O.P. No.580 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 2 to 5 to pay a sum of Rs.7,32,95,312/- to the petitioner Corporation with interest at the rate of 18% from the date of petition to till the date of realisation.

2. The first respondent is the Company and others respondents are directors and guarantors. The first respondent intended to expand its factory at Melnallathur Village, Tiruvallur Taluk and District to engage in the manufacture of rigid PVC pipes and applied for loan with the petitioner corporation. On 25.02.1992, the petitioner corporation sanctioned a term loan of Rs.37 lakhs towards purchase and erection of additional plant and machinery. The petitioner Corporation issued terms and conditions of loan on 02.03.1992. The first respondent herein hypothecated the machinery by the deed of hypothecation dated 31.03.1992. The first respondent mortgaged the factory site by the Deed of Mortgage on 31.03.1992 and created

equitable mortgage and deposited all the title deeds with the petitioner corporation. As the defendants failed to repay the loan amount which resulted in foreclosure of term loan dues on 20.11.1996 . The petitioner Corporation took possession of the factory assets on 22.07.1998 and brought the factory assets in exercise of the powers conferred under Section 29 of the State Financial Corporations Act for public auctions and realised a sum of Rs.50.85 lakhs. Even thereafter, the respondents are liable to pay the balance dues of Rs.7,32,95,312/- as on 31.11.2010. In this regard, legal notice is also sent on 18.08.2010. Hence, this petition.

3. The respondents despite serving notice remained *ex parte*. The Junior Officer of the petitioner corporation is examined as P.W.1 and Exs.P1 to P12 were marked. P.W.1 in his evidence had narrated the terms and conditions of the sanction letter of loan, mortgage, hypothecation and guarantee deed executed by others. Ex.P.2 is the Original terms and conditions of sanction order dated 02.03.1992. Ex.P3 is the original registered mortgage deed dated 31.03.1982. Ex.P3 is the original deed of hypothecation dated 31.03.1982. Ex.P4 is the original deed of guarantee dated 31.03.1982. Ex.P6 is the original letter dated 01.04.1992 confirming

the deposit of title deeds. Ex.P7 is the photocopy of the notice dated 20.11.1996. Ex.P8 is the photocopy of the auction notice dated 18.11.2019. Ex.P12 are the photocopies of the account sheets.

4. The above documents clearly shows that the properties have been mortgaged after availing the loan, auction was conducted only on 01.12.2009, 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 petitioners have proved their claim and hence, the petitioners are entitled for recovery of amount.

6**.** Accordingly, this petition is allowed. The respondents 2 to 5 are directed to pay jointly and severally sum of Rs.7,32,95,312/- to the petitioner Corporation with interest at the rate of 18% from the date of petition to till the date of realisation. The parties shall bear their own costs.

01.11.2023

dhk

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