Comp.A.No.516 of 2011 and Comp.A.No.431 of 2022
in
C.P.No.230 of 2004

Reserved On	24.11.2023
Pronounced On	21.06.2024

C.SARAVANAN, J.

By this Common order both the applications are being disposed of.

2. These Company Applications have been filed by the Borrower V.Balasubramanian and the Office of the Official Liquidator for the following relief:-

C.A.No.	C.A.No.516 of 2011	C.A.No.431 of 2022
Name of the Applicant	**V.Balasubramanian***	**Official Liquidator**
Prayer	i. Redeeming the mortgage that has been created in favour of defendant in respect of **"A" Schedule** property by executing and registering receipt of discharging mortgage and returning the title deeds;	i. To direct the respondent to repay a sum of **Rs.1,40,54,783/-** along with interest @24% P.A towards loans availed under **HML 52 & HML No.253.** ii. To permit the Official Liquidator to realize the assets given as security by respondent in **HML0052** and

	ii. redeeming the mortgage that has been created in respect of **"B" Schedule** property by executing and registering receipt of discharging mortgage and returning the title deeds; iii. consequently directing the defendants to repay a sum of **Rs.12,39,828/-** with interest at the rate of 24% per annum from the date of plaint till the date of realization.	**HML No.253** iii. To incur the expenses towards this application from and out of the funds of the company in liquidation

*Referred to as the "Borrower"

3. Two rival claims are before this Court in the above mentioned company applications. The rival claims arises out of an order dated **17.04.2006** passed by this Court winding up **M/s.RBF Nidhi Ltd.,** [hereinafter referred to as the Company] in **C.P.No.203 of 2004 to C.P.No.230 of 2004**.

4. **A & B Schedule Property** which are a subject matter of

C.A.No.516 of 2011 are detailed as under:-

Table-I

"A" Schedule	**"B" Schedule**
Property bearing Door No.4 (New No.7) Burkit Road, T.Nagar, Chennai – 17.	Property bearing Door No.53, Arcot Road, Kodambakkam, Chennai -24 .

5. The Borrower in **C.A.No.516 of 2011** had earlier filed **C.S.No.916 of 2000** against the said company on **21.11.2000** before this Court.

6. The case of the Borrower was that the Company under liquidation had refused to return the originals of **Schedule 'A'** and **Schedule 'B'** property documents though the loans taken by the Borrower were discharged which were offered as securities by way of mortgage for loans taken by the Borrower and therefore the Borrower was constrained to file **C.S.No.916 of 2000** before this Court on **21.11.2000** to redeem the Mortgage in respect of **Schedule 'A'** and **Schedule 'B'** property and consequently to direct Company under Liquidation to repay a Sum of

Rs.12,39,828/- being the excess amounts paid by the Borrower.

7. Following issues were framed for the trial in **C.S.No.916 of 2000** on **11.10.2001** after written statement was filed by the defendant company namely **M/s.RBF Nidhi Ltd.,** the Company under Liquidation:-

1. *Whether the plaintiff* (Borrower) is entitled to redemption of mortgage in respect of 'A' schedule property?*
2. *Whether the plaintiff* (Borrower) is entitled to redemption of mortgage in respect of 'B' schedule property?*
3. *Whether the discharge pleaded by the defendant# (Company under Liquidation) is true?*
4. *Whether the defendant# (Company under Liquidation) is liable to repay the amount as alleged in the plaint?*
5. *What is the amount due to the defendant# (Company under Liquidation)?*
6. *To what other relief?*

** Borrower*

 # Company under Liquidation

8. Meanwhile, during the pendency of **C.S.No.916 of 2000,** the said Company under liquidation was ordered to be wound up vide order dated **17.04.2006** in **C.P.No.230 of 2004. C.P.No.230 of 2004** was filed by one G.Krishnan on **07.10.2004** to wind up the said Company. When **C.P.No.230 of 2004** was ordered on **17.04.2006**, **C.S.No.916 of 2000** was still pending before this Court.

9. On account of change in the pecuniary jurisdiction of this Court, **C.S.No.916 of 2000** was however transferred to the **1st Additional City Civil Court**, **Chennai** and renumbered as **O.S.No.6891 of 2010** unaware of the fact that **C.P.No.230 of 2004** was ordered on **17.04.2006**.

10. The Borrower had earlier filed **C.A.No.97 of 2008** to proceed with the above suit or in the alternative prayed that the Court tries the suit as per Section 446(2)(a) of the Companies Act, 1956. **C.A.No.97 of 2008** was ordered on 03.01.2011 to try the above suit with **C.P.No.230 of 2004.**

11. The Borrower had also filed **C.A.No.98 of 2008** to stay the proceedings in **C.A.No.1515 of 2007**. However, **C.A.No.98 of 2008** was

later closed in view of the order passed in **C.A.No.97 of 2008**.

12. The Trial in **O.S.No.6891 of 2010** however commenced before the **1st Additional City Civil Court**, **Chennai** without taking note of order dated **17.04.2006** in **C.P.No.230 of 2004** ordering winding up of the said company. Documents were also marked on behalf of the Borrower as the plaintiff in the above suit in **O.S.No.6891 of 2010** [Formerly **C.S.No.916 of 2000**] **on 23.11.2010** before the **1st Additional City Civil Court, Chennai**.

13. On behalf of the Borrower, the Borrower himself tendered evidence as **P.W.1** and **Ex.A1** to **Ex.A15** were marked**.**

14. An ex-parte decree was also passed by the **1st Additional City Civil Court, Chennai** on **23.11.2010,** unaware of the fact that the said company was earlier ordered to be wound up on **17.04.2006** in **C.P.No.203 of 2004 to C.P.No.230 of 2004**. The Borrower suppressed the fact that the Borrower had earlier filed **C.A.No.97 of 2008** and was pending orders.

15. After the said Company was ordered to be wound up on **17.04.2006**, **Statement of Affairs** was filed by the former Director of the Company under Liquidation. It is at this stage, the Office of the Official Liquidator realized that as per the records maintained by the said Company under Liquidation, the Borrower was still in arrears of the amounts under various Loans advanced to the Borrower by it.

16. Thus, **Comp.A.No.1515 of 2007** was filed by the Office of the Official Liquidator before this Court to direct the Borrower, [the applicant in C.A.No.516 of 2011] to pay a sum of **Rs.1,40,54,738.50/-** after adjusting the amounts paid by the Borrower together with interest at 24% per annum from 01.01.2000 as detailed below:-

<u>Table-II</u>

Amount due as on 31.12.1999 Calculated by the Official Liquidator's office:-

HML No.	52 in (Rs.)	253 in (Rs.)	Total Amount in (Rs.)
Principal Amount	9,75,000# +15,00,000* +25,00,000*	9,00,000* +41,00,000*	
Total	49,75,000	50,00,000	99,75,000
Principal Amount paid	25,13,402	-	25,13,402
Principal Amount due	24,61,598	50,00,000	74,61,598

Interest due	15,75,416	28,00,000	43,75,416
Penal Interest due	7,18,117.90	13,55,704.60	20,73,822.50
Interest Tax due	49,512	94,445	1,43,957
Total Amount due	48,04,633.90	92,50,149.60	1,40,54,783

Interest at *22%   Interest at #24%

HML: House Mortgage Loan

17. **Comp.A.No.1515 of 2007** filed by the Official Liquidator was however closed vide order dated **20.06.2011** by this Court, since **O.S.No.6891 of 2010** [Formerly **C.S.No.916 of 2000**] had already been decreed Ex-Parte on **23.11.2010,** with a liberty to the Office of the Official Liquidator to file appropriate application and in the event of it succeeding in the application filed for setting aside the Ex-Parte decree dated **23.11.2010** passed in the above suit by the **1st Additional City Civil Court, Chennai** and was allowed.

18. Thus, the Office of the Official Liquidator filed **Comp.A.No.396 of 2011** to set aside the Ex-Parte Decree dated **23.11.2010** passed by the **1st Additional City Civil Court, Chennai** in **O.S.No.6891 of 2010** [Formerly **C.S.No.916 of 2000**]. This Court allowed **Comp.A.No.396 of**

2011 on **15.07.2011** and thus set aside the Ex-Parte Judgment and Decree dated **23.11.2010** passed by the **1st Additional City Civil Court, Chennai** in **O.S.No.6891 of 2010** (Formerly **C.S.No.916 of 2000**) by the **1st Additional City Civil Court, Chennai**. Thus, **O.S.No.6891 of 2010** (Formerly **C.S.No.916 of 2000**) was restored to the file and renumbered as **C.A.No.516 of 2011** which is now under consideration.

19. After the Judgment and Decree passed on **23.11.2010** by the **1st Additional City Civil Court**, **Chennai** was set aside wherein **Ex.A1 to Ex.A15** were marked on 19.08.2013, the Borrower once again deposed evidence before the learned Master's Court on various dates starting from **28.03.2014**.

20. On behalf of the company under liquidation, Mr.J.Perumal, Upper Division Clerk from the Office of the Official Liquidator tendered evidence as **R.W.1** and **Ex.R1 to Ex.R9** were marked through him. This Court had thereafter marked **Ex.C1 to Ex.C3**. The details of these Exhibits marked on behalf of Borrower and the Office of the Office Liquidator for the company under liquidation and by this Court are given in chronological order:-

Table-III

Exhibits	Date	Description	
A1/R7	22.08.1990	Certified copy/ Photo copy of S**imple Mortgage** for **Rs.9,75,000/-** executed by the Borrower in favour of the company of Schedule '**A**' property	
R8 Series	23.08.1990	Photocopies of the **promissory notes** executed by the Borrowers in favour of company for	**Rs.9,75,000/-**
	01.02.1993		**Rs.15,00,000/-**
R6 Series	31.01.1993	**Promissory note** dated 31.01.1993	
	01.02.1993	**Photo copy of the Memorandum of Deposit of title deeds of Schedule 'A' property executed by the Borrowers in favour of company on 01.02.1993**	
R1	28.02.1993*	Photocopy of the application for House Mortgage Loan for **Rs.50,00,000/-** submitted by the Borrower to the company of Schedule '**B**' property.	
A2/R5	16.03.1993	Certified copy / Photo copy of **Simple mortgage** for **Rs.9,00,000/-** of Shedule '**B**' property	
A3 Series		Photo copy of Certified copies of the receipts issued by the Company for payments made to the Royapettah Benefit Fund Limited	
R2 Series	18.03.1993	Photocopies of the **promissory notes** executed by the Borrowers in favour of company	**Rs.9,00,000/-**
	22.03.1993		**Rs.41,00,000/-**
R3	20.03.1993	Photo copies of the **Promissory Note** executed by the Borrower in company for **Rs.41,00,000/-**	
R4	21.03.1993	Photo copies of the **Deposit of Title Deeds** for **Rs.41,00,000/-** of Schedule '**B**' property	
R9 Series	13.05.1993	**Promissory Note** for **Rs.25,00,000/-**	
	14.05.1993	Photo copy of Deposit of Title Deeds of Schedule **A & B** property executed by the Borrower in favour of the Company	
A10	30.05.1994	Certified copy of the Banker's Cheque bearing No.065637 issued by the Canara Bank	
C1	10.02.2000	Letter issued by the Company to the Borrower demanding **Rs.39,96,359/-** in respect of **HML.No.52**	
C2	10.02.2000	Letter issued by the Company to the Borrower demanding **Rs.50,00,000/-** in respect of **HML.No.253**	
A4	16.02.2000	Certified copy of Letter of Borrower in response to **Ex.C1** letter dated **10.02.2000**	
A5 Series	06.03.2000	Certified copy of Letters of the Borrower in response to **Ex.C2** letter dated **10.02.2000** and another letter dated **01.03.2000**	

A6	07.05.2000	Certified copy of the paper publication in one issue of Tamil Daily "Dina Malar"
A7	07.05.2000	Certified copy of the paper publication in one issue of English Daily "Hindu"
A8	08.05.2000	Certified Copy of the Legal Notice on behalf of the Borrower
A9	13.05.2000	Certify copy of the Reply to the Legal Notice dated 08.05.2000.
A15	10.05.2000	Certified copy of the petition filed in I.A.No.7719/2000 in O.S.No.2942/2000
A11	07.06.2000	Certified copy of the counter affidavit filed by the respondent in IA.No.7719/2000 in O.S.No.2942 of 2000 on the IV Assistant City Civil Court, Chennai
A12	23.08.1990-28.12.1993 & 01.01.1994-22.08.1998	Statement of Accounts from the book of the plaintiff in respect of the loan account No.HML 52 of the respondent
A13	09.05.2000 11.05.2000	Series (2 Nos) are the certified copies of encumbrance certificates of the mortgaged property in loan account No.HML 52
A14	14.10.2000	Certified copy of the valuation report filed in O.S.No.2942 of 2000 on the file of the IV Assistant City Civil Court, Chennai
C3	29.06.2009	Statement of Accounts and Interest Working Statement filed by the borrower in C.A.No.1515 of 2007

*Application issued on 23.02.1993.

21. Pursuant to the aforesaid Order dated **15.07.2011** in **Comp.A.No.396 of 2011**, the Office of the Official Liquidator has now filed **C.A.No.431 of 2022** on **27.10.2022**. **C.A.No.431 of 2022** has been filed to take the report filed by the Office of the Official Liquidator and to direct the Borrower [the applicant in **C.A.No.516 of 201** / respondent in **Comp.A.No.431 of 2022**] to pay a sum of **Rs.1,40,54,783**/- together with interest at the rate of **24% per annum** in respect of the loans availed by the

Borrower (or) to permit the Official Liquidator to realize the assets given as security by the Borrower and to incur the expenses towards this application from and out of the funds of the company in liquidation.

22. The case of the Borrower in **C.A.No.516 of 2011** is that the Borrower had taken two loans from the said Company under Liquidation for a sum of **Rs.9,75,000/-** on **22.08.1990** vide **HML No.52** and a further loan for sum of **Rs.9,00,000/-** on **16.03.1993** vide **HML No.253**. As a collateral security, a registered simple mortgage of **Schedule 'A'** and **Schedule 'B'** Properties were created in favour of the aforesaid Company under Liquidation.

23. The Borrower admits that the Borrower had taken further loan for a sum of **Rs.40,00,000/-** (**Rs.15,00,000 + Rs.25,00,000**] during 1994-1995 against which undated Promissory Notes were given as Collateral Security which have now been filled up the dates as 01.02.1993 and 13.05.1993 and marked as **Ex.R8 Promissory Note** for **Rs.15,00,000/-** and **Ex. R9 Promissory Note** for **Rs.25,00,000/-.**

24. According to the Borrower, as against the **HML No.52** for **Rs.9,75,000/-,** the Borrower has paid a total sum of **Rs.38,53,516/-** between **23.08.1990** and **28.12.1993** as detailed below and that the aforesaid loan together with interest payable to the said Company stood discharged on **28.12.1993.**

Table-IV

Date	Receipt No.	Amount
23.08.1990	7346	18,037.50
25.09.1990	12432	18,037.50
25.10.1990	17323	18,037.50
24.11.1990	20877	18,037.50
26.12.1990	27379	18,037.50
25.01.1991	33811	18,037.50
25.02.1991	37465	18,037.50
24.03.1991	37552	18,037.50
24.04.1991	38310	18,037.50
25.05.1991	4873	18,037.50
24.061991	L 17905	18,037.50
25.07.1991	L 25084	18,037.50
26.08.1991	L 30463	18,037.50
25.09.1991	L 35526	18,037.50
24.10.1991	L 06464	18,037.50
24.11.1991	J 09045	18,037.50
25.11.1991	J 09121	4,387.50
24.12.1991	J 13555	18,037.50
25.01.1992	J 16857	19,500.00
25.02.1992	J 21840	19,500.00
25.03.1992	J 25906	19,500.00
25.04.1992	J 02601	19,500.00
24.05.1992	J 06605	19,500.00
25.05.1992	J 06831	1,00,000.00

25.05.1992	J 06832	75,000.00
25.06.1992	J 10724	19,500.00
27.07.1992	J 15277	3,00,000.00
27.07.1992	J 15328	15,930.00
25.08.1992	J 18983	9,930.00
24.09.1992	J 23353	9,930.00
27.10.1992	J 27610	9,930.00
26.11.1992	J 32158	9,930.00
31.12.1992	J 37480	9,930.00
23.01.1993	J 40290	9,930.00
01.02.1993	J 42323	30,203.00
01.03.1993	J 46657	30,000.00
02.03.1993	J 46889	9,930.00
18.03.1993	J 48993	9,000.00
22.03.1993	J 49422	41,000.00
23.03.1993	J 49653	5,00,000.00
25.03.1993	J 49855	9,930.00
01.04.1993	J 00008	30,000.00
22.04.1993	J 02486	82,000.00
22.04.1993	J 02487	18,000.00
02.05.1993	J 04100	30,000.00
17.05.1993	J 06006	25,000.00
01.06.1993	J 08531	30,000.00
16.06.1993	J 25774	50,000.00
17.06.1993	J 10599	50,000.00
01.07.1993	J 13685	30,000.00
17.07.1993	J 15643	50,000.00
22.07.1993	J 16403	82,000.00
22.07.1993	J 16403	18,000.00
01.08.1993	J 18634	30,000.00
17.08.1993	J 20881	50,000.00
19.08.1993	J 22704	18,000.00
19.08.1993	J 22705	82,000.00
01.09.1993	J 23348	30,000.00
25.09.1993	J 26858	82,000.00
01.10.1993	J 28177	30,000.00

17.10.1993	J 30344	50,000.00
21.10.1993	J 31043	82,000.00
21.10.1993	J 31044	18,000.00
01.11.1993	J 32543	30,000.00
17.11.1993	J 34287	50,000.00
01.12.1993	J 36801	30,000.00
01.12.1993	J 36987	5,00,000.00
21.12.1993	J 39556	49,918.00
28.12.1993	J 40348	18,000.00
28.12.1993	J 40349	82,000.00
Total	**Rs.38,53,516.00/-**	

25. This is also part of **Ex.A3 Series receipts** filed by the Borrower. However, in **Ex.A8 Notice** dated **08.05.2000**, the Borrower has stated that he has paid a sum of **Rs.22,84,588/-** only. It is stated by the learned Senior Counsel for Borrower that as against **HML No.253** for **Rs.9,00,000/-,** the Borrower has paid amounts and discharged the liability completely. It is submitted that despite the same, the Office of the Official Liquidator has demanded amounts from the Borrower and thus refused to return the Documents and the excess paid.

26. Learned Senior Counsel for the Borrower would further submit that the Borrower had taken the further loan for a sum of **Rs. 15,00,000/-** on **31.01.1993** and loan for a sum of **Rs.25,00,000/-** on **13.05.1993** and had

created an equitable mortgage and executed **Ex.R6 Memorandum of Deposit of Title Deed** dated **01.02.1993** of **Schedule A property** and **Ex.R9 Memorandum of Deposit of Title Deed** dated **14.05.1993** of both **Schedule A & B properties** in favour of the Company under Liquidation when it was a going concern.

27. It is submitted that as against the aforesaid loan of **Rs.9,00,000/-** under **HML No.253** and **Rs.40,00,000/- [Rs. 15,00,000 + Rs.25,00,000]** against Promissory Notes, the Borrower has re-paid a sum of **Rs.86,36,812/-** on various dates between the period of **02.01.1994** to **22.08.1998**. In this regard, a reliance was placed on **Ex.A3, Ex.A4 and Ex.A8** which are detailed as under:-

Table-V

Exhibits	Date	Description
A3 Series		Photo copy of Certified copies of the receipts issued by the company for payments made to the Royapettah Benefit Fund Limited
A4	16.02.2000	Certified copy of Letter of Borrower in response to Ex.C1 letter dated 10.02.2000
A8	08.05.2000	Certified copy of the Legal Notice on behalf of the Borrower

28. Thus, according to the Borrower, the third loan for **Rs.40,00,000/-**

[**15,00,000 +25,00,000**] also stood discharged on **22.08.1998**. Thus, it is submitted that the Borrower has in all paid a sum of **Rs.1,24,90,328/-** [**Rs.86,36,812 + Rs.38,53,516**] against the principal sum of **Rs.58,75,000/-** [**Rs.9,75,000 +Rs.9,00,000 + Rs.15,00,000 + Rs.25,00,000**] which consists of **Rs.66,15,328/-** [**Rs.1,24,90,328 – Rs.58,75,000**] towards interest.

29. It is submitted that the receipt for the aforesaid sum of **Rs.1,24,90,328/-** is covered by part of **Ex.A3 Series receipts**, and that there is no dispute regarding payment, although the respondent i.e., company under liquidation would contend that these loans have not been fully discharged. Amount due under Loan A/c as on December 1999 according to the Borrower and payments made are as under:-

Table-VI

S.No	**Loan Number (a)**	**Principal (b)**	**Interest (c)**	**Amount due (d)**	**Amount paid (e)**
1	First Loan	9,75,000	6,43,500	16,18,500	38,53,516
2	Second Loan	9,00,000	4,32,000	13,32,000	86,36,812
3	Third Loan	40,00,000*	48,00,000	88,00,000	
	Grand Total	58,75,000	58,75,500	1,17,50,500	1,24,90,328
Amount paid in excess (e-d)					Rs.7,39,828/-

[* **Rs.15,00,000/- + Rs.25,00,000**]

30. Hence the Borrower (plaintiff) claims to have paid a sum of **Rs.7,39,828/-** [**Rs. 1,24,90,328 - Rs. 1,17,50,500**] in excess. That apart, it is submitted that a sum of **Rs.5,00,000/-** was paid by the Borrower pursuant to order dated **05.06.2000** in **I.A.No.7719 of 2000** in **O.S.No.2942 of 2000** to defer the sale of **Schedule A Property.**

31. **O.S.No.2942 of 2000** was filed by the Borrower against the company for rendition of accounts. Therefore, it is submitted that the Company under Liquidation owes a sum of **Rs.12,39,823/-** [**Rs.7,39,828 + Rs.5,00,000**] to the Borrower. Therefore, the Borrower was not only entitled for **Redemption of Mortgage of Schedule** '**A'** and '**B'** properties but also entitled for refund of **Rs.12,39,828/-**.

32. The learned Senior Counsel for the Borrower would submit that there are no documents to substantiate that the Borrower has borrowed amounts over and above **Rs.58,75,000/- [Rs.9,75,000 + Rs.9,00,000 + Rs.40,00,000 (Rs.15,00,000 + Rs.25,00,000)]**. It is submitted that the Promissory Notes that were obtained from the Borrower at the time when

loans were sanctioned during 1990 and 1993, 1993-1996 for **Rs.58,75,000/-** **[Rs.9,75,000 + Rs.9,00,000 + Rs.40,00,000 (Rs.15,00,000 + Rs.25,00,000)]** were filled up to make it seem as if the borrower borrowed a further sum of **Rs.41,00,000/-** on **20.03.1993**.

33. It is submitted that there are no records to substantiate that over and above **Rs.58,75,000/-** any other amounts was borrowed by the Borrower and therefore, the question of entertaining the **Comp.A.No.431 of 2022** cannot be countenanced.

34. A reference was made to the Written Statement dated **31.08.2001** filed in **C.S.No.916 of 2000** by the Company which was later renumbered as **O.S.No.6891 of 2010** before the said Company was ordered to be wounded up on **17.04.2006**. It is submitted that neither a "**Set-Off**" "nor a "**Counter Claim**" was made before the Court while filing the Written Statement dated **31.08.2001** by the said Company under Liquidation before this Court.

35. It is submitted that the Company under Liquidation merely prayed for dismissal of the above suit filed by the Borrower. It is submitted that

there was also no “**Counter Claim**” for recovery of the amount due under the alleged loan of **Rs.41,00,000/-** which is said to have been allegedly borrowed by the Borrower.

36. That apart, it is submitted that the application filed by the Office of the Official Liquidator in **Comp.A.No.1515 of 2007** which relief is once again prayed for in **Comp.A.No.431 of 2022** is clearly barred by limitation under **Article 62** of the **Limitation Act, 1963.** It is submitted that at best, such an application could have been filed within 12 years from the date of the cause of action and therefore, the question of entertaining **Comp.A.No.431 of 2022** cannot be countenanced as it was hopelessly time-barred.

37. The learned Senior Counsel for the applicant would draw attention to the decision of the Hon'ble Division Bench of this Court in the case of **Official Liquidator, Radel Services Private Limited** Vs. **Southern Screws Private Limited** [(1988) 63 Comp Cas 749] rendered in the context of Section 458A of the Companies Act, 1956 read with the provisions of the Limitation Act, 1963.

38. The learned Senior Counsel would submit that since the Borrower had discharged the **HML No.253** and two Pro-Notes for **Rs.40,00,000/-** [**Rs.15,00,000 + Rs.25,00,000**] on **22.08.1998**, the suit, if any, ought to been filed within a period of **12 years** from the date of cause of action in terms of **Article 62** of the Limitation Act, 1963.

39. It is submitted that the Company Petition was filed on **07.10.2004** and the company was ordered to be wound up on **17.04.2006** and therefore as per **Section 458A** of the **Companies Act, 1956**, only the period between **07.10.2004** to **16.04.2007** alone could be excluded while computing the period of limitation of **12 years** under **Article 62** of the **Limitation Act, 1963**.

40. It is therefore submitted that even if the aforesaid period between **07.10.2004** to **16.04.2007** is excluded, the limitation to sue for recovery would have expired on **16.04.2019** by applying the provisions of **Section 458A** of the Companies Act, 1956 and Article 62 of the Limitation Act, 1963 and therefore, the question of entertaining **Comp.A.No.431 of**

2022 filed on **27.10.2022** cannot be countenanced and hence, prays for dismissal of the application filed by the Official Liquidator in Company **Comp.A.No.431 of 2022** and to allow the **Company Application No.516 of 2011** filed by the Borrower.

41. That apart, a reference is made to the deposition of RW1 [J. Perumal, the Upper Divisional Clerk from the Office of the Official Liquidators, High Court Madras. It is submitted that the said witness during the cross-examination on **22.01.2016** before the learned Masters has confirmed that he was not aware as to whether any document were filed before this Court to show that there was any debt due and existing from the Borrower in the above suit as of on **22.08.1990.**

42. It is further submitted that the said witness was also unable to confirm as to which of the **Promissory Note** in **Ex.R2, Ex.R3, Ex.R8** and **Ex.R9** related to the **Simple Mortgage Deed** under **Ex.R5 photocopy of Simple Mortgage** dated **16.03.1993**.

43. Similarly, it is submitted that the witness did not confirm details

regarding the disbursal of respective amounts mentioned in the Promissory Notes in **Ex.R2, Ex.R3, Ex.R8** and **Ex.R9**. It is therefore submitted that the application filed by the Borrower in **Comp.A.No.516 of 2011** has to be allowed and **Comp.A.No.431 of 2022** has to be dismissed.

44. The learned Senior Counsel further submits that the written statement that was filed by the company on 31.07.2001 also contains a concocted defence to state that as on 31.01.2001, the Borrower [the applicant in **Comp.A.No.516 of 2011**] owed a sum of **Rs.1,95,92,088/-** , to the Company under Liquidation.

45. The office of the Official Liquidator has drawn attention to a report dated **25.09.2022** wherein it is stated that the Borrower, [the Applicant in **Comp.A.No.516 of 2011** / respondent in **Comp.A.No.431 of 2022**] had taken the following Loans from the Company under Liquidation as detailed below:-

Table-VII

Sl.No	Date of Loan	HML.No.52	HML.No.253	Total
1	22.8.1990*	9,75,000.00		9,75,000.00
2	01.02.93	15,00,000.00		15,00,000.00
3	16.03.93#		9,00,000.00	9,00,000.00
4	20.03.93		41,00,000.00	41,00,000.00

5	17.05.93	25,00,000.00		25,00,000.00
Total		**49,75,000.00**	**50,00,000.00**	**99,75,000.00**

***Date of registered Simple Mortgage Deed-(23.08.1990- Date of Promissory Note)**
 # Date of registered Simple Mortgage Deed-(18.03.1993- Date of Promissory Note)

46. It is further stated that as per the available records, balance to be remitted by the Borrower as on **August 2000** in respect of both the loan accounts are as follows:-

Table-VIII

S.No.	Loan Account No	Principal Due	Interest	Total
1	HMLO052	24,61,588	28,88,195.65	53,49,783.65
2	HMLO0253	50,00,000	54,62,461.40	1,04,62,461.40
Grand Total				**Rs.1,58,12,245.40**

47. It is submitted that the claim in **Comp.A.No.431 of 2022** (Formerly **Comp.A.No.1515 of 2007**) is also based on **Ex.R3 Promissory Note** dated **20.03.1993** for a sum of **Rs.41,00,000/-** and **Ex.R.4 Deposit of Title Deed** dated **21.03.1993** as detailed in **Annexure C** of the aforesaid Report dated **25.09.2022**.

48. That apart, the learned Deputy Official Liquidator submits that on account of the rival claims, complaints were also filed before the **EOW, Chennai-2** and records were taken by the Officials of **EOW, Chennai-2**, which included the Original Documents. The learned Official Liquidator therefore submits that directions may be given to **EOW, Chennai -2** to hand over the originals to the Office of the Official Liquidator.

49. I have considered the Arguments of the respective counsel of both sides. I have perused the plaint of the Borrower, written statement and Report of the Official Liquidator.

50. Details of the Promissory Notes and the Simple Mortgages and Equitable Mortgage by deposit of Title Deeds of **Schedule A and Scheduled B properties** are as under:-

Table-XIX

Sl. No	Date of Loan	HML.No.52	HML.No.253	Ex. of Promissory Note	Ex. of Deed
1	22.08.1990	9,75,000.00		**R8** - Demand Promissory Note dated 23.08.1990	**A1/R7**- Registered Simple Mortgage deed dated 22.8.1990 of 'A' **Schedule property**
2	31.01.1993 /	15,00,000.00		**R6**-Demand	**R6**-Memorandum of

	01.02.1993*			Promissory Note dated 31.01.1993	deposit of Title Deeds of **'A'** Schedule Property dated 01.02.1993
3	16.03.1993		9,00,000.00	**R2-** Demand Promissory Note dated 18.03.1993	**A2/R5-** Registered Simple Mortgage deed dated 16.03.93of **'B'** Schedule Property
4	20.03.1993# /22.03.1993		41,00,000.00	**R3-** Demand Promissory Note dated 20.03.1993	**R4-** Memorandum of deposit of Title Deeds of **'B'** Schedule property dated 21.03.1993
5	17.05.1993	25,00,000.00		**R9**-Demand Promissory Note dated 13.05.1993	**R9-**Memorandum of deposit of Title Deeds of **'A' and 'B'** Schedule property dated 14.05.1993
Total		**49,75,000.00**	**50,00,000.00**		
			99,75,000		

*** Ex.R8 Series Demand Promissory Note dated 01.02.1993**

 # Ex.R2 Series Demand Promissory Note dated 22.03.1993

51. The Office of the Official Liquidator has filed **C.A.No.431 of 2022** on 20.07.2022 for the above mentioned relief to direct the Borrower to repay a sum of **Rs.1,40,54,783/-** together with interest at 24%.

52. The records available before this Court also reveals that earlier also a similar application was filed by the Office of the Official Liquidator in **C.A.No.1515 of 2007** sometime in 2007.

53. **C.A.No.1515 of 2007** was however dismissed with liberty to file a fresh application in case of ex-parte decree dated **23.11.2010** passed by the **1st Additional City Civil Court, Chennai** in **O.S.No.6891 of 2010** was set aside. Relevant portion of the Order dated **20.06.2011** of this Court dismissing **C.A.No.1515 of 2007** reads as under:-

> *"4.In view of the decree being in favour of the respondent which is not set aside or stayed by any Court, this claim applications is not maintainable being premature. Consequently, this application is dismissed. The claim petition is therefore, dismissed as premature at this stage. However, it shall be open to the learned Official Liquidator, to file an appropriate application in the event of success of application for setting aside the ex-parte decree, or the final decision in suit for redemption, if so required, as per decision of the Civil Suit.*

54. **Comp.A.No.516 of 2011** is a continuation of the suit filed by the Borrower in **C.S.No.916 of 2000** before this Court which was later transferred to the **1st Additional City Civil Court, Chennai** pursuant to reorganization of the pecuniary jurisdiction of the Courts and renumbered as **O.S.No.6891 of 2010**. **Comp.A.No.431 of 2022** is a continuation of the **Comp.A.No.1515 of 2007** which was closed with a liberty on

20.06.2011.

55. By an order dated **03.01.2011** in **C.A.No.97 of 2008**, this Court had ordered **O.S.No.6891 of 2010** be tried along with **C.P.No.230 of 2004**. However, the **1st Additional City Civil Court, Chennai** had already decreed **O.S.No.6891 of 2010** (Formerly **C.S.No.916 of 2000**) on **23.11.2010**.

56. Under these circumstances, **C.A.No.396 of 2011** was filed before this Court to set aside the ex-parte decree dated **23.11.2010** in **O.S.No.6891 of 2021** which was later allowed on **15.07.2011**.

57. It is under these circumstances, the Trial in **C.A.No.516 of 2011** and **C.P.No.230 of 2004** was recorded by the learned Master between **12.08.2013** and **22.01.2016,** after Ex-parte decree passed by the **1st Additional City Civil Court, Chennai** dated **23.11.2010** in **O.S.No.6891 of 2010** was set aside on **15.07.2011** in **Comp.A.No.396 of 2011**.

58. The Borrower had earlier filed **O.S.No.2942 of 2000** before the **IV Assistant City Civil Court, Chennai**. The Borrower has marked a counter filed in **O.A.No.7719 of 2000 in O.S.No.2942 of 2000** marked as **Ex.A11** in the present proceeding to which I shall refer later.

59. The record reveals that the **IV Assistant City Civil Court**, **Chennai** had stayed the auction of the **Schedule 'A' Property** vide its order dated **07.06.2000** in view of the undertaking given by the Borrower to deposit **Rs.5,00,000/-** in **I.A.No.7719 of 2000** in **O.S.No.2942 of 2000** before the **IV Assistant City Civil Court, Chennai**.

60. Apart from the documents which were marked on behalf of the Borrower and Official Liquidator's Office for the company under liquidation, there are also two other documents that are available in the Court bundle. Both are dated **10.02.2000** and in respect of the amounts that were allegedly due from the Borrower to the Company under Liquidation. Copy of these documents were not marked as Exhibits by the Borrower.

61. Since these documents are available in typed set of documents filed by the Office of the Official Liquidator along with **C.A.No.1515 of 2007** which was later dismissed on **20.06.2011** with liberty to file a fresh application in case the ex-parte decree dated **23.11.2010** in **O.S.No.6891 of 2010** set aside. These documents are marked as **Ex.C1** and **Ex.C2**. **Ex.C1** and **Ex.C2** are letters both dated **10.02.2000** of the Company under Liquidation addressed to the Borrower. Both these letters have also been replied by the Borrower vide **Ex.A4 Letter** dated **16.02.2000** and **Ex.A5 Letter** dated **16.02.2000**.

62. Therefore, these two letters dated **10.02.2000** of the Company under Liquidation addressed to the Borrower have been marked as **Ex.C1** and **Ex.C2** as there is no point in calling for the Office of the Official Liquidator to mark these documents by referring the case back to the Learned Master's Court for marking them as exhibits.

63. Likewise, the Statement of Accounts and Interest Working Statements which was filed by the Borrower in **C.A.No.1515 of 2007 on**

29.06.2009 is marked as **Ex.C3**, to which also I shall refer to later.

64. **Ex.C1** and **Ex.C2** letters both dated **10.02.2000** were addressed to the Borrower by the Company under Liquidation. **Ex.C1** and **Ex.C2** dated **10.02.2000** read identically. They are in respect of **HML No.52** and **HML.No.253**. Their texts are reproduced below for the sake of clarity:-

<u>Table-IX</u>

Ex.C1 dated 10.02.2000	Ex.C2 dated 10.02.2000
Sub: House Mortgage Loan No.**52** for **Rs.39,96,359/-**	**Sub:** House Mortgage Loan No.**253** for **Rs.50,00,000/-**
On perusal of our records, it is seen that you had borrowed from RBF Nidhi Limited a sum of **Rs.39,96,359/-** on **23.08.90**. The above loan has become due for repayment on **23.08.92**. Please note that the principal outstanding is **Rs.24,61,588/-** and Interest Outstanding is **Rs.23,89,621/-** as on **01.01.2000**.	On perusal of our records, it is seen that you had borrowed from RBF Nidhi Limited a sum of **Rs.50,00,000/-**on **18.03.93**. The above loan has become due for repayment on **18.03.95**. Please note that the principal outstanding is **Rs.50,00,000/-** and Interest Outstanding is **Rs.43,40,820/-** as on **31.01.2000**.
Please note that the Hon'ble Company Law Board' has superceded the existing Board and have appointed a new Board, who have decided to take immediate steps to recover the amounts due to RBF Nidhi Limited.	Please note that the Hon'ble Company Law Board' has superceded the existing Board and have appointed a new Board, who have decided to take immediate steps to recover the amounts due to RBF Nidhi Limited.

Accordingly, you are requested to repay the aforesaid amount within Seven days on receipt of this letter. If there is any problem in making the repayment. in seven days, you may kindly meet **Mr. A.R Rao, Chairman** or the **undersigned immediately along with this letter.**	Accordingly, you are requested to repay the aforesaid amount within Seven days on receipt of this letter. If there is any problem in making the repayment. in seven days, you may kindly meet **Mr.A.R Rao, Chairman** or the **undersigned immediately along with this letter.**

65. These letters were signed by K.J.Pappachan, Director of Company under liquidation after the Board of the Company under liquidation was superseded.

66. These two letters have been replied by the Borrower vide **Ex.A4** and **Ex.A5** Services dated **16.02.2000. Ex.A4** dated **16.02.2000** is in response to **Ex.C2** letter dated **10.02.2000** issued for **HML.253**. **Ex.A4** dated **16.02.2000** reads as under:-

<u>Table-X</u>

Respected Sir, **Sub: House Mortgage LoanNo.253**. With reference to the above, I am in receipt of your letter dated **10.02.2000** and noted the contents.

I would like to submit the following facts for your kind perusal and consideration. . I mortgaged my property for Rupees 9 Lakhs which amounts have been paid, I have also availed a mortgage loan on **HML No.52** by mortgaging other property for Rupees 9 lakhs.

I have already repaid the above HML loans for **Rupees 30,60,000/-** in lumpsum and also paid **Rupees 75 lakhs** towards the above **HML No.253** and **HML No.52**. I am enclosing a statement of payments as per our available records for our verification.

Having paid so much amount and also due to economic recession on real estate business, we could not make further payments. Even though we have obtained receipts for our payments, we do not know on which account our payments nave been credited.

Till 1995 we had been making payments regularly. In this connection we request your goodselves to verify your accounts.

Since there is a tough economic recession in the real estate business we are struggling for our survival. **Hence we are prepared to accept my liability within the permissible limit payable by the proposal after discussing the facts**.

67. Thus, even according to Borrower as per **Ex.A4** letter dated **10.02.2000** for two loans for **Rs.9,00,000/-** and **Rs.9,75,000/-**, the Borrower has paid a sum of **Rs.1,05,60,000/-** [**Rs.30,60,000 + Rs.75,00,000**].

68. **Ex.A5** has two letters dated **06.03.2000** in response to **Ex.C1** dated **10.02.2000** and another letter dated **01.03.2000** of the Company under Liquidation. They reads as under:-

Table-XI

Ex.A5 letter dated 06.03.2000	Ex.A5 letter dated 06.03.2000
Respected Sir, SUB : **Loan Account No. 253** I am in receipt of your notice dated **10.02.2000**. I do not admit the amount mentioned in your notice as the outstanding in my account. The notice is without particulars.	Respected Sir, SUB **: Loan Account No. 52** I am in receipt of your notice dated **01.03.2000**. I do not admit the amount mentioned in your notice as the outstanding in my account. The notice is without particulars.

69. Copy of letter dated **01.03.2000** of the Company has been neither filed by the Borrower or the Office of the Official Liquidator. The case of the Borrower is that the Borrower had taken two loans earlier for **Rs.9,75,000/-** and **Rs.9,00,000/-** and had repaid the same and thereafter took a fresh loan for **Rs.40,00,000/-** during **1993 to 1995**. It is the case of the Borrower that however, the promissory notes that were executed by the Borrower for the loans that were taken in the year **1990 to 1993** have been used by the Company under Liquidation to make it seen as if the Borrower had borrowed further amounts of **Rs.41,00,000/-.**

70. According to the Office of the Official Liquidator, the Borrower has borrowed a total sum of **Rs.99,75,000/-** as detailed below:-

Table-XI

HML No.	52	253	Total Amount
Principal Amount	9,75,000# +15,00,000* +25,00,000*	9,00,000* +41,00,000*	
Total	**49,75,000**	**50,00,000**	**99,75,000**
Interest at	***22%**	**#24%**	

71. The defence in the Written Statement in C.S.No.916 of 2000 of the Company under Liquidation before it was transferred to the **1st Additional City Civil Court, Chennai** is that the Borrower had borrowed a total sum of **Rs.99,75,000/-** under two Loan Accounts numbered as **HML No.52** and **HML No.253** respectively.

72. As per the written statement and **Ex.C1** and **Ex.C2** dated **10.02.2000** of the Company under Liquidation, the amount due from the Borrower to the Company under Liquidation in respect of **HML No.52** and **HML No.253** as on **31.01.2000** are as under:-

Table-XII

Sl.No.	Exhibit	Ex.C1 dt.10.02.2000	Ex.C2 dated 10.02.2000	Total
	HML.No.	52	253	
1	Principal Amount	9,75,000# +15,00,000* +25,00,000*	9,00,000* +41,00,000*	
	Total	49,75,000	50,00,000	99,75,000
2	Mortgage Loan Amount	Rs.39,96,359/- (as on 23.08.1990)	Rs.50,00,000/- (as on 18.03.1993)	89,96,359
3	Principal Outstanding	Rs.24,61,588/-	Rs.50,00,000/-	74,61,588
4	Interest Outstanding	Rs.23,89,621/-	Rs.43,40,820/-	67,30,441
4(3+4)	Total Outstanding as on 31.01.2000	Rs.48,51,209/-	Rs.93,40,820/-	Rs.1,41,92,029

Interest at *22% Interest at #24%

73. Thus, there is no clarity as to how **Rs.49,75,000/-** in **HML.No.52** reduces to **Rs.39,96,359/-** as per **Ex.C1** dated **10.02.2000** of the Company under Liquidation.

74. Even according to the Office of the Official Liquidator, the Borrower has together paid a total sum of **Rs.1,21,50,467/-** in respect of the **HML No.52** and **HML No.253** as detailed below as is evident from the typed set of documents filed by the Office of the official liquidator along

with the **C.A.No.1515 of 2007** in the year 2007 :-

Table-XIII

Loan A/C No	HML No.52	HML No.253	Total
Total Principal Amount	9,75,000# +15,00,000* +25,00,000*	9,00,000* +41,00,000*	
	49,75,000	50,00,000	**99,75,000**
Principal Paid	25,13,412/-	-	**25,13,412/-**
Interest Paid	38,07,797/-	58,29,267/-	**96,37,064/-**
Total	**63,21,209/-** (23.08.1990-16.08.2000)	**58,29,267/-** (18.03.1993-16.08.2000)	**1,21,50,467/-**

75. Whereas, according to the Borrower, the Borrower has repaid a sum of **Rs.1,24,90,328/-**. Thus, the issue that arises for consideration is whether the Borrower is entitled to redeem the mortgage after accepting the case that the Borrower has paid the amounts due under the respective Loan and whether indeed the borrower had taken a loan for **Rs.41,00,000/-** as argued by the Company under Liquidation.

76. It is not out of place to mention that the **C.S.No.916 of 2000** was filed by the Borrower on **21.11.2000** after the Company had issued **Ex.C1** and **C2 Notices** both dated **10.02.2000** which were responded vide **Ex.A4 Letter** dated **16.02.2000** and **Ex.A5 Series Letter** dated **06.03.2000**.

77. In the Written Statement it is stated that under **Loan Account No.52** the Borrower had borrowed initially a sum of **Rs.9,75,000/-** and thus created **A1/R7** registered Simple Mortgage in respect of **'A' Schedule Property**. It is further stated that the Borrower had subsequently borrowed further a sum of **Rs.15,00,000/-** and executed **Ex.R6 Promissory Note** dated **31.01.1993** for **Rs.15,00,000/-** along with **Ex.R6 Memorandum of Deposit of Title Deed** dated **01.02.1993** of **'A' schedule** property in favour of the Company under Liquidation.

78. It was further stated that the Borrower took another loan amount again borrowed a sum of **Rs.25,00,000/**- and executed **Ex.R9 Promissory Note** dated **13.05.1993** for **Rs.25,00,000/-** along with **Ex.R9 Memorandum of Deposit of Title Deed** dated **14.05.1993** of **'A'** and **'B'** Schedule Property. These borrowal are subject matter of **HML No.52.**

79. It was further stated that under **HML No.253,** the Borrower had borrowed further amount of **Rs.9,00,000/-** and executed **A2/R5** registered

Simple Mortgage dated **16.03.1993** in respect of **'B'** Schedule Property and subsequently borrowed another sum of **Rs.41,00,000/-** on 20.03.1993 and executed **Ex.R4** Memorandum of Deposit of Title Deed dated **21.03.1993** of **Schedule B Property**. Details of the Loans are given below:-

Table-XIV

	Loan Account No.52			
SL.No	**Date**	**Amount**	**Ex.-Mode**	**Interest**
1	22.08.1990	Rs.9,75,000/-	**A1/R7**- Registered Simple Mortgage of **'A'** Schedule property	22%
2	31.01.1993	Rs.15,00,000/-	**R6**-Demand Promissory Note dated 31.01.1993	24%
	01.02.1993		**R6-**Memorandum of deposit of Title Deeds of **'A'** Schedule Property dated 01.02.1993	24%
3	13.05.1993	Rs.25,00,000/-	**R9**-Demand Promissory Note dated 13.05.1993	24%
	14.05.1993		**R9-**Memorandum of deposit of Title Deeds of **'A' and 'B'** Schedule property dated 14.05.1993	24%
	Loan Account No.253			
4	16.03.1993	Rs.9,00,000/-	**A2/R5**- Registered Simple Mortgage of **'B'** Schedule Property	24%
5	20.03.1993	Rs.41,00,000/-	**R3**- Demand Promissory Note dated 20.03.1993	24%
	21.03.1993		**R4-** Memorandum of deposit of Title Deeds of **'B'** Schedule Property dated 21.03.1993	24%
Total Amount		**Rs.99,75,000/-/**		-

80. The defendant Company in its Written Statement stated that as on **31st July, 2001**, the amount outstanding towards repayment of **HML No.52** stood at **Rs.66.26,962/-** and the amount outstanding towards **HML No.253** stood at **Rs.1,29,65,126/-** and thus the total amount outstanding was **Rs.1,95,92,088/-** as detailed below:-

Table-XV

Loan Account No.	52 in (Rs.)	253 in (Rs.)	Total in (Rs.)
The principal amount	24,61,588.00	50,00,000.00	74,61,588.00
Interest	41, 19,782.00	78,75,581.00	1,19,95,363.00
interest, tax	45,592.00	89545	1,35,137
Total	**66,26,962.00**	**1,29,65,126**	**1,95,92,088**

81. The Borrower has relied on **Ex.A11** counter filed in **I.A.No.7719 of 2000** in **O.S.No.2942 of 2000** before IV Additional City Civil Court to state that only a sum of **Rs.53,04,674.85** was due in respect of **HML No.52** as on **31.05.2000** and that in respect of the aforesaid loan the Borrower was making payments.

82. It is submitted that in **Ex.A11** which is a counter filed in **I.A.No.7719 of 2000** in **O.S.No.2942 of 2000**, the amount due from the

Borrower in respect of **HML No. 52 and HML No 253** are as under:-

Table-XVI

Sl.No.	HML.No.	52 in (Rs.)	52 +253 in (Rs.)
1	**Total Outstanding as on 31.05.2000**	53,04,674.85	1,55,18,166.30

83. A reference was made to paragraph 6, 9 & 10 of **Ex.A11 Counter**, which reads as under:-

> "*6. The averments in para 5 with regard to another loan availed of by the petitioner on 22.3.1993 are incorrect. The amount borrowed by the petitioner was Rs. 41 lakhs and not 40 lakhs as stated by the petitioner. The claim that the pronote executed by the petitioner in respect of this loan was blank is false and denied. The payments set out in the said para are admitted except for the sum of Rs.4.00 lacs stated to have been paid on 16.4.94 by the petitioner. The scrutiny of the books of account as well the the bank statements disclose that the said amount has not been received. The total amount due and payable by the petitioner as against the aforesaid amounts as on **31.05.2000** is **Rs.1,55,18,666.30/-***
>
> *9. The averments in para 8 of the petitioners affidavit are repetitive and denied. It is however admitted that receipts were issued whenever amounts were paid by the petitioner and the same was credited. The claim of the petitioner that the mortgage in respect of the Schedule A property stands discharged is being made for the first time for the purpose of the case and is without basis for the purpose of the case and is without basis.*

10. The averments in para 9 of the affidavit, to the effect that an oral request was made by the petitioner is false and denied. The letters dated 16.2.2000 and 6.3.2000# referred to by the petitioner are admitted. A mere reading of the contents of the letter dated 16.2.2000 would disclose that there were outstanding liabilities payable by the petitioner to the respondent. Even according to the the petitioner no payment has been made subsequent to 16.2.2000. It is once again reiterated that no request was made by the respondent for release of the document, since the same the in untenable in law and was therefore never made. The claim that there was no amount Payable by the petitioner to the respondent in respect of any "loan account" is false and denied. As on 31.5.2000 a total sum of **Rs.1,55,18,166.30** is due and payable by the petitioner to the plaintiff in the two loan accounts maintained by the respondent.”*

*** Ex.A4**

 # Ex.A5

84. The fact remains that Borrower has not denied that the Borrower was in arrears of amounts due to the company under liquidation prior to institution of **O.S.No.2942 of 2000**.

85. As per **Ex.A4 Letter** dated **16.02.2000** in response to **Ex.C2 – Letter** dated **10.02.2000** for **HML No.253**, the Borrower has himself admitted that the Borrower has paid only a sum of **Rs.30,60,000/-**

and a further sum of **Rs.75,00,000/-** against **HML No. 52** and **HML No 253**.

86. In **Ex.A4** Letter dated **16.02.2000**, the Borrower has given an undertaking that he was prepared to accept any liability within the permissible limit payable by the proposal after discussing the facts. In the same letter the borrower has also admitted that due to economic recession in real estate business he could not make further payments. Thus, there is no denying that the Borrower has admitted to his liability.

87. There are also no clear records to show that **Rs.75,00,000/-** was paid by the Borrower towards the above **HML No.52** and **HML No.253.** All that the Borrower has stated that he was not aware as to how the amounts paid were appropriated by the Company under Liquidation and that due to economic recession in the real estate business the borrower is struggling for survival to pay the balance.

88. There are no evidence of any further payments by the Borrower to the Company under Liquidation. **C.S.No.916 of 2000** was almost

immediately filed on **21.11.2000** after exchange of following communication:-

Table-XVII

Exhibit	Date	Description
C1	10.02.2000	Letter issued by the Company to the Borrower demanding **Rs.39,96,359/-** in respect of **HML.No.52**
C2	10.02.2000	Letter issued by the Company to the Borrower demanding **Rs.50,00,000/-** in respect of **HML.No.253**
A4	16.02.2000	Certified copy of Letter of Borrower in response to Ex **C1** letter dated **10.02.2000**
A5	06.03.2000	Certified copy of Letter of the Borrower in response to letter dated **01.03.2000**
A6	07.05.2000	Certified copy of the paper publication in one issue of Tamil Daily “Dina Malar”
A7	07.05.2000	Certified copy of the paper publication in one issue of English Daily “Hindu”
A8	08.05.2000	Certified Copy of the Legal Notice on behalf of the Borrower
A9	13.05.2000	Certify copy of the Reply to the Legal Notice dated 08.05.2000.

89. That apart, the statement of the position as far as the amount due under the respective House Mortgaged Loan as per the Statement of the Official Liquidator corresponds with the amounts due as per the Company under liquidation in **Ex.C1 & C2** both dated **10.02.2000** which have been replied by the borrower vide **Ex.A4** letter **dated 16.02.2000** & **A5 letter** dated **06.03.2000** as mentioned above.

90. The principal outstanding as per the Statement of the Official Liquidator before this Court is that almost the same position that was taken by the Company under liquidation in **Ex.C1** and **Ex.C2** both dated **10.02.2000** as detailed below:-

Table-XVIII

Sl.	**Exhibit**	**C1**	**C2**	**Total**	**Claim of the Office of the Official Liquidator**		**Total**
No.	**HML.No**	**52**	**253**		**52**	**253**	
1	**Mortgage Loan Amount**	Rs.39,96,359*	Rs.50,00,000#	**89,96,359**	49,75,000	50,00,000	**99,75,000**
2	**Principal Outstanding**	Rs.24,61,588	Rs.50,00,000	**74,61,588**	24,61,598/-	50,00,000	**74,61,598**
3	**Interest Outstanding**	Rs.23,89,621	Rs.43,40,820	**67,30,441**	23,43,035	42,50,149	**65,93,184**
4	**Total Outstanding as on 31.01.2000**	Rs.48,51,209	Rs.93,40,820	**1,41,92,029**	48,04,633.90	92,50,149.60	**1,40,54,783**

***(as on 23.08.1990)**

#(as on 18.03.1993)

91. A reading of the Exhibits marked before this court indicate that there is no dispute with regard to the amount that were borrowed by the borrower from the Company under Liquidation.

92. The details of the amounts that were borrowed were in 5 tranches. As mentioned elsewhere during the course of this judgment. The 1st and 3rd loans were secured by Promissory Notes and Registered Simple Mortgages of **Schedule A** and **Scheduled B properties**.

93. The 2nd and the 5th loans for a total sum of **Rs.40,00,000/-** (15,00,000 + 25,00,000) which were treated as a part of **HML No.52**. They were secured by promissory notes and equitable mortgages created by deposits of title deeds of **Schedule A and Scheduled B properties**.

94. Though, the documents mentioned above have been marked as Exhibits during the course of Trial before the Learned Master by the RW-1 on behalf of the company under liquidation, it is evident from a reading of the Written Statement dated **31.7.2001** filed in **C.S.No. 916 of 2000** before this court (before it was transferred to the 1st Additional Civil Court, Chennai and re-numbered as **O.S.No. 6891 of 2010**, the Company under Liquidation has not alluded to the **R8** dated **23.08.1990** and **R2** Promissory Note dated **18.03.1993** against loan for **Rs.9,75,000/-** and Loan for **Rs.9,00,000/-**.

95. In the written statement, it was stated by the Company under Liquidation that, the Borrower had obtained loans in respect of the above 2 loans by executing a registered Simple Mortgage of **Schedule A and Scheduled B Properties.**

96. The Borrower in **Ex.A4 Letter** dated **16.2.2000** has admitted defaults committed by him by stating that due to economic recession further payments could not be made by the Borrower to the Company under Liquidation and requested for rendition of Accounts, the content of which has been extracted above in respect of both **HML No.52 & HML No.253**.

97. In fact, in **Ex.A8 Legal Notice** dated **08.05.2000** issued to the Company under liquidation on behalf of the Borrower also, there is an admission by the Borrower that amounts were borrowed in 4 tranches except for a Sum of **Rs.41,00,000/-.**

98. In **Ex.A8 Legal Notice** dated **08.05.2000**, the borrower has stated

that the borrower has repaid a sum of **Rs.22,84,588/-** towards **HML No. 52** as on **21.12.1993** as against a required amount of **Rs.16,72,125**/- and therefore an amount of **Rs.6,12,463/-** was paid in excess by the Borrower towards **HML No.21000052**.

99. In **Ex.A8- Legal notice** dated **08.05.2000**, the borrower has also alluded to **Ex.A4** letter dated **16.02.2000** and **Ex.A5 Letter** dated **06.03.2000**, wherein the company under liquidation was called upon to furnish the Statement of Account.

100. It is perhaps in this background, the borrower filed **O.S.No. 2942 of 2000** against the company under liquidation. The suit purportedly was filed for Rendition of Account and for a permanent injunction to restrain the company under liquidation from selling the **Schedule A** and **Schedule B** Property of the Borrower which was offered as security.

101. In **O.S.No. 2942 of 2000**, the borrower had also filed **I.A.No. 7719 of 2000** and secured an interim order on **07.06.2000** to restrain

the Company under liquidation, from proceeding with the proposed auction of Schedule **A & B** Property of the Borrower. The aforesaid application was ordered by the IV Additional City Civil Court, subject to the condition that the borrower deposits sum of **Rs.5,00,000/-** to the credit of the aforesaid suit.

102. The status of **O.S.No. 2942 of 2000** filed before the **IV Assistant City Civil Court, Chennai** has not been informed either by the Borrower or the office of the official liquidator. However, it is evident that **C.S.No. 916 of 2000** was filed on **21.11.2000** after securing order on **07.06.2000** in **I.A.No. 7719 of 2000** in **O.S.No. 2942 of 2000**.

103. The amounts that were repaid by the Borrower to the Company under Liquidation under the respective loans as per the case of the Borrower under **HML No.52 and HML No.253** can be summarized as detailed below:-

<u>Table-XX</u>

Sl.No	Loan Account No.	52	253	Grand Total
1	**Loan Amount**	Rs.**9,75,000**	Rs.**9,00,000**	
	P.N Loans			**Rs. 58,75,000**

			Rs.**40,00,000***	
	Total	Rs.**9,75,000**	Rs.**49,00,000**	
2	**Loan Amount repaid as per Ex.A4 Letter dated 16.02.2000**	**Rs.75,00,000**	**Rs.30,60,000**	**Rs.1,05,60,000**
3	**Loan Amount repaid as per Ex.A8 Legal Notice dated 08.05.2000**	**Rs.22,48,588**		
4	**Loan Amount repaid as per Plaint**	Rs.38,53,516	Rs.86,36,812	**Rs.1,24,90,328/-**

***Rs.40,00,000/-**[Rs.25,00,000 + Rs.15,00,000] under Promissory Notes

104. A reading of **Ex.A4** dated **16.2.2000** issued by the Borrower to the Company under Liquidation indicates that the Borrower admits having paid certain amounts against **HML No. 52 and HML No 253** which would also include the 2 other loans for a sum of **Rs.40,00,000/-** (**15,00,000+25,00,000**).

105. The position that emerges from a cumulative reading of the documents marked as Exhibits before this court indicate that the Borrower has paid a sum of **Rs.38,53,516/-** as stated in the plaint against **HML No.52.**

106. Whereas in **Ex.A8 Legal Notice** dated **08.05.2000**, the

Borrower has stated that the Borrower has repaid only a sum of **Rs.22,84,588/-** paid towards the aforesaid loan in **HML No.52**. Thus, there is contradiction.

107. In the Plaint, the Borrower has stated that against a sum of **Rs.49,00,000/-** (**9,00,000+15,00,000+25,00,000**) against **HML No.253** and 2 other loans on Promissory Notes, he has paid a sum of **Rs.86,36,812/-** and in all the borrower claims to have paid a total sum of **Rs.1,24,90,328/-** [**Rs.38,53,516 + Rs.86,36,812**]. This is without reference to the Loan of **Rs.41,00,000/-**.

108. In **Ex.A4 Notice** dated **10.02.2000**, the borrower has claimed to have paid a sum of **Rs.30,60,000/-** in lumpsum towards **HML.No.253** and a further sum of **Rs.75,00,000/-** as against both **HML No.52** and **HML No.253.** Thus, in all the amounts repaid is **only Rs.1,05,60,000/-** (**Rs.30,60,000 + Rs.75,00,000**).

109. However, as per the plaint and **Ex.A3** receipts the Borrower has claimed to have repaid a sum of **Rs.1,24,90,328/-.** The last date of payment

is **22.08.1998**. Thereafter, there are no records of any other payment made by the Borrower.

110. In the typed set of document filed in **Comp.A.No.1515 of 2007**, the Office of the Official Liquidator also admits receipt of **Rs.1,21,50,467/-** from the Borrower. Thus, the borrower has actually paid a total sum of **Rs.1,24,90,328**/-.

111. Thus, the Borrower has taken contradictory stand both with regard to the amounts borrowed from the Company under Liquidation and also the amounts that were repaid by the Borrower pursuant to the **Ex.A4** Letter dated **16.02.2000** in response to **Ex.C2 Letter** dated **10.02.2000** and **Ex.A8 Legal Notice** dated **08.05.2000** and the plaint**.**

112. The Borrower has not explained the amount of **Rs.41,00,000/-** borrowed**.** A schewed presentation of facts has been narrated in the plaint.

113. The Office of the Official Liquidator on the other hand has claimed that the borrower has borrowed additionally a sum of

Rs.41,00,000/- towards **HML No.253**.

114. As per the Office of the Official Liquidator, in **C.A.No. 431 of 2022** filed on **27.10.2022**, the borrower has to pay a sum of **Rs.1,40,54,753/-** The details of claim in **C.A.No. 431 of 2022** is as under:-

<u>Table-XXI</u>

HML No.	**52**	**253**	**Total Amount**
Principal Amount	9,75,000 +15,00,000 +25,00,000	9,00,000 +41,00,000	
Total	49,75,000	50,00,000	99,75,000
Principal Amount paid	25,13,402	-	25,13,402
Principal Amount due	24,61,598	50,00,000	74,61,598
Interest due	15,75,416	28,00,000	43,75,416
Penal Interest due	7,18,117.90	13,55,704.60	20,73,822.50
Interest Tax due	49,512	94,445	1,43,957
Total Amount due	**48,04,633.90**	**92,50,149.60**	**1,40,54,783**

115. As per the Company under Liquidation and the Office of the Official Liquidator the details of Loan availed and the Exhibits marked are as under :-

<u>Table-XXI</u>

HML.No	**52**		**253**	
Amount	9,75,000/-	**15,00,000/-**	9,00,000/-	41,00,000/-
Date	23.08.1990	31.1.1993**	18.3.1993	20.03.1993

	01.02.1993# -Rs.15L		**22.03.1993 Rs.41L****	
Interest	22%	24%	24%	24%
P.N -Ex.No	**R8***	**R6**	**R2***	**R3**
Deed-Ex.No	**A1/R7**	-do-	**A2/R5**	**R4**
Date and Particulars of the Deed	22.08.1990 (Reg-Simple Mortgage-'**A**' Schedule)	01.02.1993 (MOD) –'**A**'-Schedule	16.03.1993 (Reg-simple Mortgage-'**B**' Schedule)	21.03.1993 (MOD)-'**B**' Schedule
Amount		**25,00,000/-**		
Date		13.05.1993#		
P.N Ex.No		**R9**		
Deed Ex.No		**-do-**		
		14.05.1993 (MOD)-**A+B** Shedule		
Total	**Rs 9,75,000/-**	**Rs.40,00,000/-**	**Rs.50,00,000/-**	

*ignored in written Statement filed by the Company

****ignored by Office of the Official Liquidator**
#Borrower Disputes the date

116. In the **Report** dated **June 2009** of the Office of the Official Liquidator filed in **C.A.No.1515 of 2007**, the Office of the Official Liquidator was unable to confirm Disbursal of **Rs.41,00,000/-** to the Borrower. Relevant portion of which is extracted below:-

> *"4.That the Court has further directed the (Official Liquidator to write to the company bankers to find out if any payment has been made by **M/s. RBF Nidhi Limited** to the debtor during the year 1993. Accordingly the Official Liquidator has written to the*

*Canara bank,Royapettah, Chennai-14. on **6.1.2009** and the bank vide reply dated 30.01.2009 has stated that the bank normally preserves 8 years old records and thereafter goes for destruction of records and that they are unable the furnish the requested records as the same pertains to the year 1993. A copy of the letter is enclosed herewith as Annexure 'A."*

117. In the **Report** dated **June 2009** of the Office of the Official Liquidator there is a reference to the crystallization of the outstanding Principal amount alone as on **31.12.1999** in respect of which the outstanding Principal amount alone works out to **Rs.74,61,588/-.** Relevant portion of which is extracted below:-

*"8.That the Official Liquidator prays this Hon'ble Court to look in to the huge amount payable by him to the company in liquidation while considering the offer of settlement made by the respondent. The Official Liquidator submits that the committee of directors appointed by the Central Government Under Section 408 of Companies Act, 1956 have crystalised the outstanding as on **31.12.1999** in which case in respect of present application the amount outstanding will be **Rs.74,61,588/."***

118. The aforesaid loan for **Rs.41,00,000/-** to the Borrower is secured by **Ex.R3 Promissory Note** dated **20.3.1993** and **Ex.R4 Deposit of Title**

Deed of **Schedule 'B' Property** dated **21.03.1993** of the Borrower. The Borrower has however disputed execution of **Ex.R4 Deposit of Title Deed** of **Schedule 'B' Property** dated **21.03.1993** of the Borrower in the counter filed in response to **C.A.No.431 of 2022**. However, they are sited by the Borrower.

119. The fact remains that the Borrower has applied for **Ex.R1 House Mortgage Loan** on **28.02.1993** for a sum of **Rs.50,00,000/-.** The application was issued on **23.02.1993**. This **Rs.50,00,000/-** is sub total of **Rs.9,00,000/- +41,00,000/-** of **HML.No.253.** Thus, the facts clearly emerges that the Borrower borrowed a sum of **Rs.50,00,000/-** consisting of **Rs.9,00,000 + Rs.41,00,000.**

120. Though the Office of the Official Liquidator is unable to confirm the disbursal of **Rs.41,00,000/-** to the Borrower, in Ex.C3 (though not marked before the Learned Master), Statement of Accounts and Interest Working Statement filed by the Borrower himself in **C.A.No.1515 of 2007**, before this Court on **29.06.2009** for approving the proposal made by the Borrower before the Official Liquidator for Settlement of Accounts at

Rs.15,00,000/- in full and final Settlement of all the dues and to grant 3 months time for one-time Payment.

121. This offer was no doubt **“without prejudice”** to contention of the Borrower having received a Sum of **Rs.41,00,000/-** on **22.03.1993**, towards **Loan No.3**. The Statement of Accounts and Interest Working Statement filed by the Borrower himself in **C.A.No.1515 of 2007**, before this Court on **29.06.2009** is extracted below :

Page 6

R.Balasubramanian in account with
Royapettah Benefit Fund Limited
Loan No 3

Loan 3

Rate of interest

Rate of interest 15.00%

Date	Particulars	Debit Rupees	Credit Rupees	Balance Rupees	No of days	Product
20-Mar-93	Disbursal	900,000.00		900,000.00	2	1800000
22-Mar-93	Disbursal	4,100,000.00		5,000,000.00	9	45000000
31-Mar-93	Interest	19,232.90		5,019,232.90	22	110423124
22-Apr-93	Payment		100,000.00	4,919,232.90	8	39353863
30-Apr-93	Interest	61,552.20		4,980,785.10	22	109577272
22-May-93	Payment		100,000.00	4,880,785.10	9	43927066
31-May-93	Interest	63,084.00		4,943,869.10	22	108765120
22-Jun-93	Payment		100,000.00	4,843,869.10	8	38750953
30-Jun-93	Interest	60,623.00		4,904,492.10	22	107898826
22-Jul-93	Payment		100,000.00	4,804,492.10	9	43240429
31-Jul-93	Interest	62,112.00		4,866,604.10	29	141131519
29-Aug-93	Payment		100,000.00	4,766,604.10	2	9533208
31-Aug-93	Interest	61,917.00		4,828,521.10	25	120713028
25-Sep-93	Payment		100,000.00	4,728,521.10	5	23642606
30-Sep-93	Interest	59,324.20		4,787,845.30	21	100544751
21-Oct-93	Payment		100,000.00	4,687,845.30	10	46878453
31-Oct-93	Interest	60,584.90		4,748,430.20	22	104465464
22-Nov-93	Payment		100,000.00	4,648,430.20	8	37187442
30-Nov-93	Interest	58,213.50		4,706,643.70	23	108252806
23-Dec-93	Payment		100,000.00	4,606,643.70	8	36853150
31-Dec-93	Interest	59,632.60		4,666,276.30	27	125989460
27-Jan-94	Payment		100,000.00	4,566,276.30	4	18265105
31-Jan-94	Interest	59,282.70		4,625,559.00	22	101762298
22-Feb-94	Payment		100,000.00	4,525,559.00	6	27153354
28-Feb-94	Interest	52,979.00		4,578,538.00	22	100727836
22-Mar-94	Payment		100,000.00	4,478,538.00	9	40306842
31-Mar-94	Interest	57,959.50		4,536,497.50	27	122485433
27-Apr-94	Payment		100,000.00	4,436,497.50	3	13309493
30-Apr-94	Interest	55,806.10		4,492,303.60	25	112307590
25-May-94	Payment		100,000.00	4,392,303.60	6	26353822
31-May-94	Interest	56,984.10		4,449,287.70	25	111232193
25-Jun-94	Payment		100,000.00	4,349,287.70	5	21746439
30-Jun-94	Interest	54,648.80		4,403,936.50	25	110098413
25-Jul-94	Payment		148,000.00	4,255,936.50	6	25535619
31-Jul-94	Interest	55,740.00		4,311,676.50	25	107791913
25-Aug-94	Payment		100,000.00	4,211,676.50	6	25270059
31-Aug-94	Payment		34,013.00	4,177,663.50	0	0
31-Aug-94	Interest	54,683.00		4,232,346.50	24	101576316
24-Sep-94	Payment		100,000.00	4,132,346.50	6	24794079
30-Sep-94	Interest	51,933.00		4,184,279.50	31	129712565
31-Oct-94	Interest	53,306.60		4,237,586.10	15	63563792
15-Nov-94	Payment		100,000.00	4,137,586.10	13	53788619
28-Nov-94	Payment		11,060.00	4,126,526.10	2	8253052
30-Nov-94	Payment		100,000.00	4,026,526.10	0	0
30-Nov-94	Interest	51,618.70		4,078,144.80	41	167203937
10-Jan-95	Payment		104,040.00	3,974,104.80	20	79482096
30-Jan-95	Payment		100,000.00	3,874,104.80	1	3874105
31-Jan-95	Interest	102,969.90		3,977,074.70	11	43747822
11-Feb-95	Payment		100,000.00	3,877,074.70	14	54279046
25-Feb-95	Payment		147,370.00	3,729,704.70	3	11189114
28-Feb-95	Interest	44,883.30		3,774,588.00	15	56618820
15-Mar-95	Payment		110,764.00	3,663,824.00	16	58621184
31-Mar-95	Payment		100,000.00	3,563,824.00	0	0
31-Mar-95	Interest	47,358.90		3,611,182.90	24	86668390
24-Apr-95	Payment		100,000.00	3,511,182.90	0	0
24-Apr-95	Payment		9,519.00	3,501,663.90	6	21009983
30-Apr-95	Interest	44,251.40		3,545,915.30	31	109923374
31-May-95	Interest	45,174.00		3,591,089.30	17	61048518
17-Jun-95	Payment		111,791.00	3,479,298.30	13	45230878
30-Jun-95	Payment		102,000.00	3,377,298.30	0	0
30-Jun-95	Interest	43,676.50		3,420,974.80	22	75261446
22-Jul-95	Trfd fm Loan 2		(336,203.70)	3,757,178.50	9	33814607

122. In the **Report** dated **November 2009** of the Office of the Official Liquidator filed in **C.A.No.1515 of 2007** there is also a reference to the admission that is said to have been made by the Borrower which is extracted below:-

> *"That the respondent/debtor also has accepted the payment of Rs.41 lakhs from the company in liquidation as seen in page no.6 of the Statement of Accounts and interest workings dated 29.06.2009*

under the heading loan No.3 filed by the respondent herein on 29.06.2009 before this Hon'ble Court."

123. In **Ex.A4** Letter dated **16.02.2000**, the Borrower has also given only a apologetic reply to **Ex.C2 Letter** dated **10.02.2000** wherein he stated that he was prepared to accept any liability within the permissible limit payable by the proposal after discussing the facts.

124. Thus, there is no doubt the borrower has borrowed **Rs.41,00,000/-** over and above **Rs.9,00,000/** under **HML No.253**. The Office of the Official Liquidator is thus entitled to recover the balance amounts due from the Borrower against the aforesaid amounts advanced/loaned to the Borrower for a Total Sum of **Rs.99,75,00,000**/- [**Rs.9,75,000+ Rs.15,00,000+ Rs.25,00,000+ Rs.9,00,000+ Rs.41,00,000**].

125. The fact remains that amounts are due. It is however not clear as to which of the loan were discharged at what point of time and how the payments were appropriated by the Company under Liquidation. This ought to have been brought up by the Office of the Official Liquidator, as it is too much to expect the borrower to assist the Court as the borrower is wrongly

claiming a refund of **Rs.7,39,828/-.** Therefore Office of the Official Liquidator is permitted to get back all the records from **EOW Chennai-II**. There is absolutely no merits in **C.A.No.516 of 2011** (Formerly **CS.No. 916 of 2000** renumbered as **O.S.No 6891 of 2010**). It is is liable to be dismissed.

126. Admittedly there are multiple mortgages created by the Borrower in favour of the Company under liquidation in connection with the loans in **HML.No.52** and **HML.No.253**. The details of **HML.No.52** and **HML.No.253** as has been explained as above.

127. Various company petitions that were filed starting from **C.P.No.203 of 2004 to C.P.No.230 of 2004** on **17.10.2004** against the Company under Liquidation to wind it up. The company under Liquidation was eventually ordered to be wound up on **17.04.2006** in **C.P.No.203 of 2004 to C.P.No.230 of 2004** by which time the Borrower had already filed **C.S.No.916 of 2000** on **21.11.2000,** to recover a sum of **Rs.12,39,838/-** from the Company under Liquidation allegedly due to the Borrower from the Company under Liquidation. The Borrower also wanted to redeem

mortgage of **Schedule A & B Property** without actually discharging the loan.

128. The Borrower filed **C.S.No.916 of 2000** without discharging the liability under **HML.No.52** and **HML.No.253, C.S.No.916 of 2000**. **C.S.No.916 of 2000** filed by the Borrower was pre-mature. It was filed even though the right to sue had not accrued to the Borrower as the loans under **HML.No.52** and **HML.No.53** had not been fully discharged by the Borrower. This is evident from a reading of **Ex.A4** Letter dated **16.02.2000** and **Ex.A5** Series Letter dated **06.03.2000** of the Borrower in response to **Ex.C2** Notice dated **10.02.2000** and Notice dated **01.03.2000** of the Company under Liquidation and **Ex.A8 Legal Notice** dated **08.05.2000** of the Borrower.

129. In all the above mentioned **Exhibits**, there are admissions of liability by the Borrower though the Borrower has not clearly explained what was the amount that was due and payable by the Borrower to the Company under Liquidation. The Borrower however requested the Company under Liquidation for negotiation to close the loans owing to his

economic conditions.

130. Part V of First Division of the Limitation Act, 1963 prescribes the period of limitations in respect of suits relating to immovable property. Article 62 of the Limitation Act, 1963, pertains to a suit to enforce payments of money secured by a mortgage or otherwise charged upon immovable property by a mortgage. The period of limitation prescribed is twelve (12) years. The limitation begins to run from the date when the money sued for becomes due.

131. It cannot be therefore said that after initiation of **C.S.No.916 of 2000** on **21.11.2000**, the limitation for right to sue for money commenced or right to sue for foreclosure of mortgage under **HML No.52** and **HML No.253** expired immediately after the written statement in **C.S.No.916 of 2006** was filed.

132. The argument that **Comp.A.No.431 of 2022** or for that matter **Comp.A.No.1515 of 2007** were barred in view of limitation prescribed under **Article 62** of the **Limitation Act, 1963** cannot be countenanced

merely because no counter claim was filed along with the written statement in **C.S.No.916 of 2000**. The limitation for the Company under liquidation under Article 63 of the Limitation Act, 1963 cannot be reduced merely becaue **C.S.No.916 of 2000** was filed on **21.11.2000** by the Borrower prematurely contrary to the admissions in **Ex.A4** Letter dated **16.02.2000** and **Ex.A5** Series Letter dated **06.03.2000** of the Borrower in response to **Ex.C2** Notice dated **10.02.2000** and Notice dated **01.03.2000** of the Company under Liquidation and **Ex.A8 Legal Notice** dated **08.05.2000** of the Borrower.

133. In fact, the Company under Liquidation is entitled to sell the **Schedule A & B Property** under Section 69 of the Transfer of Property Act, 1882. The Company under Liquidation as a "Mortgagee" has a period of limitation of 30 years to file a suit for foreclosure of rights under the mortgages in terms of Article 63 in Part V of the Limitation Act, 1963.

134. In computing the period of limitation for suit or application in the name and/or on behalf of the company which is being wound up, the period from the date of commencement of the wounding up of the company

to the date on which the wounding up order is made both inclusive and a period of one year immediately following the date of wounding up order shall be excluded. Either, **C.A.No.1515 of 2007** that was filed on **01.06.2007** or **C.A.No.431 of 2022** that was filed later on **27.10.2022** cannot be said that they were barred by limitation as the loan had not been repaid or liability discharged.

135. It cannot be said that limitation for the right to sue to recover money or for right to sue for foreclosure of mortgage under **HML.No.52** and **HML.No.253** had commenced on the date of written statement filed in **C.S.No.916 of 2000**. Thus, there is no merits in the submission of the Borrower.

136. Since the period of limitation cannot be said to have expired, the Company under Liquidation through the Office of the Official Liquidator is thus entitled to enforce its rights over the mortgaged property as the Borrower failed to discharge the loan.

137. **C.A.No.431 of 2022** is therefore disposed by directing the

Office of the Official Liquidator to file a fresh report giving the correct particular of the amounts paid by the Borrower, appropriated and balance payable.

138. The Office of the Official Liquidator may also take the assistance of a Chartered Accountant to look into the accounts in case of any complication and thereafter file a fresh report before this Court to recover the balance amount from the Borrower.

139. If there are no dues payable to any other creditors of the Company under liquidation and if the amounts have also been already paid to the contributories of the Company under liquidation, the Borrower may be given an option to settle the balance amount after due negotiation taking note of downward revision of bank rates in the later years.

140. In the light of the above discussions the issues framed are answered as under:-

1. *Whether the plaintiff* (Borrower) is entitled to redemption of mortgage in respect of 'A'*

schedule property?

Ans: *No*

2. *Whether the plaintiff* (Borrower) is entitled to redemption of mortgage in respect of 'B' schedule property?*

   Ans: *No*

3. *Whether the discharge pleaded by the defendant# (Company under Liquidation) is true?*

   Ans: *To be decided after a fresh report is filed by the Office of the Official Liquidator based on the observations based on the observations contained herein*

4. *Whether the defendant# (Company under Liquidation) is liable to repay the amount as alleged in the plaint?*

   Ans:*Yes. Subject to fresh report of the Office of the Official Liquidator*

5. *What is the amount due to the defendant# (Company under Liquidation)?*

   Ans:*To be decided after a fresh report is filed by the Office of the Official Liquidator*

6. *To what other relief?*

   Ans:*Nil for the present.*

141. In the result,

i. **C.A.No.516 of 2011** (formerly CS. No. 916 of 2000 renumbered as

O.S.No. 6891 of 2010) is dismissed.

ii. **C.A.No.431 of 2022** is disposed with the above observation.

iii. **EOW Chennai-II** is directed to return the originals to the office of the Official Liquidator for further action in this regard.

iv. No cost.

21.06.2024

jen/rgm

C.SARAVANAN, J.

jen/rgm