

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 24TH DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE P.VELMURUGAN

O.P.No.486 of 2016

and

A.No.27 of 2022

In the matter of State Financial
Corporations Act 1951

State Industries Promotion Corporation
of Tamilnadu Limited, represented by
its Managing Director
No.19-A, Rukmani Lakshmiipathy Road,
Egmore, Chennai-600 008

... Petitioner

vs.

1. M/s.Brite Granites P.Ltd
having its registered office at
No.B-5, 2nd Floor, TRB Complex,
22, 1st Avenue, Ashok Nagar,
Chennai- 600 083

2.Thiru.S.Rajappa,
S/o.Late.Subramanian,
No.14, 11th Avenue,
Ashok Nagar,
Chennai- 600 083

3.Thiru C.V.Ananthasayanam,
S/o.C.V.Veera Raghavan,
'THIRUMAL'
1, 3rd Street,
Dr.Radhakrishnan Road,
Chennai- 600 004

4.Tmt.R.Santha,
W/o.S.Rajappa,
No.14, 11th Avenue,
Ashok Nagar,
Chennai- 600 083

5.The Tamilnadu Industrial Investment Corporation Ltd,
No.23A, Ranganathan Road,
Hotel Woodlands Complex,
Chennai- Trichy Trunk Road,
Villupuram - 605 602

..Respondents

Original Petition praying that this Hon'ble Court be pleased to
pass an order in favour of the petitioner and against the respondents

a)Directing the respondents jointly and severally pay to the
petitioner a sum of Rs.54,57,91,738.00 together with interest @17.5% per
annum till the date of realization failing which to proceed against personally
and against their properties.

b)For the cost of the petition.

A.No.27 of 2022:

Thiru S.Rajappa
S/o.Late Subramanian,
No.14, 11th Avenue,
Ashok Nagar,
Chennai- 600 083

..Applicant/2nd Respondents

vs

1.State Industries Promotion Corporation
of Tamilnadu Limited, represented by
its Managing Director,
19A, Rukmani Lakshmipathy Road,
Egmore, chennai- 600 008

..1st Respondent/Petitioner

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Villupuram - 605 602

..Respondents 2 to 5/
Respondents 1,3 to 5

Application praying that this Hon'ble Court be pleased to reject
the O.P.No.486 of 2016 as barred by limitation.

This original petition along with the application coming on this day
before this Court for hearing in the presence of Mr.Sudharsana Sundar,
Advocate for the petitioner in O.P.No.486 of 2016 and for the 1st
respondent in A.No.27 of 2022 and Mr.R.Vishnu for M/s.Kunjithapatam
Ramu, advocates for the 2nd respondent in O.P.No.486 of 2016 and for the
applicant in A.No.27 of 2022 and upon reading the petition filed in
O.P.No.486 of 2016 and the judges summons and the affidavit of S.Rajappa

filed in A.No.27 of 2022, and this Court having observed that the first respondent filed the petition in O.P.No.486 of 2016 under Section 31(1) (aa) of the State Financial Corporation Act invoking the personal guarantee after the lapse of five years, even a bare reading of the averment in the petition itself shows that the petitioner received the pro-rata share from the sale proceeds from the M/s.TIIC on 24.11.2011 itself, the first respondent/petitioner should have filed the petition to invoke personal guarantee under section 31 (1) (aa) of the State Financial Corporations Act, 1951, within 3 years, whereas, it has been filed only in the year 2016 which is beyond limitation and therefore the main original petition is liable to be rejected on the ground of limitation and allowing this application.

It is ordered :-

That the O.P.No.486 of 2016 be and is hereby rejected.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 24TH DAY OF MARCH 2022.

Sd./-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

DL

07.04.2022

O.P.No.486 of 2016
and
A.No.27 of 2022

ORDER

DATED : 24.03.2022

THE HON'BLE MR. JUSTICE
P.VELMURUGAN

FOR APPROVAL: 18.04.2022

APPROVED ON : 19.04.2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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THURSDAY, THE 24TH DAY OF MARCH 2022

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..Respondents

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a)Directing the respondents jointly and severally pay to the petitioner a sum of Rs.54,57,91,738.00 together with interest @17.5% per annum till the date of realization failing which to proceed against personally and against their properties.

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Villupuram - 605 602

..Respondents 2 to 5/
Respndents 1,3 to 5

Application praying that this Hon'ble Court be pleased to reject
the O.P.No.486 of 2016 as barred by limitation.

This original petition along with the application coming on this day
before this Court for hearing, The Court made the following order:

This application has been filed under Section 31(1) (aa) and
32(11) of the State Financial Corporation Act seeking to reject the Original
Petition in O.P.No.486 of 2016.

2. The applicant is the 2nd respondent in the main O.P. and he is the guarantor to the loan. He has filed the present application to reject the main original petition in O.P.No.486 of 2016 stating that to invoke the personal guarantee, there is a limitation of 3 years and therefore beyond that, the personal guarantee cannot be invoked which is barred by limitation.

3. The learned counsel appearing for the applicant/2nd respondent submitted that the first respondent/petitioner in the petition itself averred that foreclosure notice was issued on 30.10.1996 and the mortgaged property was taken over on 09.06.1999. The petitioner corporation, on 08.10.2009, handed over the mortgaged property to M/s.TIIC being the pari passu holder, who in turn sold the properties and on 24.11.2011 released a sum of Rs.1,06,80,388/- from and out of sale proceeds to the petitioner Corporation. The learned counsel further submitted that it is to be noted that from that day i.e. 24.11.2011 within 3 years the personal guarantee should have been invoked whereas, the present petition has been filed in the year 2016 which is after the lapse of 5 years. Therefore, it is barred by limitation and he has placed reliance on the judgment of the Hon'ble Supreme Court reported in **2006(4) CTC 89 (Maharashtra State Financial Corporation vs. Ashok K.Agarwal and others)** in which the Hon'ble Supreme Court held that the period of limitation for invoking personal guarantee is 3 years and as per the Article 136 and 137 of the Limitation Act,, the application to

invoke personal guarantee for recovery of short fall amount is barred by limitation. The application under Section 31 and 32 of the State Financial Corporation Act, is not the way of execution of a decree or order of any civil suit. Therefore, the petition is beyond the period of limitation of 3 years and hence the main original petition has to be rejected.

4. The learned Counsel for the first respondent/petitioner would submit that there is no quarrel with reference to the proposition of law that invoking personal guarantee, the period of limitation is 3 years whereas, against the company, it is 12 years. Therefore, the citations referred to by the learned counsel for the applicant/2nd respondent is not applicable to the present case and the application is liable to be dismissed.

5. Heard and perused the records.

6. Admittedly the applicant/2nd respondent is the personal guarantor for the loan availed by the second respondent/1st respondent company. The first respondent/Corporation is a deemed Financial Corporation within the meaning of the Section 46(1) of the State Financial Corporations Act, 1951. Since the applicant company committed default in repaying the loan, foreclosure notice was issued and the assets of the company were also taken over by the first respondent/petitioner and handed over to M/s.TIIC. The mortgaged properties were sold by the 5th respondent/TIIC and released a sum of Rs.1,06,80,388/- on 24.11.2011 to

the first respondent/petitioner. Thereafter, the first respondent filed the petition in O.P.No.486 of 2016 under Section 31(1) (aa) of the State Financial Corporation Act invoking the personal guarantee after the lapse of five years. Even a bare reading of the averment in the petition itself shows that the petitioner received the pro-rata share from the sale proceeds from the M/s.TIIC on 24.11.2011 itself. The first respondent/petitioner should have filed the petition to invoke personal guarantee under section 31 (1) (aa) of the State Financial Corporations Act, 1951, within 3 years, whereas, it has been filed only in the year 2016 which is beyond limitation. Therefore the main original petition is liable to be rejected on the ground of limitation.

7. Accordingly, this application is allowed and the main petition in O.P.No.486 of 2016 is rejected.

Sd/-P.V.J.

24.03.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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