O.P. No.602 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 3 to pay a sum of Rs.7,97,80,321.30/- to the petitioner Corporation with interest at the rate of 18.5% p.a., 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 set up a factory for the manufacture of lubricant oil at No.4, SIPCOT Industrial Complex, Gummidipoondi, Tiruvallur District and applied for loan with the petitioner corporation. On 17.05.1991 and 27.05.1991, the petitioner corporation sanctioned a term loan of Rs.21.15 lakhs, Rs.0.35 lakhs and Rs.2.60 lakhs for the purchase and erection of machinery in the factory. The petitioner Corporation issued terms and conditions of loan on 27.05.1991 and 16.02.1994 for the second loan. The first respondent herein hypothecated the machinery by the deed of hypothecation on 10.10.1991 and 31.03.1994

for a sum of Rs.21,15,000/- and Rs.10,60,000/- respectively. The third respondent mortgaged the scheduled property on 31.03.1994 as security by deposit of title deeds with the petitioner corporation. The second respondent herein executed deed of continuing and binding guarantee on 13.03.1994 and 16.05.1994. As the respondents failed to repay the loan amount, the petitioner Corporation auctioned the assets on 07.12.2009 and realised a sum of Rs.43 lakhs. Even thereafter, the respondents are liable to pay the balance dues of Rs.7,97,80,321.30/- as on 23.12.2011. 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 P18 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 and substantiated the same. Ex.P.2 is the Original Deed of mortgage dated 10.10.1991. Ex.P3 is the original deed of hypothecation dated 10.10.1991. Ex.P4 is the original letter dated 11.10.1991 confirming the deposit of title deeds. Ex.P5 is the original terms and conditions of sanction order dated 16.02.1994. Ex.P6 is the original Deed of Guarantee dated 31.03.1994. Ex.P11 is the copy of paper

publication dated 25.11.2007 for auction sale. Ex.P12 is the original notice to the respondents for auction sale dated 26.11.2007. Ex.P16 is the photocopy of the account sheets. Ex.P17 is the original terms and conditions of sanction order dated 27.05.1991.

4. The above documents clearly shows that the properties have been mortgaged after availing the loan, auction was conducted only on 04.08.2011, 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 has proved its claim and hence, the petitioner is entitled for recovery of amount.

6**.** Accordingly, this petition is allowed. The respondents 1 to 3 are directed to pay jointly and severally sum of Rs.7,97,80,321.30/- to the petitioner Corporation with interest at the rate of 18.5% 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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