A. No.2043 of 2022
in O.P.No.485 of 2016

N.SATHISH KUMAR, J.

This application has been filed under Sections 31(1)(aa) and 32(11) of the State Financial Corporation Act seeking to reject the Original Petition in O.P.No.485 of 2016 .

2**.** The applicant is the 2nd respondent in the main O.P. And he is the guarantor of loan. He has filed the present application to reject the main original petition in O.P.No.485 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 for the applicant submitted that even as per the dictum of the Hon'ble Supreme Court in the judgement reported in *(2015) 5 SCC 518* in the case of *Deepak Bhandari Vs. Himachal Pradesh State Industrial Development Corporation Limited* held the period of limitation will be within from the date of realisation of the amount by sale. Admittedly, in this case, sale took place on 24.03.2009 and a sum of

Rs.70,63,868/- has been realised, for any balance amount, the Original Petition ought to have been filed within a period of three years, wherein, the present O.P. has been filed beyond the period of three years. Hence, right of the Original Petition is extinguished and the Original Petition is not maintainable. The learned counsel for the respondent would fairly submit that the date of sale is 24.03.2009 and filing of this original petition is beyond the period of limitation.

4. It is relevant to note that 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 settled position, the limitation of three years will commence from the date of sale and not when the legal notice was given. Admittedly, assets of the company was sold on 24.03.2009 from that day onwards, the Original Petition ought to have been filed within a period of three years, whereas, the present petition is filed on 03.12.2012 beyond the period of limitation, which is clearly barred by limitation.

6. Accordingly, this application is allowed and the main petition in O.P.No.485 of 2016 is rejected.

01.11.2023

dhk

N.SATHISH KUMAR, J.

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