the 'A' schedule properties, by depositing the title deeds on 15.03.1996. On 15.03.1996, the respondents 2 to 4 executed a Deed of Guarantee for due repayment of the loan. The first respondent agreed to repay the loan in 57 monthly installments with interest at the rate of 18.75% per annum. The first respondent did not repay the monthly installments, inspite of several reminders. Since the first respondent failed to repay the loan as undertaken by him, the hypothecated vehicle was seized by the petitioner/ Corporation on 15.09.1998 and the same was auctioned for a sum of Rs.4,08,000/-. One Ekambaram, who was the highest bidder, took delivery of the vehicle on 07.09.1999. Thereafter, the said Ekambaram filed O.P.No.208 of 2000 before the District Consumer Forum alleging deficiency in service by RTO, Chennai and non-issuance of Registration Certificate/Transfer of

ownership by the petitioner/Corporation. Since the highest bidder/Ekamabaram surrendered the said vehicle, the petitioner/Corporation refunded the entire bid amount to Ekambaram on 09.02.2000. The petitioner/Corporation filed an appeal before the State Consumer Forum and the State Consumer Forum, by order dated 03.04.2007, directed the petitioner/Corporation to pay a sum of Rs.3,000/- to the said Ekambaram as compensation. Meanwhile, the first respondent also filed the Original Suits in O.S.No.59 of 1999 and O.S.No.5844 of 1999 before the City Civil Court, Chennai to return the vehicle and not to transfer the ownership. The petitioner/Corporation agreed to return back the vehicle to the first respondent and the same was also returned. Hence, the first respondent had withdrawn the said suits. After taking over the vehicle from the petitioner/Corporation, the first respondent neither repaid the loan amount nor surrendered the vehicle as undertaken by him and the vehicle was also not traceable for seizure. Hence, the first respondent was liable to pay a sum of Rs.10,79,897.09/- as on 22.01.2021. A demand notice was also sent on 22.05.2002 to the first respondent, calling upon him to repay the balance amount of Rs.14,56,603.09/-. The first respondent acknowledged the liability of loan in his letters dated 23.04.2003 and 03.06.2003. The first respondent filed Writ Petition No.6860 of 2009 before this Court for return of the documents stating that the loan accounts are already settled. Misrepresentation of the first respondent was brought to the knowledge of this Court and the said Writ Petition was dismissed on 17.02.2011. Since the first respondent did not repay the loan amount, the vehicle was seized and sold in public auction and due to some defects, the auction purchaser returned the vehicle and got back the money. The first respondent took back the vehicle and he neither repaid the loan amount, nor surrendered the vehicle as per the agreement. Hence, the petitioner/Corporation has filed this Original Petition for recovery of dues. Though the respondents remained ex-parte, one of the Junior officer of the petitioner/Corporation was examined as P.W.1 and the petitioner has filed the proof affidavit and marked the relevant documents as Exs.P1 to P19.

4. Learned counsel for the petitioner/Corporation submitted that, since the first respondent did not repay the loan dues, the petitioner seized the vehicle and brought it for public auction. Public auction was finalized in favour of one Ekamabaram and subsequently he paid Rs.4,50,000/- towards the bid amount and thereafter, he filed a petition before the District Consumer Forum for deficiency of service. Therefore, State Forum directed the petitioner/ Corporation to pay the compensation and thereafter, the vehicle was returned by the said Ekamabaram and auction amount paid by Ekamabaram, was also refunded. The first respondent also filed several suits before the City Civil

Court, Chennai, but, subsequently, the same were dismissed as withdrawn. The first respondent has also got back the vehicle during the pendency of the suits and writ petition. Subsequently, he neither re-paid the amount, nor surrendered the vehicle. Notice was sent to the first respondent and he could not invoke Section 29 of the State Financial Corporations Act, since the vehicle was not traceable. Therefore, now the petitioner has filed this present petition which is not barred by limitation. Limitation starts against the transfer guarantee, after seizing the property under Section 29 of the Act and the same was sold under public auction and the said amount was realized. From the date of realization, within three years, a transfer guarantee can be invoked under Section 31(1)(aa) of the Act. This is a peculiar case where, originally the vehicle was seized and brought in public auction and the amount was received from the auction purchaser. Subsequently, due to some defects, the petitioner/Corporation was compelled to return that vehicle and the said amount was refunded. Subsequently, the vehicle was handed over to the first respondent/borrower.Thereafter, the first respondent neither repaid the loan, nor surrendered the vehicle. Subsequently, hypothecated vehicle could not be traced. Therefore, unless it is traced or sold out or the amount was realized, Section 31(1)(aa) of the Act could not be invoked. Hence, the suit is not barred by limitation. Even otherwise, if the transfer guarantee is barred by limitation, the respondents 2 to 4 have mortgaged the A schedule properties by depositing the B schedule title deeds. 12 years of limitation have to be taken as against the mortgaged property. Therefore, the petition is not barred by limitation. Hence, the petition may be allowed.

5. Heard the learned counsel for the petitioner. The respondents entered appearance through counsel, but they have not cross-examined the witnesses examined on the side of the petitioner. Despite giving opportunity, they have not disputed the facts.

6. Heard both sides and perused the materials available on record.

7. Admittedly, the petitioner is a Finance Corporation. The first respondent borrowed loan from the petitioner. Respondents 2 to 4 are guarantors and they also mortgaged the property by depositing title deeds. The petitioner has marked all the loan sanctioned documents and other relevant documents as Exs.P2 to P19. It is also admitted that, originally hypothecated vehicle was seized on 15.09.1998 and the same was auctioned on 07.01.1999 and the said Ekamabaram was the highest bidder. He took possession of the auctioned vehicle on 07.09.1999. Subsequently, the said Ekamabaram filed

the petition before the District Consumer Forum against the petitioner. After return of the vehicle, amount was refunded to Ekambaram on 09.02.2000. State Consumer Forum, by its order dated 03.04.2007, directed the petitioner to pay Rs.3,000/- to the said Ekambaram. Meanwhile, the first respondent also filed O.S.Nos.59 of 1999 and 5844 of 1999 before the City Civil Court for return of vehicle. The first respondent acknowledged his liability by his letters dated 23.04.2003 and 03.06.2003. On 04.06.2003, when the vehicle was returned to the first respondent, he withdraw the suits filed by him. Subsequently, the first respondent neither repaid the dues, nor surrendered the vehicle as per the terms of the loan agreement. The petitioner has also sent final notice on 05.08.2011 and the petitioner admitted that the vehicle was returned to the first respondent on 04.06.2003. After taking back the vehicle, the first respondent neither re-paid the amount, nor surrendered the vehicle. Inspite of effective steps taken by the petitioner, under Section 29 of the State Financial Corporations Act to seize the vehicle they could not trace it. Once the petitioner found that the vehicle could not be traced out, they should have invoked personal guarantee within three years to recover the loan dues. But they have not invoked Personal Guarantee, instead they filed the petition to recover the money from the respondents 1 to 4. Since, personal guarantee was invoked after three years which is barred by limitation. However, the respondents 2 to 4 have mortgaged the A schedule properties by depositing B schedule title deeds with the petitioner/Corporation. From the date of return of vehicle to the first respondent on 04.06.2003, if the first respondent has not repaid the money, the Corporation could have either seized the hypothecated vehicle or taken auction against the mortgaged property, for which 12 years is limitation period. This Original Petition is filed in the year 2012. Therefore, as far as the claim against the respondents 1 to 4 regarding personal guarantee is concerned, it is barred by limitation and for selling the mortgaged properties is concerned not barred by limitation. Therefore, the petitioner is entitled to bring the 'A' schedule properties for sale for realization of the dues. In respect of invoking transfer guarantee is concerned, the petition is dismissed.

8. In the result, the petition is partly allowed with costs.

.04.2022

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<u>Note: Issue Order copy on 27.04.2022</u>

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