IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 25.04.2024

JUDGMENT PRONOUNCED ON : 02.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.S.No.334 of 2014

Canbank Factores Ltd.,
a subsidiary of Canara Bank
and a public limited company within the
meaning of Companies Act, 1956
having its registered office
at No.67/1, Kanakapura Main Road
V V Puram, Basavanagudi
Bangalore 560 004 and
having a Branch at Chennai
No.770-A, Anna Salai
Spencer Towers Annexe
Chennai-600 002. .. Plaintiff

Vs.

1. M/s.Pioneer Alloys Castings Limited
(in Liquidation) and represented by
The Official Liquidator
High Court of Andhra Pradesh - 5-4-400
2nd Floor, East Wing Gangvihar
Nampally, Hyderabad - 500 001

* substituted by amended order dated 09.02.2015 in A.No.7997 of 2014
** amended as per order dated 17.06.2022 in A.No.1340 of 2022
*** suit is dismissed as against 1st defendant vide order dated 01.02.2024

2. Mrs.K.S.Gita

3. Dr.T.Pavithra

4. M/s.Hotel Temple View (P) Ltd.,
(Pioneer Group of Companies)
Administrative Office
132/33, Nelson Manickam Road
Chennai-600 018.

5. Mr.Sharath Kakumanu
S/o.Late K.Subbaiah
29, Bishop Garden
R.A.Puram, Chennai-600 028.

6. Mrs.K.Beena
W/o.Mr.K.Rajeswara Rao

7. Mr.Ahswin Kakumanu
S/o.Late K.Sudharshan

8. Ms.Sujini Kakumanu
D/o.Late K.Sudharshan

* Amended as per order dated 15.04.2021 in A.No.1593 of 2021

9. M/s.Mahindra & Mahindra Limited
Tractors Division
Akruti Road
Kandivili (East)
Mumbai - 400 001.

10. Andhra Bank
Mowbrays Road Branch
265, TTK Salai, Alwarpet
Chennai-600 018.

11. State Bank of India
Settipalli Branch
Tirupathy
Andhra Pradesh - 517 506. .. Defendants

PRAYER : Civil suit is filed under Order VII Rule 1 of CPC read with Order IV Rule 1 of O.S. Rules prayer to pass a decree and judgment as against the original 1st defendant namely, Pioneer Alloys Castings Limited and defendants 1 to 3 and 9 jointly and severally and defendant 4 to the extent of the mortgage over schedule "A" property and defendants 2 and 5 to 8, from out of the estates inherited by them as legal heirs of the late K.Subbiah

(i) for Rs.4,94,64,951/- together with discount charges at 17.25% per annum, compounded with monthly rests, from the date of plaint, till date of realization;

(ii) In the event of default to pay the amounts claimed under clause (a) above, direct sale of Schedule 'A' to 'C' immovable properties and appropriate the net proceeds in the decree amount claimed under clause (a) above, after defraying the expenses thereof, without prejudice to other modes of execution;

(iii) pass a personal decree against the original 1st defendant namely, Pioneer Alloys Castings Limited and defendants 1 to 3 and 5 to 8, to the extent of the estate inherited by them on the death of Late K.Subbaiah, if there be any deficiency;

(iv) Award costs of the suit;

For Plaintiff : Mr.S.Pandurangan

For Defendants : Mr.Bijesh Thomas and K.F.Manavalan for D7

Mr.M.K.Kabir
Senior Counsel for
Mr.Anand Sashidharan for D8

JUDGMENT

The suit has been filed seeking for recovery of a sum of Rs.4,94,64,951/- together with discount charges at 17.25% per annum, compounded with monthly rests, from the date of plaint, till date of realization and also for sale of mortgage properties, Schedule 'A' to 'C' in the plaint and to pass a personal decree against the original first defendant, namely M/s.Pioneer Alloys Castings Limited and defendants 1 to 3 and 5 to 8 to the extent of the estate inherited by them on the death of Late K.Subbiah, if there is any deficiency and for costs.

2. The averments made in the plaint are as follows:-

2.1. The plaintiff is a Non-Banking Financial Company [NBFC] engaged in the business of providing post sale working capital facilities by purchasing the receivables and allowing pre-payment to its clients. 'M/s.Pioneer Alloys Castings Limited' [hereinafter referred to as 'the original first defendant' for brevity] is a Company incorporated under the Companies Act, 1956 and defendants 2 and 3 are its Directors and are also guarantors. The original first defendant is engaged in the business of manufacturing and marketing automobile components, iron castings and other allied products. Originally, the original first defendant approached the plaintiff for factoring various invoices raised by them for their supplies of components, supplied to its various customers. At the request of the original first defendant, the plaintiff extended the financial facility by way of Factoring, Sales Invoices, Receivables and Book Debts. The plaintiff, vide its sanction letter dated 01.10.1996 (Ex.P1), sanctioned pre-payment limit of Rs.60 Lakhs in favour of the original first defendant, putting forth the terms and conditions and the same was accepted by the first defendant. In respect of the above sanction, the first defendant agreed to pay the amounts of the factored bill amounts with discount charges at 20% per annum. The aforesaid pre-payment limit was periodically renewed/enhanced/reduced from time to time. The original first defendant agreed to pay the discount charges which were originally fixed at 20% per annum. In respect of the aforesaid renewals/ enhancement/reductions, the original first defendant, represented by its Directors, had executed necessary loan documents in favour of the plaintiff. Further, as a collateral security for the repayment of the factoring facilities granted by the plaintiff to the original first defendant, the fourth defendant created equitable mortgage in favour of the plaintiff over Schedule "A" mentioned immovable property belonging to the fourth defendant by depositing their title deeds with the plaintiff at Chennai on 27.02.2003 and confirmed the same vide letter dated 28.02.2003 (Ex.P.9).

2.2. That apart, the then Director of the original first defendant - Company – Late K. Subbaiah, father of defendants 2, 5 and 6 and grandfather of defendants 7 and 8 being the sons of Late K. Sudharshan, who is one of the sons of Late K. Subbaiah, created equitable mortgage over the property belonging to Late K. Subbaiah, by depositing the title deeds pertaining to Schedule "B" mentioned property in favour of the plaintiff at Chennai on 20.03.2002 and confirmed the deposit of the title deeds on 21.03.2002 (Ex.P.7). The original first defendant had created second charge on 17.07.2007 in and over the fixed assets of the original first defendant namely, land and building, plant and machinery belonging to the original first defendant at Gummidipoondi, Tamil Nadu and Gazulamandyam, Renigunta, Andhra Pradesh and more fully described in Schedule "C" to the plaint in favour of the plaintiff, the 1st charge holder being, Andhra Bank, 10th defendant herein.

2.3. It is further averred that 10th defendant, namely Andhra Bank, has released the charge over Schedule "C" properties without the knowledge and consent of the plaintiff. Once their charge is released by 10th defendant, the plaintiff, steps into the shoes of 10th defendant and becomes the 1st charge holder in respect of the Schedule "C" property. The original first defendant seems to have availed credit facilities from 11th defendant by creating a charge over the Schedule "C" properties. The said charge is only by way of 2nd charge, as already stated, 10th defendant releases its 1st charge, the plaintiff becomes the 1st charge holder in respect of Schedule "C" properties. Hence, 10th and 11th defendants are brought as party to the present proceedings, though no specific relief is sought against them. In consideration of the aforesaid facilities granted by the plaintiff to the original first defendant, defendants 2 and 3 have executed guarantees dated 24.07.2008 and 21.09.2009, respectively. However, the other documents executed by the original first defendant in respect of the facilities extended from time to time since 1997, are not filed, as they are not relevant for determining the relief sought for in the plaint, as the plaintiff is claiming in respect of the supplies effected and invoice bills raised by the original first defendant for the supplies to one of its customers namely, M/s. Mahindra & Mahindra Limited/9th defendant herein from and out of the factoring facility from 21.10.2010 as detailed in the annexure to plaint (Ex.P.22).

2.4. While so, the 9th defendant has also been purchasing components from 1997 onwards and the original first defendant utilized the factoring facilities extended to them by the plaintiff, has been supplying the components to the 9th defendant. The procedure for factoring of supply bills by the plaintiff was that the supply bills raised *inter alia*, the 9th defendant, should contain a Clause viz., "the amount payable under the Invoice has been purchased by the plaintiff / Can Bank Factors Limited, Chennai Branch, 770-A Spencer Towers Annex, Anna

Salai, Chennai- 600 002. This authority and request are irrevocable without the consent in writing of M/s.Can Bank Factors Limited. If this invoice is not found to be correct in all aspects, they must be informed immediately, thereby authorizing and requesting 9th defendant to make the payments of the factored bills amount in favour of the plaintiff directly.

2.5. To confirm the payment of the factored bill amounts by 9th defendant to the plaintiff directly for the supply of components effected by the original 1st defendant to 9th defendant, the plaintiff wrote a letter dated 18.03.1997 to 9th defendant and the same was confirmed by 9th defendant Ex.P6 - letter dated 26.03.1997 (Ex.P.6) and also undertook to make the payments in the name of Can Bank Factors Limited Account PACL. The execution of the Power of Attorney by the original first defendant in favour of the plaintiff is to receive factored bill amounts, amounts to creation of equitable assignment of the debt covered by various factored bills raised by the original 1st defendant including 9th defendant and factored with the plaintiff and execution of letter dated 18.03.1997 by the plaintiff and letter dated 26.03.1997 by 9th defendant to the plaintiff, amounts to notice for such equitable assignment of the debt. Moreover, in the transaction of supply of goods and payment thereof, between the original first defendant and 9th defendant, including the manner of payment of bill amounts to be made by 9th defendant to the original 1st defendant as per the terms of invoices as referred to above, it became a concluded contract between the original first defendant and 9th defendant, by accepting various invoices raised by the original 1st defendant and accepted by 9th defendant. The 9th defendant also accepted the procedure for payment of the bill amounts directly to the plaintiff for the supply of components by the original 1st defendant. Therefore, 9th defendant is bound to pay the factored bill amounts for the invoices raised by the original 1st defendant on them only to the plaintiff. Based on the aforesaid procedures and execution of documents, the original 1st defendant has been effecting supplies of components to the 9th defendant with the copy of the invoice given by the plaintiff and 9th defendant has also been making the payments directly to the plaintiff. The plaintiff has filed the invoices raised by the original 1st defendant on 9th defendant for the supplies effected by them in the list of documents.

2.6. The 9th defendant has been making payments for the components supplied by the original 1st defendant till the end of 2009 in favour of the plaintiff. During 2010 and 2011 under various invoices raised on 9th defendant, amounting to Rs.5,15,77,924/-, however, 9th defendant did not make payment to the plaintiff, despite repeated demands and reminders made by the plaintiff, including the plaintiff's legal notice dated 29.11.2011 (Ex.P.23). The 9th defendant has sent a reply dated 19.12.2011 (Ex.P.24) *inter alia* contending that they are not liable to make the payment for the supplies effected by the original first defendant on 9th defendant to the plaintiff, despite a specific undertaking letter dated 26.03.1997 (Ex.P.6) given by the 9th defendant to the plaintiff to make the payments and also the fact that they have been making payments directly to the plaintiff for the supplies effected by the original first defendant on them from 1999 till 2009. The present liability in respect of the factoring bills is Rs.4,94,64,951/- and Statement of Accounts (Ex.P.25) is filed as one of the documents to the plaint. The plaintiff submits that the transaction being a commercial one, the plaintiff is entitled to future discount charges at the rate of 17.25% per annum, compounded with monthly rests.

3. The seventh defendant has filed the written statement, which has been adopted by the eight defendant by filing a memo to that effect. The defence raised in the said written statement *interalia* are as follows:

3.1. Primarily the suit is not maintainable as against 7th and 8th defendants, since the immovable properties described in Schedule "B" and "C" of the plaint are situated outside the jurisdiction of this Court and 8th defendant has been residing outside India for over 20 years and no leave has been sought for institution of the suit before this Court as mandated under the Original Side Rules read with Code of Civil Procedure. The plaintiff in paragraph No.10 of the plaint has categorically claimed that the original first defendant executed renewal of factoring agreement on 24.07.2008 and 21.09.2009, which includes Letter of guarantees given by 2nd and 3rd defendants. This amounts to a fresh agreement, as on the date of such renewal, K. Subbiah was not alive, as he passed away on 30.12.2005 itself. Therefore, K. Subbiah was not a party to the renewal of the factoring agreement, either on 24.07.2008 or on 21.09.2009. It is thus evident that the earlier letters of guarantee have been replaced by fresh guarantees from defendants 2 and 3, who were the present Directors of the original first defendant -

Company. Consequently, Ex.P4 - letters of guarantee issued by K. Subbiah dated 22.11.1996, do not subsist and hence, the claim against 7th defendant, who is the grand son of said K. Subbiah is liable to be dismissed.

3.2. The plaintiff signed new Letters of guarantee, dated 24.07.2008 with the new Directors of the original first defendant - Company i.e., 2nd and 3rd defendants, which shows that they knew that the liability of K. Subbiah lapsed on his demise. It is the specific case of the plaintiff that the 9th defendant did not make payments for supplies effected during 2010 and 2011 under various invoices raised on it. The said amount works out to Rs.5,15,77,924/-. Therefore, the plaintiff issued a legal notice dated 29.11.2011 to the 9th defendant only claiming the said amount. However, no notice was issued to any other defendants on the said date or thereafter. It is admitted that, vide letter dated 26.03.1997, the 9th defendant undertook to make payments in the name of the plaintiff. Therefore, there can be only cause of action as against the 9th defendant. This apart, it is also clear that the period of default is during the period between 2010 and 2011 and prior to such default, K.

Subbiah passed away. The admission of the plaintiff that the 9th defendant paid for the components supplied till the end of 2009, would go to show that during the lifetime of K. Subbiah, there was no default in payment. The alleged Letter of guarantee dated 22.11.1996, which neither bears the date or the name in the stamp paper, pertains to various facilities under factoring arrangement between the plaintiff and the original 1st defendant. The said letter of guarantee under Clause 1 relates to "General balance due from the client", namely Pioneer Alloy Castings Limited. It is an admitted fact that there was no outstanding amount due and payable by the original first defendant prior to the end of 2009. Therefore, on the date of demise of K.Subbiah, there was no subsisting liability of the original first defendant to the plaintiff which can be proceeded against the legal heirs. It is admitted by the plaintiff that the pre-payment limit which originally stood at Rs.60 Lakhs was periodically increased to Rs.500 Lakhs. It is also admitted that in respect of renewals/enhancements/reductions, the original first defendant - Company represented by its Directors executed necessary documents in favour of the plaintiff. Admittedly, in respect of renewals on 22.02.2007, 24.07.2008 and 21.09.2009, K. Subbiah was not the Director of the original first defendant - Company and he could not have signed the documents. According to the plaintiff, the amount of Rs.5,15,77,924/- is due and payable by the 9th defendant for supplies effected during 2010 and 2011 under various invoices raised on the 9th defendant. The liability of 9th defendant cannot be a ground to enforce the alleged mortgages purported to have been created by the 4th defendant and K. Subbiah. The suit should have been filed for recovery of money for the supplies effected by the original first defendant as against 9th defendant. For this reason, notice dated 29.11.2011 was issued to 9th defendant alone. The default on 9th defendant cannot be construed as default on the first defendant - Company. In any event, the deposit of title deeds by 1st defendant or K. Subbiah can be construed only as a collateral security for payment of money by 1st defendant. Admittedly, it is the 9th defendant, who has failed to pay money for the supplies effected. Therefore, it cannot be construed as a default on the part of 1st defendant creating a debt for invoking the alleged equitable mortgages. The plaintiff having failed to institute a suit against 9th defendant for recovery of money, has filed this suit as if it is a suit on mortgage. Thus, the suit suffers from *misjoinder* of causes of action and hence, it is liable to be rejected.

4. Upon considering the pleadings and documents annexed therewith, the following issues have been framed by this Court on 15.02.2023:-

"i) Whether the suit against a company in liquidation is maintainable?

ii) Whether the present suit is maintainable without prior notice to the mortgagors of the foreclosure of the option of redemption?

iii) Whether the suit is maintainable in the absence of leave being obtained when the properties are situate outside the jurisdiction of this Court?

iv) Whether the suit is barred by limitation as against the defendants 7 and 8 as their grandfather, K.Subbiah died on 31.12.2005?

v) Whether the plaintiff being the power of attorney agent of the first defendant can only institute the suit for recovery of amount due from the 9th defendant in terms of the arrangement with the 9th defendant?

vi) Whether the default of the 9th defendant in honoring its payment to the plaintiff under the arrangement between the plaintiff and the 9th defendant would give rise to a cause of action against the other defendants for enforcing the right under the mortgage?

vii) Whether subsequent to the demise of K.Subbiah, the letter of guarantee issued by him is binding on the 1st defendant?

viii) Whether in the absence of all the legal heirs executing a guarantee after the demise of Subbiah, the suit is maintainable as against the legal heirs and the property of Subbiah? and

ix) To what reliefs are the parties entitled to?"

5. After framing of issues, during trial, on the side of the plaintiff, one Chandan Kumar was examined as P.W.1 and 27 documents were marked as Exs.P1 to P27. On the side of the defendants, no oral evidence was adduced, however, 3 documents were marked as Exs.D1 to D3.

6. Learned counsel for the plaintiff submitted that the original first defendant, who is engaged in the business of manufacturing and marketing of automobile components, iron castings and other allied products, approached the plaintiff for factoring various invoices raised by them for their supplies of components, supplied to its various customers. Initially, the plaintiff - Company vide sanction letter dated 01.10.1996

(Ex.P.1) sanctioned prepayment limit of Rs.60 lakhs in favour of the original first defendant, subsequently, the said prepayment limit was periodically renewed/enhanced/reduced from time to time, for which, K.Subbiah, who is one of the Directors of the original first defendant - Company, executed necessary loan documents in favour of the plaintiff and defendants 2 and 3, who are one of the Directors of the original first defendant - Company and they have also executed necessary guarantee agreement in favour of the plaintiff. The original first defendant also agreed to pay the discount charges which were originally fixed at 20% p.a compounded monthly and varied periodically and which stood at 14.25% p.a compounded monthly with effect from 01.07.2011. He further submitted that for the said transaction, the fourth defendant - M/s.Hotel Temple View (P) Ltd., K.Subbiah and the original first defendant, have created equitable mortgages in favour of the plaintiff over Schedule 'A', 'B' and 'C' mentioned immovable properties, by depositing their title deeds with the plaintiff. Apart from the above, Late K. Subbiah executed Power of Attorney dated 22.11.1996 in favour of the plaintiff, authorizing the plaintiff to receive the factored bill amounts directly from the drawees of the bills. He further submitted that the present suit has been filed claiming in respect of the supplies effected and invoice bills raised by the original first defendant for the supplies to one of its customers, namely, the 9th defendant herein, from and out of the factoring facilities from 21.10.2010. Originally, the 9th defendant, purchased components from the original first defendant from 1997 onwards. As such, the 9th defendant has been making payments for the components supplied by the original first defendant till end of 2009, in favour of the plaintiff as per the procedure. During 2010 and 2011, the original first defendant raised various invoices on 9th defendant, amounting to Rs.5,15,77,924/-, which is due and payable by the 9th defendant to the plaintiff, but they did not make payments to the plaintiff, despite repeated demands and reminders by the plaintiff, including notice dated 29.11.2011 (Ex.P.23). The 9th defendant sent a reply dated 19.12.2011 (Ex.P24) contending *inter alia* that the payments have been directly paid to the plaintiff for the supplies effected on them from 1999 till 2009. However, the said payments do not have the effect of discharging 9th defendant from the payment of the factored bill amounts to the plaintiff for the subsequent period.

7. Learned counsel for the plaintiff further submitted that exhibits marked on the side of the plaintiff will clearly prove that there have been liabilities created by the original first defendant on utilizing the factoring limits extended by the plaintiff. As the 9th defendant failed to make payments to the plaintiff, the original first defendant and defendants 2 and 3, who are Directors and guarantors of the original first defendant are jointly and severally liable to pay to the plaintiff the suit claim of Rs.4,94,64,951/- together with discount charges of 17.25% p.a. compounded with monthly rests. He further submitted that the plaintiff is also entitled to proceed against the Schedule "A" to "C" immovable properties and appropriate the net sale proceeds in the suit claim. Defendants 2 and 5 to 8 are liable to the extent of the estate inherited by them from Late K. Subbiah.

8. Learned Senior Counsel appearing for 8th defendant submitted that originally the plaintiff has filed a suit against M/s. Pioneer Alloy Castings Ltd., and others. Subsequently, M/s. Pioneer Alloy Castings Ltd was ordered to be wounded up by the Hon'ble High Court of Andhra Pradesh and the Official Liquidator, High Court of Andhra

Pradesh was in the process of liquidation of the Company. Hence, the Official Liquidator, High Court of Andhra Pradesh has been impleaded as the first defendant in the place of the original first defendant. Thereafter, the plaintiff has given up its claim against the 1st defendant, but no leave has been sought for instituting the suit under Section 446 (1) of the Companies Act 1956, and this Court by order dated 01.02.2024 has dismissed the claim as against 1st defendant. Consequently, the claim, if any, against 1st defendant stands dismissed. In the absence of there being any valid claim maintainable against 1st defendant, the case against the 8th defendant as well as the mortgaged properties also falls, as admittedly, there is no claim against 1st defendant and no amounts are due. The present suit itself is bad in law as the same has been instituted in contravention of the specific prohibition / bar contained in Section 446 (1) of the Companies Act 1956. The giving up of the claim against 1st defendant cannot resuscitate the still born case filed by the plaintiff. In light of the bar contained in Section 446 (1) of the Companies Act 1956, the present suit ought to be dismissed.

8.1. Learned Senior Counsel appearing for 8th defendant further submitted that the case of the plaintiff itself is that the plaintiff - Company entered into a factoring agreement with 1st defendant on 22.11.1996. Under the said Agreement, the plaintiff agreed to factor various invoices raised by 1st defendant for supplies of components to its customers. Apart from the factoring agreement, 1st defendant also executed a general power of attorney in favor of the plaintiff - Company on 22.11.1996. It is contended in paragraph 7 of the plaint that as collateral security for the repayment of the factoring facilities, the 4th defendant created an equitable mortgage in favour of the plaintiff over Schedule 'A' property on 27.02.2003. Schedule 'A' property measures 171 cents and is situate at Door No. 1 Lattice Bridge Road, Chennai - 600 020. It is further contended that K. Subbiah created equitable mortgage over the property described in Schedule 'B' by depositing the title deeds on 20.03.2002. Schedule 'B' property is situate at Muttukadu Village, Chengalpet District. It is an admitted fact that K. Subbiah passed away on 30.12.2005. On the date of his passing away, there were no dues payable to the plaintiff by 1st defendant in respect of the factoring agreement. Admittedly, the 9th defendant was purchasing components from 1st defendant from 1997 onwards. In paragraph 13 of the plaint, the plaintiff submits that to confirm the payment of the factored bill amounts from 9th defendant to the plaintiff directly, plaintiff has also wrote a letter to 9th defendant on 18.03.1997. The 9th defendant vide letter dated 26.03.1997, undertook to make the payments in the name of the plaintiff. Thus, it is evident that there has been an *inter se* arrangement between the plaintiff and 9th defendant, whereby, 9th defendant would pay the factored bills directly to the plaintiff's accounts. The plaintiff has specifically pleaded in paragraph 14 of the plaint that it constitutes an equitable assignment of the debt. It is also pleaded in the said paragraph that 9th defendant is bound to pay the factored bill amounts for the invoices raised by 1st defendant on it only to the plaintiff. In paragraph 16 of the plaint, it is submitted that 9th defendant has been making payments for the components supplied directly to the plaintiff till the end of 2009. However, during 2010 and 2011, the 9th defendant defaulted and hence the plaintiff issued a legal notice on 29.11.2011 to 9th defendant. The 9th defendant has replied to the said notice on 19.12.2011 itself. Thus, it is evident that there is an *inter se* dispute between the plaintiff and 9th defendant.

8.2. Learned Senior Counsel appearing for 8th defendant further submitted that during cross examination, P.W.1 also admitted that the claims in the suit are only arising out of factoring facilities, which are provided from 21.10.2010 onwards. Therefore, it is evident that 9th defendant/Mahindra & Mahindra Ltd. has been remitting the amount directly to the plaintiff till 20.10.2010. Therefore, on the date of demise of K. Subbiah, there was no default committed by 1st defendant in payment of any amount to the plaintiff under the factoring agreement. In fact, as admitted by the plaintiff, till 21.10.2010, 9th defendant also continued to pay the amounts to the plaintiff. In the plaint itself, the plaintiff has accepted that 1st defendant has assigned the debt on 9th defendant agreeing to pay the amounts due from the purchase of component directly to the plaintiff. In fact, notice dated 29.11.2011 is addressed only to 9th defendant and not to any other defendants. In paragraph Nos.3 and 5 of the notice dated 29.11.2011, it is specifically stated as follows:

> "3. Our clients put you on specific notice that you have also been informed and well aware of the power of attorney executed by M/s Pioneer Alloy Castings Ltd., in favor of our clients, empowering

them to collect their receivables from you."

"5. Our client states that the aforesaid liability of M/s Pioneer Alloy Castings Ltd. has become overdue on account of your failure to pay the invoice amount, which you have specifically agreed to remit to our clients."

The said legal notice on the premise of which the suit has been instituted would clearly shows that the default, if any, committed by 9th defendant is the cause of action for institution of the present suit. The notice itself admits that the plaintiff is the Power Agent of 1st defendant and the liability is towards it. However, no suit has been instituted by the plaintiff against the 9th defendant for recovery of the said sum. The Factoring Agreement dated 22.11.1996 defines the terms 'Assignment', 'Debt', 'Facility' and 'Insolvency' under Clause 1(iii), (iv) (ix) and (x) respectively. The definition of assignment reads that it is Absolute Assignment of a Debt in writing made by the client and 'Debt' means the amount owing or accruing due to the client from the customers consequent upon the sale or supply of Goods as defined under Clause 1(xiv). The said Clause refers to Invoices as per Clause 3E. Under 3E (iv) the amount payable under the Invoice has been purchased by the plaintiff and the customer is authorised or requested to make payment to the plaintiff for valid discharge. A conjoint reading of the said Clauses would reveal that the amounts payable by the customer has already been purchased by the plaintiff and that debt from the customer is assigned to the plaintiff absolutely. Therefore, by virtue of the Power of Attorney given to the plaintiff, the plaintiff has to recover the debt from the customers and it cannot proceed against 1st defendant or its Directors under the guise of enforcing the Equitable Mortgage or the Guarantee given by them, therefore, there is no independent cause of action as against 1st defendant and its Directors, much less than the legal heirs until the remedy against the customer stands exhausted.

8.3. Admittedly, no notice has been sent to 1st defendant demanding payment. In the absence of default, despite notice of demand on 1st defendant, the suit cannot be continued to enforce a guarantee or the equitable mortgage, as, the claim against 1st defendant, if any, has been dismissed. When the suit as against 1st defendant is dismissed, the claim against 1st defendant under the factoring agreement dated 22.11.1996 cannot be continued. In fact, no notice of demand has been sent either to the guarantors, mortgagors or the sureties. It is the case of the plaintiff that 9th defendant defaulted in honoring its commitment, despite the debt being assigned to the plaintiff with the consent of 1st defendant. It is thus clear that 1st defendant is not in default, but one of its customers, who has been paying the amount to the plaintiff for the goods purchased till 20.10.2010. The Letter of Guarantee dated 22.11.1996 issued by Late K. Subbiah lapses on his demise on 30.12.2005. Neither any succeeding Director or the plaintiff can renew the guarantee of a dead person. Therefore, the guarantee given by K. Subblah lapsed on 30.12.2005. The letter evidencing deposit of Title Deeds dated 21.03.2002 is unregistered with the Registrar of Companies. This letter evidencing Deposit of Title Deeds relates to the property at Muttukadu, which is outside the territorial jurisdiction of this Court. The letter of renewal dated 21.09.2009 have been issued by 2nd and 3rd defendants without the concurrence of the legal heirs of K. Subbiah. The letter of renewal dated 21.09.2009 is not even on behalf of 1st defendant - Company and the same does not bear the seal of the Company and the Resolution authorizing 2nd defendant to sign the same. The stamp papers have been purchased in Egmore by the plaintiff - Company in its name and not in the name of the 1st defendant - Company. No Resolution has been filed as to how 2nd defendant represented 1st defendant - Company. Similarly, the letter of guarantee issued by T. Pavithra, daughter of 2nd defendant as surety cannot be on behalf of the Company. As the letter of guarantee issued by K. Subbiah had lapsed on his demise, the same cannot be renewed. Further, according to the plaintiff, fresh letters of guarantee had been obtained from defendants 2 and 3. The same has replaced the letter of guarantee given by K. Subbiah, prior to his demise on 30.12.2005. In any event, till 20.10.2010 there has been no default by 9th defendant in paying the debt to the plaintiff. Therefore, no cause of action can arise against K. Subbiah or to his estate. Further, 8th defendant cannot be mulcted with liability based on the guarantee said to have been executed by K. Subbiah. The letter evidencing Deposit of Title deeds dated 21.03.2002, as stated supra, is not registered with the Registrar of Companies. There is no document produced to show that it was registered with the Resolution of Company. In fact, the Statement of outstanding shows that 9th defendant is liable to pay 1st defendant from 21.10.2010. The search report dated 22.11.2007 (Ex.P.15) issued by the Chartered Accountant of the plaintiff under Column 6, 'Short particulars of the property charged' shows that the land and factory shed including plant and machinery at Chittoor District and Gummidipoondi and not any other immovable property. This is also reflected in Column 9. Therefore, it is evident that after the demise of K. Subbiah, there has been a modification as reflected in Column 9. The said search clearly states that these immovable properties are subject matter of charge before the ROC at Andhra Pradesh.

8.4. The alleged letter evidencing deposit of title deeds is dated 21.03.2002. The leave to sue application has been filed only in the year 2014 and it was allowed by this Court on 15.05.2014. The suit itself is taken on file only on 19.05.2014. In the meanwhile, the period of 12 years lapsed and hence, the suit is barred by limitation. The mere presentation of a suit without obtaining Leave to institute the same will not arrest the period of limitation. Consequently, the suit is liable to be dismissed on the ground that the suit is barred by limitation. Mere presentation of the plaint by itself does not constitute institution of a suit. Institution of a suit should comply with the provisions of Order III, IV and VII of the Code of Civil Procedure. In the absence thereof, the suit is not validly instituted and if the plaint is returned by the Registry it is only a returned plaint and not a suit. Therefore, the period of limitation does not stand arrested.

8.5. In support of his contention, the learned Senior Counsel appearing for 8th defendant relied upon decision of this Court in case of ***Mr. K. Varathan Vs. Mr. Prakash Babu Nakundhi Reddy [C.S. (Comm.Div.) 202 of 2022 dated 13.10.2022 (Pg. 13, to 16)]*** and also relied upon the decision of the Hon'ble Supreme Court ***2022 (10)SCC 1- (Para 94.1 and 2 and 95 to 98)***.

8.6. In fact, the leave to sue itself has been applied by suppressing material fact that the original first defendant - Company has been wound up by the Hon'ble High Court of Andhra Pradesh vide order dated 09.11.2012 in C.P.No.171 of 2011. Even though, the Official Liquidator appointed by the Hon'ble High Court of Andhra Pradesh had informed the plaintiff by letter dated 02.01.2013, which has been replied by the plaintiff on 20.03.2013. Therefore, the plaintiff - Company was aware when the original first defendant - Company was wound up, it ought not to have suppressed the material fact both in the Application for Leave to sue and in the plaint. Therefore, the suit is liable to be dismissed on this ground. He further submitted during cross examination, P.W.1 himself admitted that the Official Liquidator informed them regarding the winding up proceeding initiated against M/s. Pioneer Alloy Casting Ltd. The letter of the Official Liquidator is marked as Ex.D.2 and the reply by the plaintiff is marked as Ex.D.3. Therefore, the institution of this suit for the amounts due from 9th defendant to 1st defendant cannot be proceeded with on the plaintiff giving up its claim against 1st defendant. The debt which was assigned under the Factoring Agreement pertains to the amounts payable by 9th defendant to the plaintiff. If 1st defendant is wound up, in the absence of any notice, to the other defendants primarily claiming the amount which may be disputed, the suit is not maintainable. As the Official Liquidator is seized of all the accounts of 1st defendant - Company and the plaintiff informed the Official Liquidator under Ex.D.3 that it is not standing outside the winding up, it has to approach the Official Liquidator alone and cannot stand outside the liquidation to enforce a debt due to the Company. Moreover, the debt itself having been assigned to the plaintiff, its only remedy is to stand inside the liquidation and cannot enforce the guarantees independently. In any event, prior to the demise of K. Subbiah, there was no amount due and payable by 1st defendant to the plaintiff. Consequently, his estate cannot be subjected to independent recovery of an alleged debt owed by a customer to the Company, that too when the same stands assigned to the plaintiff. Hence, the suit is liable to be dismissed.

8.7. Learned Senior Counsel appearing for 8th defendant further submitted that the suit is beyond the territorial jurisdiction of this Court as the suit has been filed based on the alleged mortgage of the Schedule 'B' and 'C' properties, which are located at Muttukadu and Renigunta, Andhra Pradesh, which is beyond the territorial jurisdiction of this Court. For the reasons stated above, the suit deserves to be dismissed *in-limine* and 8th defendant cannot be held to be liable for the amounts claimed in the suit based on the guarantee said to have been executed by K. Subbiah, especially considering the fact that the amounts are said to have arisen well after the demise of K. Subbiah. It is only after the demise of K. Subbiah that the plaintiff had obtained guarantees from defendants 2 and 3. The plaintiff obtained the said guarantees from the defendants 2 and 3 since they were aware that the alleged guarantee of K. Subbiah, was no longer valid. Therefore, he prays to dismiss the suit as devoid of merits.

9. Heard Mr. S. Pandurangan, learned counsel for the plaintiff, Mr. Bijesh Thomas, learned counsel for 7th defendant and Mr. M.K. Kabir, learned Senior Counsel appearing for 8th defendant and perused the materials available on record.

10. Issue No.1 : Whether the suit against a company in liquidation is maintainable ?

10.1. The specific case of the plaintiff is that, the original first defendant, who is engaged in the business of manufacturing and marketing of automobile components, iron castings and other allied products, approached the plaintiff for factoring various invoices raised by them for their supplies of components, supplied to its various customers. Initially, the plaintiff - Company under Ex.P.1 sanction letter dated 01.10.1996 sanctioned prepayment limit of Rs.60 lakhs in favour of the original first defendant, subsequently, the said prepayment limit was periodically renewed/enhanced/reduced from time to time, for which, K.Subbiah, who is one of the Directors of the original first defendant-Company, executed necessary loan documents in favour of the plaintiff and defendants 2 and 3, who are also the Directors of the original first defendant - Company executed necessary guarantee agreement in favour of the plaintiff. In the said transaction, fourth defendant - M/s.Hotel Temple View (P) Ltd., K.Subbiah and the original first defendant, have created equitable mortgages in favour of the plaintiff over Schedule 'A', 'B' and 'C' mentioned immovable properties, by depositing their title deeds with the plaintiff. Apart from that, K. Subbiah executed Ex.P5-Power of Attorney dated 22.11.1996 in favour of the plaintiff, authorizing the plaintiff to receive the factored bill amounts directly from the drawees of the bills. The present suit has been filed claiming in respect of the supplies effected and invoice bills raised by the original first defendant for the supplies to one of its customers, namely, the 9th defendant herein, from and out of the factoring facilities from 21.10.2010. During 2010 and 2011, the original first defendant raised various invoices on 9th defendant, amounting to Rs.5,15,77,924/-, which is due and payable by 9th defendant to the plaintiff, but they did not make payments to the plaintiff, despite repeated demands and reminders by the plaintiff, including Ex.P.23 - notice dated 29.11.2011. However, 9th defendant sent Ex.P.24 - reply dated 19.12.2011 denying the liability. As per the documentary evidence produced by the plaintiff there have been liabilities created by the original first defendant on utilizing the factoring limits extended by the plaintiff. As the 9th defendant failed to make payments to the plaintiff, the original first defendant and defendants 2 and 3, who are Directors and Guarantors of the original first defendant-Company are jointly and severally liable to pay to the plaintiff the suit claim of Rs.4,94,64,951/- together with discount charges of 17.25% p.a. compounded with monthly rests. The plaintiff is also entitled to proceed against the Schedule "A" to "C" immovable properties and appropriate the net sale proceeds in the suit claim. Defendants 2, 5 to 8 are liable to the extent of the estate inherited by them from Late K. Subbiah.

10.2. Except defendants 7 and 8, all other defendants remained *ex-parte.* The case of the contesting defendants 7 and 8 is that originally the plaintiff has filed a suit against M/s. Pioneer Alloy Castings Ltd., and others. Subsequently, M/s. Pioneer Alloy Castings Ltd was ordered to be wound up by the High Court of Andhra Pradesh and the Official Liquidator, High Court of Andhra Pradesh was in the process of liquidation of the Company and hence, pending suit, the Official Liquidator, High Court of Andhra Pradsh has been impleaded as the first defendant in the place of the original first defendant. Thereafter, the plaintiff has given up its claim against the 1st defendant, but no leave has been sought for instituting the suit under Section 446 (1) of the Companies Act 1956, and this Court by order dated 01.02.2024 has dismissed the claim as against 1st defendant. Consequently, the claim, if any, against 1st defendant stands dismissed. In the absence of there being any valid claim maintainable against 1st defendant, the case against the 8th defendant as well as the mortgaged properties also falls, as admittedly, there is no claim against 1st defendant and no amounts are due. The present suit itself is bad in law as the same has been instituted in contravention of the specific prohibition / bar contained in Section 446 (1) of the Companies Act 1956. The giving up of the claim against 1st defendant cannot resuscitate the still born case filed by the plaintiff.

10.3. The further case of the contesting defendants is that K. Subbiah passed away on 30.12.2005. On the date of his passing away, there were no dues payable to the plaintiff by 1st defendant in respect of the factoring agreement. Admittedly, 9th defendant was purchasing components from 1st defendant from 1997 onwards. The 9th defendant by Ex.P.6 - letter dated 26.03.1997, undertook to make the payments in the name of the plaintiff. Thus, it is evident that there has been an *inter se* arrangement between the plaintiff and 9th defendant, therefore, the first defendant has nothing to do with the liability of 9th defendant. The plaintiff himself admitted that 9th defendant is bound to pay the factored bill amounts for the invoices raised by 1st defendant on it only to the plaintiff. Further, the plaintiff himself admitted that 9th defendant has been making payments for the components supplied directly to the plaintiff till the end of 2009. However, during 2010 and 2011, 9th defendant defaulted and hence the plaintiff issued a legal notice Ex.P.23 on 29.11.2011 to the 9th defendant and the 9th defendant has also sent a reply Ex.P.24 on 19.12.2011 itself. Thus, it is evident that there is an *inter se* dispute between the plaintiff and 9th defendant. Therefore, the other defendants have nothing to do with the suit claim. Even, during cross examination, P.W.1 has admitted that the claim in the suit arises only out of factoring facilities, which are provided from 21.10.2010 onwards. It is evident that 9th defendant namely Mahindra & Mahindra Ltd. has been remitting the amount directly to the plaintiff till 20.10.2010. Therefore, on the date of demise of K. Subbiah, there was no default committed by 1st defendant in payment of any amount to the plaintiff under the factoring agreement. In fact, as admitted by the plaintiff, till 21.10.2010, 9th defendant continued to pay the amounts to the plaintiff. The plaintiff has also accepted that 1st defendant has assigned the debt on 9th defendant agreeing to pay the amounts due from the purchase of component directly to the plaintiff. In fact, Ex.P.23 notice dated 29.11.2011 was addressed only to 9th defendant and not to any other defendants. The notice itself clearly shows that the plaintiff is the Power Agent of 1st defendant and the liability is towards it. However, no suit has been instituted by the plaintiff against 9th defendant for recovery of the said sum. Ex.P.2 The Factoring Agreement dated 22.11.1996 defines the terms 'Assignment', 'Debt', 'Facility' and 'Insolvency' under Clause 1(iii), (iv) (ix) and (x) respectively. A conjoint reading of the said Clauses would reveal that the amounts payable by the customer has already been purchased by the plaintiff and that debt from the customer is assigned to the plaintiff absolutely. As per the Power of Attorney, the plaintiff has to recover the debts from the customers and it cannot proceed against 1st defendant or its Directors under the guise of enforcing the Equitable Mortgage or the Guarantee given by them. Thus, there is no independent cause of action as against the 1st defendant and its Directors, therefore, the suit as against the first defendant is dismissed. The claim against the first defendant is only in respect of the factoring agreement dated 22.11.1996. In fact, no notice of demand has been sent either to the guarantors, mortgagors or the sureties. Thus, it is very clear that 9th defendant defaulted in honoring its commitment despite the debt being assigned to the plaintiff with the consent of the 1st defendant. The letter of guarantee dated 22.11.1996 issued by Late K. Subbiah lapses on his demise on 30.12.2005. Neither any succeeding Director or the plaintiff can renew the guarantee of a dead person. The letter of renewal dated 21.09.2009 is not even on behalf of 1st defendant - Company and the same does not bears the seal of the Company and the Resolution authorizing 2nd defendant to sign the same. According to the plaintiff, fresh letters of guarantee had been obtained from defendants 2 and 3. The same has replaced the letter of guarantee given by K. Subbiah, prior to his demise on 30.12.2005. In any event, till 20.10.2010 there has been no default by the 9th defendant in paying the debt to the plaintiff. Therefore, no cause of action arise against K. Subbiah or to his estate i.e., defendants 2 and 5 to 8. Ex.P.7 the letter evidencing Deposit of Title deeds dated 21.03.2002 is not registered with the Registrar of Companies. The Leave to sue Application has been filed only in the year 2014 and it was allowed by this Court on 19.05.2014. On the date of filing of the suit, the leave was not obtained. Therefore, the suit is liable to be dismissed as against all these defendants.

10.4. Further contention of the contesting defendants is that P.W.1 himself admitted that the Official Liquidator informed them regarding the winding up proceeding initiated against M/s.Pioneer Alloy Casting Ltd. The letter of the Official Liquidator is marked as Ex.D.2 and the reply by the plaintiff is marked as Ex.D.3. Therefore, the institution of this suit for the amounts due from 9th defendant to 1st defendant cannot be proceeded with on the plaintiff giving up its claim against 1st defendant. As the Official Liquidator is seized of all the accounts of 1st defendant -

Company and the plaintiff informed the Official Liquidator that it is not standing outside the winding up it has to approach the Official Liquidator alone and cannot stand outside the liquidation to enforce a debt due to the Company. Therefore, the plaintiff is either entitled to recover the amount from 9th defendant or they can approach the Official Liquidator and make a claim against the first defendant. Therefore, the contesting defendants are not liable to pay any suit claim.

10.5. Pending suit, as the plaintiff - Company has given up its claim against the first defendant, no leave has been sought for instituting the suit under Section 446(1) of the Companies Act, 1956 and this Court vide order dated 01.02.2024 dismissed the suit as against the first defendant namely M/s. Pioneer Alloys Castings Ltd., which has been wound up by the Hon'ble High Court of Andhra Pradesh by order dated 19.11.2012. The relevant portion of the order dated 01.02.2024 is extracted hereunder :

> " 3. In view of the settled law, the suit filed by the plaintiff as against the 1st defendant which has already been wound up by the High Court of Andhra Pradesh at Hyderabad by order dated 09.11.2012 in C.P.No.171 of

2011, the suit as against the 1st defendant filed by the plaintiff has to be dismissed, since no statutory leave has been obtained under Section 446(1) of the Companies Act, 1956 by the plaintiff. Accordingly, the suit as against the 1st defendant is dismissed. However, the learned counsel for the plaintiff would submit that the remaining defendants are liable to pay the suit claim."

Therefore, no question arises regarding the maintainability of the the suit against the first defendant - Company in liquidation, and there is no challenge against the first defendant. This issue is answered accordingly.

11. Issue No.2 : Whether the present suit is maintainable without prior notice to the mortgagors of the foreclosure of the option of redemption?

Admittedly, when the plaintiff - Company extended factoring facility in favour of the original first defendant - Company, the mortgagors viz., the fourth defendant - M/s.Hotel Temple View (P) Ltd., K.Subbiah and the original first defendant, have created equitable mortgages in favour of the plaintiff over Schedule 'A', 'B' and 'C' mentioned immovable properties, by depositing their title deeds with the plaintiff and defendants 2 and 3, who are the Directors of the original first defendant - Company have also executed a guarantee agreement. Therefore, prior notice to the mortgagors of the foreclosure of the option of redemption is not a mandatory. This issue is answered accordingly.

12. Issue No.3 : Whether the suit is maintainable in the absence of leave being obtained when the properties are situate outside the jurisdiction of this Court?

The plaintiff has filed an application in A.No.3132 of 2014 in C.S.D.No.25470 of 2012 seeking leave to sue the defendants 6 to 9 and 11 and against plaint Schedule 'B' and items 2 and 3 and 4 of Schedule 'C' immovable properties and Schedule 'C' item 1 of the plaint and machinery and stocks (viz) movable properties and this Court vide order dated 15.05.2014 granted leave. Though leave has been obtained after institution of the suit on 15.05.2014, the grant of such leave relates back to date on which the suit was filed viz., with effect from the date of filing of the suit. This issue is answered accordingly.

13. <u>Issue No.4 : Whether the suit is barred by limitation as against the defendants 7 and 8 as their grandfather, K. Subbiah died on 31.12.2005?</u>

One K. Subbiah, who is one of the Directors of the original first defendant's Company had deposited the title deeds pertaining to Schedule 'B' mentioned property in favour of the plaintiff in the year 2002 and he died in the year 2005. Originally the suit was filed in the year 2012, even otherwise, it was numbered in the year 2014. Since the suit has been filed within 12 years from the date of deposit of title deeds, the suit is not barred by limitation as against K. Subbiah. Once K. Subbiah died, if his legal heirs are enjoying the properties, their liabilities extend to the estate of K. Subbiah. Therefore, the suit is not barred by limitation as against defendants 7 and 8 as their grandfather, K. Subbiah died on 30.12.2005 and the suit has been instituted within the period of limitation.

14. Issue Nos.5 and 6 : Whether the plaintiff being the power of attorney agent of the first defendant can only institute the suit for recovery of amount due from the 9th defendant in terms of the arrangement with the 9th defendant?

and

Whether the default of the 9th defendant in honoring its payment to the plaintiff under the arrangement between the plaintiff and the 9th defendant would give rise to a cause of action against the other defendants for enforcing the right under the mortgage?

14.1. The plaintiff entered into an agreement with the original first defendant - Company and one K.Subbiah, as Director of the original first defendant - Company had given Power of Attorney – Ex.P.5 on 22.11.1996 authorizing the plaintiff to receive the factored bill amounts directly from the drawees of the bills, however, the said K. Subbiah did not give Power of Attorney in favour of plaintiff in his individual capacity. Therefore, the first defendant is authorized to recover the money from their customers.

14.2. The 9th defendant is the Company, in favour of whom the original first defendant supplied components by utilizing the factoring facilities extended to them by the plaintiff. Even in the loan agreement, the first defendant authorised the plaintiff to receive the money from their customers for the invoices raised by them. Initially, 9th defendant also undertook to make payments of the supply bills directly in favour of the plaintiff and also make payments till 2009. However, there is an outstanding amount due and payable by 9th defendant from 2010 onwards and hence the plaintiff has sent a legal notice on 29.11.2011. In reply, 9th defendant denied their liability. However, 9th defendant has not contested the suit, despite summons. The 9th defendant has not challenged the documents filed by the plaintiff, even he has not cross examined P.W.1. Therefore, the liability of 9th defendant is proved.

14.3. Defendants 2 and 3, who are the Directors of the original first defendant - Company have given guarantee to the said factoring agreement and executed Ex.P.16 to Ex.P21. Ex.P.4 is the Letter of guarantee dated 22.11.1996, Ex.P.5 is the Power of Attorney and Ex.P.6 is the letter of 9th defendant to the plaintiff. On a combined reading of

Ex.P.4, Ex.P.5 and Ex.P.6, it would reveal that default of 9th defendant in making payments to the plaintiff. Based on Ex.P.4, the plaintiff can recover the amount from the guarantors and therefore, the suit filed against all the defendants is maintainable.

14.4. Since defendants 2 and 3 executed the guarantee agreement and Ex.P.4 is the letter of guarantee and default committed by the 9th defendant would give raise to cause of action against the other defendants for enforcing the right under the mortgage. As per the loan agreement, if any dues falls, they are liable to recover the amount. The property was mortgaged and in failure to pay any dues or failure to pay customers on invoice of the first defendant, a cause of action would arose to the plaintiff to institute the suit. The debts was secured under the mortgage, therefore, loan agreement itself gives right to the plaintiff to recover the secured debts through the mortgaged properties. Therefore, these issues are answered accordingly.

15. Issue No.7 : Whether subsequent to the demise of K. Subbiah, the letter of guarantee issued by him is binding on the 1st defendant ?

K. Subbiah, as one of the Directors of the original first defendant - Company has given Power of Attorney to the plaintiff and he has also given personal guarantee. So the loan was covered under the security by mortgage of the property. After the death of K. Subbiah, the personal guarantee would be lapsed, however, the liability extended to the estate of K. Subbiah will survive. Therefore mere demise of K. Subbiah, will not lapse the plaintiff to file the suit to recover the dues through the property of K. Subbiah. Even after the demise of K. Subbiah, the liability incurred by him can be extended to the mortgaged property. This issue is answered accordingly.

16. Issue No.8 : Whether in the absence of all the legal heirs executing a guarantee after the demise of Subbiah, the suit is maintainable as against the legal heirs and the property of Subbiah?

One K. Subbiah had given letter of guarantee - Ex.P4 in his personal capacity and not as a Director of the original first defendant - Company. He also mortgaged the property in favour of the plaintiff for the debts of the first defendant - Company. Therefore, the legal heirs of K. Subbiah are not liable to pay the amount other than the estate of K. Subbiah. However, the legal heirs of K.Subbiah are liable to pay to the extent of the estate of K. Subbiah.

17. Issue No.9 : To what reliefs are the parties entitled to ?

This Court, vide order dated 01.02.2024, dismissed the suit as against the first defendant. Except 7th and 8th defendants, no other defendants have contested the suit and filed written statement. Defendants 7 and 8 are the legal heirs of K. Subbiah. Since K. Subbiah died, the liability of K. Subbiah is extended to the mortgaged property. Since it is a loan covered under the mortgage, except 7th and 8th defendants,the other defendants have not contested the suit and they have not filed written statement and they have not cross examined any witness. Even 7th and 8th defendants have also not come to the witness box and have not been subjected to cross examination, and have not substantiated the contents of their written statement. The plaintiff is the Company, which is a subsidiary of Canara Bank and it is a public limited Company within the meaning of the Companies Act, 1956, and therefore, the suit is decreed as against all other defendants as prayed for, except the first defendant.

As far as defendants 2 and 5 to 8 are concerned, their liabilities are limited only to the extent of mortgaged property and defendants 2 and 5 to 8 are not personally liable.

18. In the result, the suit is decreed. There shall be no order as to costs. Consequently, connected pending applications, if any, are closed.

02.08.2024

Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation : Yes/No
ms

List of Witness examined on the side of the plaintiff

Chandan Kumar - PW1

List of documents marked on the side of the plaintiff

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	Photocopy of the Sanction Letter for Debt purchase limit of Rs.75 lakhs and prepayment limit of Rs.60 lakhs	01.10.1996
2.	P2	Photocopy of the Factoring Agreement by the first defendant	22.11.1996
3.	P3	Photocopy of the Prepayment Facility Agreement	22.11.1996
4.	P4	Photocopy of the Letter of Guarantee	22.11.1996
5.	P5	Photocopy of the Power of Attorney	22.11.1996
6.	P6	Photocopy of the Letter of the 9th defendant to the plaintiff	26.03.1997
7.	P7	Photocopy of the Letter evidencing Deposit of Title Deeds	21.03.2002
8.	P8	Photocopy of the Letter evidencing Deposit Title Deeds	28.02.2003
9.	P9	Photocopy of the Letter by plaintiff to Andhra Bank regarding second charge	24.03.2007
10.	P10	Photocopy of the Letter by 1st defendant to Andhra Bank regarding second charge to plaintiff	26.03.2007
11.	P11	Photocopy of the Agreement for creating second charge	17.07.2007
12.	P12	Photocopy of the Permission Letter by Andhra Bank for second charge	27.04.2007
13.	P13	Photocopy of the Letter by the plaintiff to the 1st defendant	27.04.2007
14.	P14	Photocopy of the Letter by the plaintiff to the 1st defendant	29.05.2007
15.	P15	Photocopy of the Search Report	22.11.2007
16.	P16	Photocopy of the Letter of Renewal	24.07.2008

17.	P17	Photocopy of the Letter of Guarantee by 2nd defendant	24.07.2008
18.	P18	Photocopy of the Letter of Guarantee by 3rd defendant	24.07.2008
19.	P19	Photocopy of the Letter of Renewal	21.09.2009
20.	P20	Photocopy of the Letter of Renewal of Guarantee by the second defendant	21.09.2009
21.	P21	Photocopy of the Letter of Renewal of Guarantee by the third defendant	21.09.2009
22.	P22	Photocopy of the Invoices (as per details given in the annexure to the plaint)	
23.	P23	Photocopy of the plaintiff's lawyer's notice	29.11.2011
24.	P24	Photocopy of the 9th defendant's Reply Notice	19.12.2011
25.	P25	Original Statement of Accounts	
26.	P26	Photocopy of the Encumbrance Certificate	
27.	P27	Certified copy of the Power of Attorney	12.01.2016

List of Witness examined on the side of the defendants : -

Nil

List of documents marked on the side of the defendants

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	D1	Copy of the affidavit of Chandan Kumar	
2.	D2	The Official Liquidator letter	02.01.2013
3.	D3	Bank reply	20.03.2013

02.08.2024

P. VELMURUGAN, J.

ms

C.S.No.334 of 2014

02.08.2024