O.P.No.81 of 2012

P.VELMURUGAN.,J

This Original Petition has been filed to determine the liability and direct the respondent herein to pay sum of Rs.2,35,13,915/- [Rupees Two Crores Thirty Five Lakhs, Thirteen thousand, Nine hundred and Fifteen only] to the petitioner/Corporation with interest at the rate of 20% per annum from the date of petition till the date of realization in full and for the sale of the schedule mentioned property for realization of the above sum.

2. Petitioner is the Tamilnadu Industrial Investment Corporation Limited and the respondent is the borrower.

3. The petitioner which is a public financial institution sanctioned a term loan of Rs.8.45 lakhs and soft loan of Rs.1.50 lakhs to the respondent towards purchase and erection of imported machinery and hypothecated the machinery by deed of hypothecation. Since the respondent did not repay the loan amount, the hypothecated machinery was recovered by the petitioner/Corporation and brought for sale in public auction on 02.03.2011 for a sum of Rs.5,255/- and the sale proceeds were credited to the loan account. It is the averment of the petitioner that the respondent is liable to pay the balance principal of Rs.1,44,000/- interest of Rs.18,41,465/- towards soft loan and principal of Rs.8,14,000/- interest of Rs.2,16,72,450/- other dues of Rs.36,237/- towards the term loan totalling a sum of Rs.2,35,13,915/- as on 30.09.2011. After sale of

the machinery, sale proceeds were appropriated in the accounts of the respondent. Since the sale proceeds were not sufficient to realize the entire dues, the petitioner invoked section 31(1)(aa) of the State Financial Corporation Act, to invoke personal guarantee as well as the sale of the mortgaged property. Therefore, the petitioner Corporation has filed the present petition to realize the balance dues.

4. In order to prove its claim, one of the official of the petitioner/ corporation was examined as P.W.1 and marked 24 documents as Exs.P1 to P24 before this Court.

5. Period of Limitation for invoking personal guarantee is three years. 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. From the date of realization of the sale proceeds, within three years, the personal guarantee can be invoked and within 12 years, the morgaged property can be brought for sale.

6. Today, when the matter is taken up for hearing, though the name of the respondent printed in the cause list, he has not appeared either in person or through counsel. The respondent is hereby set exparte.

7. On a perusal of the records, it is seen that borrowal of amount has not been disputed. Liability of the respondent is also not disputed. Originally, Section 29 of the State Financial Corporation Act was invoked and hypothecated machinery was brought for sale and the sale proceeds were realized. In order to prove the same, Ex.P2 has been marked. Since the sale proceeds were not sufficient to clear the dues, the petitioner Corporation has filed the present petition to claim balance due amount. The petitioner has proved its claim against the respondent and after the realization of the sale proceeds, the petitioner has filed this petition within the period of limitation. Therefore, the respondent is directed to pay the balance due amount as claimed in the petition within a period of three months from the date of receipt of a copy of this order with subsequent interest at the rate of 18% per annum, failing which, the petitioner is at liberty to proceed further in accordance with law for realizing the balance amount.

8. In the result, the petition is allowed.

26.04.2022

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