O.P.No.568 of 2012

N.SATHISH KUMAR,J.

This Original petition has been filed under Sections 31(a), 31(aa) and 32 of the State Financial Corporation's Act, 1951, to pass the following orders:

(a) determining the liability and direct the respondents 2 and 3 herein to pay jointly and severally a sum of Rs.3,16,58,509.05(Rupees three crores sixteen lakhs fifty eight thousand five hundred and nine and paise five only) to the petitioner corporation with interest at the rate of 18.50% p.a., from the date of the petition, to till the date of realization in full;

(b) order the sale of A schedule property herein towards the realization of the above sum; and

(c) awarding costs of this petition.

2. The case of the petitioner-Corporation is that the petitioner-Corporation sanctioned a term loan (TL) of Rs.20.00 lakhs on

26.03.1997 towards purchase and erection of machinery to the first respondent. As per the terms and conditions, the term loan should be repaid in 28 quarterly instalments with interest at the rate of 18.50% p.a. The respondents 1 and 2 hypothecated the machinery by a deed of Hypothecation on 07.04.1997 for a sum of Rs.20.00 lakhs and the second respondent created equitable mortgage in respect of 'A' schedule property for the loan amount and deposited the title deeds. Therefore, the respondents are liable to repay the loan amount with interest. As the amount due is not paid in instalments as per the terms and conditions, this original petition is filed to pay the amount jointly and severally by the respondents.

3. The respondents 1 and 2 remained exparte. The third respondent filed a counter.

4. It is contention of the third respondent that without the knowledge and consent of the third respondent, one Mr.Sampath Kumar, has illegally pledged the original sale deed document of the third respondent. There is no previous contract between the petitioner and the

third respondent. Hence, he opposed to allow this original petition.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the third respondent and also perused the materials available on record.

6. On the side of the petitioner-Corporation, one Mr.Somasundaram, Junior Officer-Grade II, Tamil Nadu Industrial Investment Corporation, Thiruvallur Branch, Chennai, was examined as PW-1 and ten documents were marked as Ex.P1 to Ex.P10. He has spoken about the sanctioning of the loan in favour of the first respondent. Ex.P2 is the terms and conditions in sanctioning the loan to the first respondent. Ex.P3 is the original deed of hypothecation dated 07.04.1997 executed by the first respondent on 07.04.1997 in favour of the petitioner-Corporation. Ex.P4 is the original deed of guarantee dated 07.04.1997 executed by the second respondent in favour of the petitioner-Corporation. Ex.P5 is the letter dated 09.04.1997 sent by M/s Excel Engineering to the petitioner-Tamil Nadu Industrial Investment Corporation Limited, Chennai.

7. From the above documents, it is clear that the first respondent has executed the deed of hypothecation in favour of the petitioner and the second respondent has executed the original deed of guarantee in favour of the petitioner. The very specific case of the petitioner to the effect that only the second respondent has created equitable mortgage in respect of the 'A' schedule property. The entire pleadings is that the second respondent has created equitable mortgage in respect of the loan advanced to the first respondent. There is no whisper whatsoever made in the entire pleadings. How the third respondent is connected to the borrower or for execution of the document. The specific stand of the petitioner to the effect that only the second respondent has created the equitable mortgage deed in respect of the property shown in the 'A' schedule and deposited the title deeds shown in the 'B' schedule property.

8. It is relevant to note that 'A' schedule property is an absolute property of the third respondent. Such being a position, this Court is at loss to understand as to how the petitioner-corporation has accepted the

equitable mortgage created by the person, who has no title whatsoever in respect of the 'A' schedule property. Therefore, when the very same petition itself is clearly shown that they proceeded only on the basis of the so-called equitable mortgage executed by the second respondent in respect of the 'A' schedule property in which the second respondent has no right whatsoever. The petitioner-corporation cannot proceed against the property, since the same has not been mortgaged by the concerned owner. However, having taken a plea in the entire petition that only the second respondent has created the mortgage deed, during the trial, an attempt has been made by the petitioner-Corporation to prove the alleged deposit of title deed by the third respondent. To establish the above said fact, Ex.P6-letter dated 09.04.1997 has been relied on by the petitioner. Ex.P6 is only the Xerox copy of the so called letter of the third respondent. The letter said to have been signed by the third respondent in depositing certain documents. There was no foundation whatsoever made to file xerox copy and there is no explanation as to non production of the original. Therefore, unless and until, the proper foundation is made by the petitioner to rely upon the secondary evidence as xerox copy, the same cannot be relied as a matter of right.

9. Be that as it may. Even assuming that Ex.P6 is admissible, on perusal of the same, it would indicate that Ex.P6 is related to the some other property. The survey number is totally unconnected to the 'A' schedule property. Therefore, Ex.P6 will not help in any manner to prove the claim of the petitioner as against the third respondent.

10. Hence, this Court is of the view that the claim of the petitioner as against the third respondent has not been established. However, the claim of the petitioner as against the respondents 1 and 2 has been clearly established, in view of the documents, particularly, Ex.P2 to Ex.P5. Neither those documents have been challenged nor denied.

11. In such view of the matter, the petitioner is entitled to recover a sum of Rs.3,16,58,509.05 with the subsequent interest at the rate of 7.5% p.a from the respondents 1 and 2 and not from the third respondent. Accordingly, this Original Petition is ordered for recovery of

such amount with interest at the rate of 7.5% from the respondents 1 and 2 from the date of the petition till the date of realisation. This Original Petition is dismissed as against the third respondent. No costs.

14.03.2024

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N.SATHISH KUMAR,J.

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