O.P. No.296 of 2017

N.SATHISH KUMAR, J.

This Petition has been filed under Sections 31 & 31 (aa) of the State Financial Corporation Act, 1951 for directing the respondents 1 to 5 to pay a sum of Rs.4,64,39,725.05/- to the petitioner Corporation with interest at the rate of 15.5% per annum compounded half yearly from the date of the petition to till the date of realisation in full.

2. The first respondent is a Company applied for a term loan with the petitioner corporation and the petitioner sanctioned a term loan of Rs.17.60 lakhs towards purchase of plant and machinery. The respondents 1 and 2 hypothecated the machinery. The second respondent executed a Guarantee deed on 28.04.1986. The third respondent 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 and the petitioner Corporation took possession of the factory assets 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.1.55 lakhs. When the petitioner proposed to take possession of the third respondent property, it came to know that the third respondent sold the property to the fourth and fifth respondent. The fourth respondent came forward to settle the amount vide one time settlement, however, the petitioner rejected the proposal. Even thereafter, the respondents are liable to pay the balance dues of Rs.4,64,39,725.05. In this regard, legal notice is also sent on 15.11.2016. 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 P9 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 photocopy of the sanction letter dated 23.12.1985. Ex.P3 is the photocopy of the Deed of Hypothecation dated 28.04.1986. Ex.P4 is the photocopy of the deed of guarantee dated 28.04.1986. Ex.P5 is the photocopy of the letter dated 29.04.1986 confirming the deposit of title deeds sent by the 3rd respondent to the petitioner Corporation. Ex.P8 is the office copy of the legal notice dated 15.11.2016. Ex.P9 is the photocopy of the account sheets.

4. The evidences of the PW1 clearly shows that the properties have been mortgaged after availing the loan, a notice under SARFAESI Act was issued on 18.09.2010 and a demand notice was published on 24.11.2010 and further, a legal notice was sent on 15.11.2016.

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 5 are directed to pay a sum of Rs.4,64,39,725.05/- to the petitioner Corporation with interest at the rate of 15.5% per annum compounded half yearly from the date of the petition to till the date of realisation in full. Further, the petitioner Corporation is also permitted to sell the schedule mentioned property of respondents 3 and 4 by their authorised officer to realise the amounts. The parties shall bear their own costs.

01.11.2023

dhk

N.SATHISH KUMAR, J.

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