IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.105 of 2021

State Industries Promotion Corporation
of Tamil Nadu Limited, represented by
its Managing Director
Regd.office at 19-A,
Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008. ...Appellant

Vs.

1.M/s.Balasubramaniam Castings Pvt.Ltd.,
Regd.Off:No.5/9, 3rd cross Kamaraj colony,
Hosur 635 126.
2. M.Anbumani
3. C.Babu
4. M.Balachandran
5. Tmt.P.Indirani ...Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 10.04.2013 made in S.F.C.O.P.No.33 of 2004 on the file of the Additional District Court, Krishnagiri.

For Appellant	: Mr.Sudharshana Sundar
For R1&R5	: No appearance
For R2 to R4	: Mr.R.Ezhilarasan

****

JUDGMENT

The State Industries Promotion Corporation of Tamil Nadu Limited is the appellant herein.

2. The unsuccessful petitioner/ State Industries Corporation in O.P.No.33 of 2004 is the appellant herein.

3. For the sake of convenience the parties are referred to as per their ranking before the trial Court.

4. The first respondent company approached the appellant/petitioner for the following loan assistances for construction of buildings and purchase of plant and machinery for manufacturing the Alloy and Steel Castings at Bellagondappalli Village, Thenkanikoottai Taluk, Dharmapuri District. The appellant/petitioner sanctioned Term Loan of Rs.128.00 lakhs on 28.08.1991, Second Term loan of Rs.10.00 lakhs on 10.05.93, Seed capital by way of Soft loan under IDBI Seed Capital Scheme of Rs.13.50 lakhs on 28.08.1991, Seed Capital assistance of SIPCOT in the form of Rupee Term Loan of Rs.1.50 lakhs on 28.08.1991 and State Capital Subsidy of Rs.15.00 lakhs on 14.10.1991.

5. The respondents have executed the following documents to secure the above said loans.

I. First Term loan of Rs.128.00 lakhs

Deed of hypothecation	:28.11.1991
Deed of undertaking	:28.11.1991
Equitable mortgage	:28.11.1991

II.Second Term loan of Rs.10.00 lakhs

Deed of hypothecation	:21.06.1993
Deed of undertaking	:21.06.1993
Equitable mortgage	:21.06.1993

III.IDBI Seed Capital of Rs.13.50 lakhs

Deed of agreement	:29.10.1991
Deed of hypothecation	:28.11.1991

IV.SIPCOT Seed Capital of Rs.1.50 lakhs

Deed of agreement	:29.10.1991
Deed of hypothecation	:28.11.1991

V. State Capital Subsidy of Rs.15.00 lakhs

Deed of agreement	:28.11.1991
Personal Guarantee	:28.11.1991

6. Since the second to fifth respondents are jointly and personally guaranteed for the above said loan and liable to repay the dues, executed a Deed of Personal Guarantees on 28.11.1991, 21.06.1993 and guaranteed the due repayment of the above said loans and the respondents 2 and 3 have executed the deed of personal guarantee for subsidy availed by the first respondent. The guarantee is a continuing one of the liabilities and the sureties are coextensive with the first respondent.

7. As there was a default in re-payment, the petitioner foreclosed the loan

on 05.10.1994 and had taken over the possession of the Unit on 04.08.1995 by exercising the powers conferred under Section 29 of State Financial Corporations Act 1951. After giving credit to the sale proceeds of Rs.41.53 lakhs, there is still a sum of Rs.13,22,28,234.68ps due and payable by the first respondent towards the loan as on 30.11.2003.

8. The petitioner issued a notice to the respondents invoking the personal guarantee on 13.11.2001 and demanded the due amounts. But no amount has been received and hence they filed the present application for determining the liability of the respondents and to direct the respondents 2 to 5 namely the guarantors to pay a sum of Rs.13,22,28,234.68ps with 20% interest.

9. The defendant D1 company remained ex-parte. The third defendant filed a counter statement alleging that they are not liable to pay the amount and further contended that the third respondent already resigned from the post of Directorship as early as on 14.09.1993 and the same was accepted by the Company on 03.10.1994 and intimated to the petitioner / SIPCOT and hence he is not liable to pay any amount. Further it is also specifically stated in the counter that the petitioner has taken possession of the mortgaged property under Section 29 of the State Financial Corporations Act about bringing the mortgaged property for sale, no notice was given to the third respondent and the

alleged public auction was taken by the father of the respondent and also raised a plea of limitation.

10. Before the trial Court, on behalf of the appellant/SIPCOT, P.W.1 and P.W.2 were examined and Exs.P1 to P25 were marked. On behalf of the respondents no documents have been marked.

11. The learned District Judge had made offer to the learned Additional District Judge to formulate whether the petition claim is barred by limitation and also whether the appellant/SIPCOT is entitled for recovery of money from the guarantor of personal guarantee. The learned District Judge after taking note of the factual position that the counter in respect of the loan has concluded on 05.10.1994 and the mortgage promotion were attached on 04.08.1995 and the suit was filed in the year 2003 nearly after 9 years and by relying upon the judgment of the Supreme Court in AIR 2009 SC 1713 [Karnataka State Industrial Investment & Development Corporation Limited Vs.S.K.K.Kulkarni and others] held that it is a time barred and accordingly, dismissed the O.P and hence the appeal.

12. The learned counsel appearing for the R2 to R4 submitted that on the point of commutation of limitation the public auction notice under Section 29 of

the State Financial Corporations Act was issued on 16.03.1995 and last payment to the credit of the loan amount was made in the year 1998 and the present application was filed on 01.12.2003.

13.It is relevant to note that the Hon'ble Apex Court in the judgment 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.

14. This Court has occasioned to consider the point of limitation and also held that in respect of recovery proceedings on mortgaged property against the guarantee, delivery can be only within 3 years and not after 12 years from the date of the last payment. Since from the date of the last payment, it is more than 6 years and hence it is clear that the payment made within limitation and hence the decision arrived by the trial Court on the plea of limitation is maintainable.

15. Accordingly, this Civil Miscellaneous Appeal is dismissed, cannot be interfered with other aspects. No costs.

28.02.2024

nvi

Neutral Citation:Yes/No
Speaking Order: Yes/no

To
1. The Additional District Court, Krishnagiri.
2. The Section Officer, V.R.Section, High Court of Madras,Chennai.

RMT.TEEKAA RAMAN.J,

nvi

Judgment made in
C.M.A.No.105 of 2021

Dated:28.02.2024