IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:	**Pronounced on:**
05.03.2024	17.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.431 of 2021
and
C.M.P.No.2735 of 2021

1.M/s.V.L.V Industries,
having its registered office at
D.No.25, Prabhat Factory Complex,
Ragavendrachari Road, Agraharam,
Komarapalayam – 638 183,
Thiruchengode Taluk.
Namakkal District represented by its
Proprietor Tmt.S.Vasantha.

2.S.Vasantha

3.V.L.Soundararajan .. Appellants

Vs.

The Tamil Nadu Industrial Investment Corporation Limited
having its' registered office at 692, Anna Salai,
Nandanam, Chennai, and
having its' branch office at D.No.20/127 A-5B,
First Floor, 80 feet road, Salem road, Namakkal – 637 001.
represented by its Branch Manager,
Thiru. P.Ramasamy .. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 32(9) of the State Financial Corporation Act, 1951, read with Section 104 of CPC, to call for the records from the Court below and allow the appeal and set aside the order and decree made in S.F.C.O.P.No.11 of 2016 dated 02.04.2019 on the file of the Principal District Judge, Namakkal, and dismiss the petition.

For Appellants : Mr.S.Jerald Lenin
for Mr.K.J.Nithianandam

For Respondent : Mr.K.Magesh

JUDGMENT

The respondent / Industrial Concern in S.F.C.O.P.No.11 of 2016 is the appellant herein against the order of recovery made by the learned Principal District Judge, Namakkal, in favour of the Tamil Nadu Industrial Investment Corporation Limited (TIIC). Present appeal has been filed mainly on the ground of limitation.

2.The brief facts that are necessary for determination of this Civil Miscellaneous Appeal is as under:

2.1.The Tamil Nadu Industrial Investment Corporation Limited (TIIC) has filed S.F.C.O.P.No.11 of 2016 for enforcing the liability against the respondents personally by directing them to pay to the petitioner, the sum of Rs.1,31,48,598.10 (Term loan of Rs. 82,43,034.35 and working capital term loan of Rs.49,05,563.75) as on 30.09.2015 with subsequent interest from 01.10.2015 thereon at the rate of Term Loan 14.50% per annum Working Capital Term Loan 16.00% per annum till realization in respect of the above said loan and to proceed against their assets for realization of dues and Sale of the Schedule properties as mentioned under and all other personal assets of respondents.

2.2.The 1st appellant / 1st respondent M/s.VLV Industries is a Industrial concern engaged in manufacturing of Wire heads for power looms and hand looms. The 2nd respondent is the proprietor of the said 1st respondent industrial concern M/s.VLV Industries. The 3rd appellant / 3rd respondent has mortgaged the property as a Collateral security for the 1st respondent Industrial Concern.

2.3.The 3rd appellant / 3rd respondent has offered a collateral security for the above loan and created an equitable mortgage by deposit of title deeds on 8.11.1989. In respect of the properties situated at S.No. 412/14, Plo Nos. 386, 387, 388 & 389 Amani Village, Momarapalayam, Tiruchengode Taluk, Namakkal District extent of 3520 Sq.ft. owned by Thiru. V.L. Soundarajam and confirmed in favour of the Petitioner's Corporation on behalf of the 1st respondent industrial concern to secure loan and promising to repay the same with interest.

2.4.The 2nd appellant / 2nd respondent apart from being the proprietor of the 1st appellant Industrial Concern, is also guarantor and 3rd appellant / 3rd respondent is guarantor for the loan transaction of the 1st appellant industrial concern with the respondent Corporation. The 3rd appellant has executed a Deed of Guarantee on 21.11.1989 in favour of the respondent Corporation thereby securing the loan transaction of the 1st appellant Industrial Concern with respondent Corporation with his personal guarantee and also has agreed to abide by the other terms and conditions mentioned therein in the Deed of Guarantee.

2.5.The respondent Corporation to the appellants / respondents calling upon him to settle the account and inspite of the said reminders and demands the appellants failed to settle the amount due to the respondent's Corporation. The respondent Corporation has proceeded against the appellants personally in their capacity as borrower and surety and also against the mortgaged properties to recover the amount due to them under section 31(1) (a) 31(1) (aa) of the SFC Act.

2.6.Even though the loan was sanctioned on 07.10.1989 the loan documents were executed on 07.11.1989, since the loan amount is repayable in installments this petition is not barred by limitation. As per the said accounts, the amounts due from the respondents as on 30.09.2015 is Rs.1,31,48,598.10 inclusive of interest and other dues. Hence this petition.

3.In the counter, the 2nd respondent filed a written statement assessing that she is not responsible to discharge the loan amount borrowed by the 1st respondent Company. The 3rd respondent in the counter could state that the claim made by the petitioner Corporation is time barred.

4.During the trial, on behalf of the plaintiff, one witness was examined as P.W.1 and marked Exs.P1 to P6. The defendants examined D.W.1 and marked Exs.R1 to R3.

5.Based upon the plaintiff side documents, the Principal District Judge, Namakkal, has held that the amount as calculated by the Tamil Nadu Industrial Investment Corporation Limited (TIIC) is proper and also observed that as per Ex.P5 / Foreclosure notice dated 18.10.1993, a sum of Rs.1,32,007.35/- (Rupees One Crore Thirty Two Lakhs and Seven and Thirty Five Paise Only) in respect of Term Loan and Working Capital Loan are pending and interest up to 30.09.1993 for a sum of Rs.1,60,930.80 (Rupees One Lakh Sixty Thousand Nine Hundred and Thirty and Eighty Paise Only) and held that the amount due is proper and merely held that the appellant herein is liable to pay the amount. On the pointum of limitation, he has stated that the period is 24 years and hence their claim is in time and accordingly decreed the OP and hence, this Civil Miscellaneous Appeal.

6.The learned counsel for the appellants contended that the claim made by the respondent / Tamil Nadu Industrial Investment Corporation Limited

(TIIC) is barred by limitation. The appellant Industrial Concern has availed two types of loan namely Term Loan and Working Capital Loan. Payment has to be made within 12 years in two instalments per every year. In otherwise, instalment has to be paid once in every six months. However, the Trial Court has calculated it as if it is 12 X 2 = 24 years and wrongly held that the claim is within the limitation.

6(a).The appellants availed loan from the respondents being a sum of Rs.2,60,000/-(Rupees two lakh sixty thousand only) and a sum of Rs.1,28,000/- (Rupees one lakh twenty eight thousand only) towards working capital being a total sum of Rs.3,88,000/-(Rupees three lakhs eighty eight thousand only) in the year 1989 and promised to repay with interest. But the above petition with the said prayer has been preferred claiming a sum of Rs.1,31,48.598.10/- (Rupees one crore thirty one lakh forty eight thousand five hundred and eight and ten paise only) towards loan amount, working capital with interest in the year 2015 after a lapse of 26 years and therefore the claim petition is barred by limitation.

6(b).The court below failed to note that when the appellants / petitioners committed default in payment of instalments towards repayment of loan, the respondent / petitioner failed to proceed against the movables hypothecated and the property mortgaged by the 3rd appellant / 3rd respondent by deposit of title deed on 08.11.1989 in respect of the property situated at Amani Village, Momarapalaym, Thriuchengode Taluk, Namakkal District with an extent of 3520 sq.feet vacant land.

6(c).In the counter dated 30.11.2016 filed by the 3rd appellant / 3rd respondent in which he has given up his right over the property given as collateral security for the loan and has given his consent to transfer the property to the corporation to bring it to public auction and adjust the amount to the loan amount and following this the appellant herein wrote a letter dated 06.08.1992 and the corporation sent a reply dated 12.08.1992 stating that the corporation will take early steps to dispose of the property and waive the loan amount, but the Corporation failed to do so.

6(d).The Court below failed to observe the mandatory procedure contemplated u/s 32(1) of the Act, whenever any application is preferred by the Corporation u/s 30(1)(a)and (c) of the Act, to pass an ad interim order of attaching the security with or without an ad interim injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment and issue notice u/s 32(1-A) of the Act calling upon the surety to show cause on a date to be specified in the notice why his liability should not be enforced and before passing any order u/s 31(1) and (2), if the Court thinks fit, examine the officer making the application and in the event of the borrower or the surety did not show any cause then by following the procedure u/s 31(S) of the Act the District Judge forthwith make the ad interim order absolute and direct the sale of the attached property or transfer the management of the industrial concern to the Corporation or confirm the injunction.

6(e).The Court below failed to perform the mandatory procedure as contemplated us 31(1), (3) and (5).

6(f).The Financial Corporation failed to exercise the mandatory right given u/s 29 of the Act against the defaulting industry to take over the management or possession or both of the industry concerned as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

7.The learned counsel for the Tamil Nadu Industrial Investment Corporation Limited (TIIC) has made submissions in support of the order passed by the Trial Judge.

<u>Points for consideration</u>:

8.Whether the claim made by the Tamil Nadu Industrial Investment Corporation Limited (TIIC) is in time.

9.The Industrial owner is the appellant herein. He had availed two loans namely Term loan and Working Capital loan from The Tamil Nadu Industrial Investment Corporation Limited (TIIC) and executed Exs.P2 to P4 – deed of hypothecation and guarantee deed and confirmation of equitable mortgage. The twelve years period expired and the possession was handed over. Letter was sent by the third appellant to the respondent TIIC as early as on

06.08.1992 under Ex.R1 and reply was sent by the TIIC to the third appellant on 12.08.1992 under Ex.R2.

10.The learned counsel for the appellant would contend that when the possession is already been handed over to the TIIC, the proceedings under Section 29 of the State Financial Corporation Act is unwarranted. Further proceedings under Section 31 is barred by limitation. Furthermore, after 20 long years, the proceedings have been initiated under Section 31 of the Act, after expiry of limitation period of three years.

11.According to the learned counsel for the appellant, the loan is repayable in half-yearly instalments. However, the learned Principal District Judge, Namakkal, while answering to Point No.3, has held that expiry of loan is 12 half years instalments, i.e., 24 years and thereby he has miscalculated the limitation period and held that the petition filed by the TIIC is intact and further stated that in the absence of any calculation to liability, Section 31 cannot be invoked.

12.As per Ex.R2, the possession of the Industrial unit has already been handed over to the Tamil Nadu Industrial Investment Corporation Limited (TIIC) and hence proceedings under Section 29 is totally unwarranted and further proceedings under Section 31 is barred by limitation. The Trial Court has committed an error in reading the terms of the conditions since it is specifically stated that 12 years and payment has to be made twice in a year and therefore it has to be 12 years not 24 years as held by the Trial Court at point No.3.

13.The date of the loan obtained is 25.10.1989 and hence, the loan expires on 24.10.2001. As per Ex.R1 / letter given by the 3rd respondent to Industrial Concern is on 06.08.1992. The suit is filed on 10.12.2005. The petition is filed under Section 31, 31(1)(a) & 31(1)(aa) of the State Financial Corporation Act, 1951. The Hon'ble Supreme Court in ***Karnataka State Financial Corporation Vs. N.Narasimahaiah and others*** reported in ***(2008) 5 SCC 176***, has held that

> *"...the said right under Section 29 has to be exercised only against defaulting industrial concern*

and not against surety or guarantor – Surety can be proceeded against only in terms of Section 31 and not under Section 29 – Both the said Sections i.e., Sections 29 and 31 are distinct – None of these provisions control each other.

Thus, Section 29 of the Act nowhere states that the Corporation can proceed against the surety even if some properties are mortgaged or hypothecated by it. The right of the Financial Corporation in terms of Section 29 of the Act must be exercised only on a defaulting party. There cannot be any default as is envisaged in Section 29 by a surety or a guarantor. The liabilities of a surety or the guarantor to repay the loan of the principal debtor arises only when a default is made by the latter. Although the words "as well as" occurring in Section 29 confer two different rights, such rights are to be enforced against the same person viz., the industrial concern.

Section 31 postulates an additional relief to Corporation – What can be done by invoking Section 29 can inter alia be done by invoking Section 31, but a different procedure has to be adopted therefore – Section 31 also provides for a relief against surety and is not limited to industrial concern alone.

The Corporation under the State Financial Corporations Act, 1951, after coming into force of Section 32-G of the said Act, four remedies for the purpose of enforcing a liability of an Industrial concern viz.: (i) to file a suit, (ii) to take recourse to Section 29 of the 1951 Act; (iii) to take recourse to Section 31 of the said Act; and (iv) to take recourse *to Section 32-G of that Act.*

Section 31 also provides for a relief against a surety and not confined to the industrial concern alone. Sub-Section (2) of Section 31 also refers to industrial concern and not the surety. The legislative intent, therefore, to our mind, is clear and unambiguous."

14.The foreclosure notice was issued under Ex.P5 on 18.10.1993. The letter of handing over by the 3rd respondent Guarantor to the Tamil Nadu Industrial Investment Corporation Limited (TIIC) Ex.R1 is dated 06.08.1992.

15.This Court in O.P.No.398 of 2001 dated 17.01.2013 has held that limitation of recovery of money from the surety was only three years. In the instant case, the case has been filed after three years and hence, the suit is barred by limitation. Hence, I have no hesitation to hold that the order passed by the learned Principal District Judge, Namakkal, is unsustainable in law on on the point of limitation.

16.Accordingly, this Civil Miscellaneous Appeal is allowed. The order passed by the learned Principal District Judge, Namakkal, in S.F.C.O.P.No.11

of 2016 dated 02.04.2019 is set aside. Consequently, S.F.C.O.P.No.11 of 2016 filed by the Tamil Nadu Industrial Investment Corporation Limited (TIIC) is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

17.04.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The Principal District Judge,
Namakkal.

2.The Section Officer,
VR Section,
High Court, Madras.

<u>RMT.TEEKAA RAMAN, J.</u>
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C.M.A.No.431 of 2021

17.04.2024