O.P. No.209 of 2012

N.SATHISH KUMAR, J.

This Petition has been filed under Sections 31(a), 31(aa) & 32 of the State Financial Corporation Act, 1951 for determining the liability and direct the respondents 1 to 6 to pay a sum of Rs.20,79,36,184.93/- to the petitioner Corporation with further interest and ordering the sale of "A" schedule property.

2. The first respondent is the Company and others respondents are directors and guarantors. The first respondent applied for a short term loan with the petitioner corporation. On 26.04.1996, the petitioner corporation sanctioned a term loan of Rs.50 lakhs towards the purchase of raw materials. The petitioner Corporation issued terms and conditions of loan on 30.04.1996. The first respondent hypothecated raw materials by the deed of hypothecation dated 10.05.1996. The first respondent executed a hire purchase agreement on 10.05.1996. The respondents 2 to 4 executed a deed of Guarantee and indemnity on 10.05.1996 for the hire purchase loan. The respondents 5 & 6 created equitable mortgage on A Schedule property on

27.06.1996. They have deposited the 'B' schedule documents with the petitioner corporation. As the defendants failed to repay the loan amount, the petitioner initiated actions to recover the dues and the first respondent has so far remitted a sum of Rs.34,00,350.38/-. The petitioner Corporation in exercise of the powers conferred under Section 29 of the State Financial Corporations Act for public auctions and they received meagre offer amount. Even thereafter, the respondents are liable to pay the balance dues of Rs.20,79,36,184.96 as on 31.12.2010. In this regard, legal notice is also sent on 14.12.2010. Hence, this petition.

3. The respondents despite serving notice remained *ex parte*. The Grade III Officer of the petitioner corporation is examined as P.W.1 and Exs.P1 to P10 were marked. P.W.1 in his evidence had narrated the terms and conditions of the sanction letter of loan, hypothecation and guarantee deed executed by others and to substantiate the same. Ex.P.2 is the Original terms and conditions of sanction order dated 30.04.1996. Ex.P3 is the original Deed of Agreement dated 10.05.1996. Ex.P4 is the original deed of hypothecation dated 10.05.1996. Ex.P5 is the original deed of guarantee dated 10.05.1996. Ex.P6 is the original promissory note dated 10.05.1996.

Ex.P7 is the original letter confirming the deposit of title deeds. Ex.P8 is the original final notice dated 14.12.2010. Ex.P10 is the Loan Account sheet.

4. The above documents clearly shows that the properties have been hypothecated after availing the loan, auction was conducted, a part of the amount has been realised and application has been filed within a period of three years thereafter. In this regard, the Hon'ble Apex Court in the judgement reported in *(2015) 5 SCC 518* in the case of *Deepak Bhandari Vs. Himachal Pradesh State Industrial Development Corporation Limited* has held as follows:

> *22. It is thus clear that merely because the Corporation acted under Section 29 of the State Financial Corporation Act did not mean that the contract of indemnity came to an end. Section 29 merely enabled the Corporation to take possession and sell the assets for recovery of the dues under the main contract. It may be that only the Corporation taking action under Section 29 and on their taking possession they became deemed owners. The mortgage may have come to an end, but the contract of indemnity, which was an independent contract, did not. The right to claim for the balance arose, under the contract of indemnity, only when the sale proceeds were found to be insufficient. The right to sue on the contract of indemnity arose after the assets were sold. The present case would fall under Article 55 of the Limitation Act, 1963 which corresponds to old Articles 115 and 116 of the old Limitation Act, 1908.*

The right to sue on a contract of indemnity/ guarantee would arise when the contract is broken.

23. Therefore, the period of limitation is to be counted from the date when the assets of the Company were sold and not when the recall notice was given.

5. Considering the above and the fact that the respondents remained *ex parte*, I am of the view that the petitioner Corporation has proved their claim and hence, the petitioner Corporation is entitled for recovery of amount. At this stage, the learned counsel for the petitioner Corporation submitted that as far as the respondents 5 and 6 are concerned, they have already paid the amount and redeemed the mortgage document. Such view of the mater, in respect of 5 and 6, this Court is of the view that the petitioner Corporation has no claim.

6**.** Accordingly, this petition is allowed as prayed for, only in respect of other defendants, i.e., 1 to 4. The parties shall bear their own costs.

01.11.2023

dhk

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