



C.M.A(MD).No.964 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 02.09.2024

CORAM:

**THE HON'BLE Mr. JUSTICE P.VELMURUGAN
AND
THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN**

C.M.A.(MD). No.964 of 2016

The Tamil Nadu Industrial Investment
Corporation Limited
rep. Through its
Branch Manager

... Appellant

Vs.

1.M/S. Jamal Bran Oil Mills Pvt. Ltd.,
Rep by its Director having its Registered]
Office at No.4/1 B.SHahul Manzil,
Railway Station Road, Ukkadai Ariyamangalam,
Tiruchirapalli-10.

2.S.Jamal Mohammed

3.S.S.Raja Mohammed

4.M.Mohammed Amanullah

5.S.S.Shajahan

... Respondents

Prayer : Civil Miscellaneous Petition filed under Section 32 of State



C.M.A(MD).No.964 of 2016

Finance Corporation Act, 1951, praying to set aside the Judgment and Decree dated 06.01.2016 passed in S.F.C.O.P.No.5 of 2009 on the file of the first Additional District Judge (PCR), Tiruchirappali, and consequently direct the respondents herein to pay the dues to the tune of Rs. 23,80,85,90.55/- along with interest at the rate of 27.75% till the date of realisation.

For Appellant : Mr.G.Murugan

For Respondents : Mr.K.Govindaraja
for R4 & R5
: No appearance of R1 to R3

JUDGMENT

[Order of the Court was made by **K.K.RAMAKRISHNAN, J.**]

This Civil Miscellaneous Appeal has been filed by the Tamil Nadu Industrial Investment Corporation Limited against the Judgment and Decree dated 06.01.2016 passed in S.F.C.O.P.No.5 of 2009 on the file of the first Additional District Judge (PCR), Tiruchirappali.

2.The petitioner is a Public Limited Company incorporated under the



Indian Companies Act, 1956. The first respondent herein approached the petitioner Corporation for granting a loan to the tune of Rs.84,60,000/- (Rupees Eighty Four Lakhs and Sixty Thousand Only). Thereby, they sanctioned loan to the respondents for a sum of Rs.84,60,000/- on 19.11.1991 for construction of building and purchase and installation of machineries. Thereafter, the respondents availed loan to the tune of Rs.76,40,000/-. The first respondent entered into a term loan agreement on 10.01.1992 for Rs.84,60,000/-. Out of this amount, a sum of Rs.76,40,000/- was disbursed to the first respondent on different dates and the first respondent agreed to repay the said principal amount of Rs.76,40,000/- in fourteen half yearly instalments and the interest thereon every six months. The respondent herein had agreed that in case the IDBI refinanced the rate of interest for the loan will be 4% per annum over and the above, the IDBI interest rate for refinanced amount with minimum of 19% per annum. The above rate is inclusive of interest rate and taxes also. However, in case of default, an additional interest of 5% per annum will be charged on the defaulted amount for the defaulted period and the same was agreed by the respondents. The first respondent through its Director had also executed a Registered Deed of Mortgage dated 11.03.1992 and a Deed of



C.M.A(MD).No.964 of 2016

Hypothecation of the building and the machineries also, as per the deed dated 11.03.1992. The respondents 2 to 5 along with others executed a deed of Guarantee on 11.03.1992 and 22.05.1992 for prompt repayment of the amount borrowed by the first respondent and thereby, they undertook personal liability for the amount due to the petitioner corporation. Now, some of the guarantors passed away and they are not added as parties to this case. The respondents committed default in payment of instalments of interest and principal due under the above said transaction on the due dates. Hence, the petitioner sent a notice to the respondents to pay the entire amount due to be paid by the respondents. Thereafter, the respondents did not pay the amount due to be paid by them to the petitioner corporation. Thereafter, the petitioner issued foreclosure notice on 05.07.1995 and issued a seven days notice on 25.07.1995 and 10.08.1996. As per the State Financial Corporation Act, the petitioner has power to take possession of the property and thereby, the petitioner took possession of the property mortgaged to the petitioner on 05.09.1996. Thereafter, the property was brought for auction. On 11.08.2003, the said property was sold in auction for a sum of Rs.52,00,000/-. The auction purchaser has become absolute owner of the said property, which belonged to the first respondent. After



C.M.A(MD).No.964 of 2016

auCTION of the above said properties, a huge amount was still due and payable by the respondents to the petitioner. Hence, further notice of demand for the balance due had been issued to the respondents. Despite the notice, they failed to pay the amount due. Hence, the petitioner filed a petition under Article 112 of the Limitation Act. Instead of paying the amount due, the respondents filed a suit in O.S.No.238 of 2004 before the learned District Munsif, Thuraiyur, challenging the auction held on 11.08.2003 and consequential relief for permanent injunction.

3.The petition filed by the appellant corporation was dismissed on the ground that the claim of the appellant corporation was barred by limitation. Aggrieved over the same, the appellant corporation have preferred this appeal before this Court.

4.Submissions of the learned counsel for the appellant:

4.1.The learned counsel for the appellant submitted that there is no limitation to file the petition under Section 31 of the State Financial Corporation Act, 1951, against the surety. The corporation has independent right of enforcement against the surety and to enforce the same no period of



limitation is prescribed in the Act.

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4.2.He further submits that the limitation act has no application to the enforcement against the surety under Section 31 of the State Financial Corporation Act, 1951. Therefore, the learned trial Judge has committed error in dismissing the application filed under Section 31 as if it was barred by limitation.

4.3.The learned trial Judge erroneously invoked Article 137 of the Limitation Act.

5.Submissions of the learned counsel for the respondents:

The learned counsel for the respondents submitted that the corporation conducted the auction and sold the property of the Principal borrower for a sum of Rs.52,00,000/- on 11.08.2003. Many of the Guarantors died and the petition was filed only against the respondents. There was no reason assigned to initiate action under Section 31 of the Limitation Act, after the lapse of many years. Therefore, the learned trial Judge has correctly dismissed the petition as barred by limitation. The Hon'ble Supreme Court in various decisions has applied both Articles 137 and 55. By applying both the articles, the claim of the petitioner is barred by



limitation. Therefore, the learned trial Judge correctly dismissed the petition.

6.This Court considered the rival submissions made by the learned counsel appearing for the appellant corporation and the learned counsel appearing for the respondents and perused the materials available on record and precedents relied by them.

7.Now the questions to be decided in this civil miscellaneous appeal are as follows:

(I).Whether the contention of the appellant corporation that Limitation Act is not applicable to file the application under Section 31 of the State Financial Corporation Act, 1951, legally acceptable or not?

(II)Whether the case of the appellant that the claim was within the period of limitation under Article 112 of the Limitation Act is acceptable?

(III)Whether the claim of the appellant corporation to initiate the action under Section 31 of the State Financial Corporation Act, against the Guarantor after lapse of many years from the date of the sale of the property of principal borrower ie., on 11.08.2003 is barred by limitation either under Article 137 or under Article 55 of the Limitation Act?



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8. Applicability of Limitation Act:

In the State Financial Corporation Act, there is no reference either to application of the Limitation Act or non application of the Limitation Act.

Section 31 of the State Financial Corporation Act reads as follows:

“Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof [or in meeting its obligations in relation to any guarantee given by the Corporation] or otherwise fails to comply with the terms of its agreement with the Financial Corporation or where the Financial Corporation requires an industrial concern to make immediate repayment of any loan or advance under section 30 and the industrial concern fails to make such repayment, [then, without prejudice to the provisions of section 29 of this Act and of section 69 of the Transfer of Property Act, 1882 ([4 of 1882](#))] [Inserted by Act 56 of 1956, Section 15 (w.e.f. 1-10-1956).], any officer of the Financial Corporation, generally or specially authorized by the Board in this behalf, may apply to the District Judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs, namely:-



_____(a)for an order for the sale of property pledged, mortgaged, hypothecated or assigned to the [Financial Corporation] [Substituted by Act 56 of 1956, Section 15, for " Corporation" (w.e.f. 1-10-1956).] as security for the loan or advance; or(aa)[for enforcing the liability of any surety; or] [Inserted by Act 43 of 1985, Section 19 (w.e.f. 21-8-1985).]

_____(b)for transferring the management of the industrial concern to the Financial Corporation; or

_____(c)for an ad interim injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the Board, where such removal is apprehended.”

8.1.Unless and until, there is a specific reference about the non applicability of the Limitation Act, 1963, the provision of limitation Act is made applicable to decide the Limitation. In similar circumstances, the Hon'ble Supreme Court while interpreting the provision of the land acquisition Act in the case of **Addl. Spl. Land Acquisition Officer v. Thakoredas, Major**, reported (1997) 11 SCC 412 at page 414, has held as follows:



3. Admittedly, the cause of action for seeking a reference had arisen on the date of service of the award under Section 12(2) of the Act. Within 90 days from the date of the service of the notice, the respondents made the application requesting the Deputy Commissioner to refer the cases to the civil court under Section 18. Under the amended sub-section 3(a) of the Act, the Deputy Commissioner shall, within 90 days from 1-9-1970 make reference under Section 18 to the civil court which he failed to do. Consequently by operation of sub-section 3(b) with the expiry of the aforestated 90 days, the cause of action had accrued to the respondents to make an application to the civil court with a prayer to direct the Deputy Commissioner to make a reference. There is no period of limitation prescribed in sub-section 3(b) to make that application but it should be done within limitation prescribed by the Schedule to the Limitation Act. Since no article expressly prescribed the limitation to make such application, the residuary article under Article 137 of the Schedule to the Limitation Act gets attracted. Thus, it could be seen that in the absence of any special period of limitation prescribed by clause (b) of sub-section (3) of Section 18 of the Act, the application should have been made within three years from the date of expiry of 90 days prescribed in Section



18(3)(b) i.e. the date on which cause of action had accrued to the respondent-claimant. Since the applications had been admittedly made beyond three years, it was clearly barred by limitation. Since, the High Court relied upon the case in Municipal Council [(1969) 1 SCC 873 : (1970) 1 SCR 51] which has stood overruled, the order of the High Court is unsustainable. The appeals are accordingly allowed, and the application made to the Court by the respondent stands rejected.

8.2.The same was further demonstrated by the Hon'ble Supreme Court in the following judgments by applying the various Articles.

JUDGMENT of the APEX COURT	RATIO LAID DOWN	Facts of the case
2006 9 SCC 617	The Hon'ble Supreme Court has applied the Article 137 of the Limitation Act, 1963, and has held that the application filed under Section 31 of the State Financial Corporation Act, 1951, is barred by limitation.	The application filed against the principal borrower on 25.10.1983. The application for the enforcement of liability against the surety filed on 02.01.1992. The Hon'ble Supreme Court has held that the same was barred by limitation.
2015 5 SCC 518	The Hon'ble Supreme Court has applied the Article 55 of the Limitation Act, 1963, and has held that the application filed under Section 31 of the State Financial Corporation Act, 1951, is barred by limitation.	The right to sue on the contract of indemnity arose after the assets were sold. Action taken under Section 29 of the SFC Act, 1951, and sold on 29.03.1984. The suit filed on 26.12.1996.



C.M.A(MD).No.964 of 2016

2015 5 SCC 617	The Hon'ble Supreme Court has applied the Article 55 of the Limitation Act, 1963, and has held that the application filed under Section 31 of the State Financial Corporation Act, 1951, is barred by limitation.	The period of 12 years as in the case of mortgage suit.
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8.3.From the above, it is clear that the Supreme Court applied the limitation act, to decide the issue of limitation When petitions were filed under Section 31 of the SFC Act, 1951. Therefore, there is no express prohibition to the application of the Limitation Act and hence, the contention of the appellant that Limitation Act is not applicable cannot be accepted. Accordingly, the question No.(I) answered against the appellant.

9.In this case, the following dates and events are relevant to decide the issue of limitation.

DATES	EVENTS
19.11.1991	The appellant corporation sanctioned the loan of Rs. 84,60,000/- for construction of the building and purchase erection of the machineries.
10.01.1992	Out of the said amount, Rs.76,40,000/- was disbursed. The first respondent company has entered into an agreement with the appellant corporation with undertaking to repay the said amount of Rs.76,40,000/- in fourteen half yearly instalments and interest thereon every six months.
11.03.1992	The deed of hypothecation of the building and machineries was executed.
11.03.1992	The respondents No.2 to 4 along with other executed the deed of guarantee.



C.M.A(MD).No.964 of 2016

22.05.1992	The fifth respondent also executed a deed of guarantee.
05.07.1995	The appellant corporation issued foreclosure notice.
05.09.1996	The appellant had taken the possession of the property.
06.01.1997	The first auction notice for the value of Rs.40,00,000/-.
28.02.1997	The second auction notice stayed by the Court.
23.07.1997	The third auction notice- no bidder.
22.12.1997	The fourth auction notice-no bidder.
11.05.1998	The fifth auction notice-no bidder.
21.05.2000	The sixth auction notice-no bidder.
11.08.2003	The seventh auction held and the property sold for the value of Rs.54,00,000/-
30.12.2003	The proceeds of the sale was credited to the loan account.
07.12.2009	The present petition has filed under Section 31 of the SFC Act, 1951, after the nearly 6 years from the date of the auction.

10. Applicability of Article 112

According to the appellant the receipt of the foreclosure notice dated 05.07.1995 on 07.07.1995 amounts to the acknowledgment of the debt. Therefore, as per its pleadings, the claim petition is within the time frame as per Article 112 of the Act. While considering this submission, it is seen that Article 112, reads as follows:

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C.M.A(MD).No.964 of 2016

Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government, including the Government of the State of Jammu and Kashmir.	Thirty years.	When the period of limitation would begin to run under this Act against a like suit by a private person.
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10.1. The said Article is not applicable to the present case. As per Section 2(l) of the Limitation Act, application is not a suit Section 2(l) reads as follows:

“Suit does not include an appeal or an application”

According to the Hon'ble Supreme Court, the proceedings either under Section 29 of the State Financial Corporation Act, or the claim under Section 31 of the State Financial Corporation Act, is not a suit. It is a claim application to recover the remaining due amount of the Principal borrower from the guarantor on the basis of the contract of guarantee.

10.2. The same was considered by the Hon'ble Three Judges Bench of the Supreme Court in the case of ***Gujarat State Finance Corporation.***



C.M.A(MD).No.964 of 2016

V.Natson Mfg.Co (P) Ltd., reported in **1979 1 SCC 193** and it has held as follows:

“The substantive relief in an application under Section 31(1) is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree”.

Therefore, the contention of the appellant corporation that the claim made under Section 31 amounts to a suit and hence, the claim was not barred by limitation cannot be accepted.

11.Applicability of Article 136:

Article 136 is as follows :

	<i>“Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
136	For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.	Twelve years	When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods when default in making the payment of delivery in respect of which execution is sought, takes place:



C.M.A(MD).No.964 of 2016

Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.”

The said issue of applicability of article 136 has elaborately considered by the Hon'ble supreme Court in the case of ***Maharashtra State Financial Corpn. v. Ashok K. Agarwal*** reported in ***(2006) 9 SCC 617*** and held that the article 136 has no application and article 137 alone applicable and the relevant paragraph as follows :

5. Section 31 of the Act contains special provisions for enforcement of claims by the State Financial Corporations. It is by way of a legal fiction that the procedure akin to execution of decrees under the Code of Civil Procedure has been permitted to be invoked. But one cannot lose sight of the fact that there is no decree or order of a civil court when we are dealing with applications under Section 31 of the Act. The legal fiction at best refers to a procedure to be followed. It does not mean that a decree or order of a civil court is being executed, which is a sine qua non for invoking Article 136. The proposition set out in Gujarat State Financial Corpn. [(1979) 1 SCC 193 : (1979) 1 SCR 372] found support in Everest



Industrial Corpn. v. Gujarat State Financial Corpn. [(1987) 3 SCC 597] Again in Maganlal v. Jaiswal Industries [(1989) 4 SCC 344 : (1989) 3 SCR 696] this Court noticed that an order under Section 32 is not a decree stricto sensu as defined in Section 2(2) of the Code of Civil Procedure, the Financial Corporation could not be said to be a decree-holder. This makes it clear that while dealing with an application under Sections 31 and 32 of the Act there is no decree or order of a civil court being executed. It was only on the basis of a legal fiction that the proceedings under Section 31 are treated as akin to execution proceedings. In fact this Court has observed that there is no decree to be executed nor is there any decree-holder or judgment-debtor and therefore in a strict sense it cannot be said to be a case of execution of a decree. Article 136 of the Limitation Act has no application in the facts of the present case. Article 136 specifically uses the words “decree or order of any civil court”. The application under Sections 31 and 32 of the State Financial Corporation Act is not by way of execution of a decree or order of any civil court.

11.1. In this case, as per the deed of guarantee, it is the duty of the appellant corporation to make a “demand” and the relevant portion of the guarantee deed is as follows:

“If at any time default shall be made by the company in the payment of the principal, interest or any other monies for



the time being due to the Corporation upon the Security of the mortgage ***“the Guarantor will on demand pay to the Corporation whole of such principal, interest and other monies”*** which then be due to the Corporation as aforesaid and will indemnify any keep the Corporation indemnified against all loss of principal interest or other monies secured by the Mortgage and all costs, charges and expenses whatsoever which the Corporation may incur by reason of any default on the part of the Company its successors or assigns.”

11.2. Further, as per the evidence of P.W.1, they have demanded the same, by issuing the foreclosure notice on 05.07.1995. There was no further demand notice issued before filing the claim application under Section 31 of the Act. Even the guarantors are not a party to the suit filed by the principal borrower in A.S.No.238 of 2004 questioning the auction for under valuation and the same was admitted by P.W.1. Therefore, *even though Article 136 is not applicable to the application under Section 31 of the Act as per the law laid down by the Hon'ble Supreme Court as the application is not the execution of the decree, the claim is hopelessly barred in these circumstances also for the reason that they have filed the present claim application only on 07.12.2009 long after 12 years from 05.07.1995.*



12. Applicability of Article 137:

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12.1. The Hon'ble Supreme Court in the case of ***Gujarat State Finance Corporation. V. Natson Mfg. Co (P) Ltd.***, reported in ***1979 1 SCC 193*** has held that the District Judge exercising power under Section 32 while considering the application under Section 31 of the Act is not a Persona Designata, but a Civil court of Ordinary jurisdiction. *Therefore, Article 137 of the Limitation Act, is applicable to decide whether the claim made by the appellant corporation is within time.* The same was considered by the Hon'ble Supreme Court in the case of ***Kerala State Electricity Board v. T.P. Kunhaliumma***, reported in ***(1976) 4 SCC 634 at page 639*** and the relevant paragraph is as follows:

22. The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two-judge bench of this Court in Athani Municipal Council case [(1969) 1 SCC 873 : (1970) 1 SCR 51] and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for



C.M.A(MD).No.964 of 2016

judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act.

12.2.To decide the claim of the appellant is within a time as per Article 137, it is relevant to extract the following article:

137	Any other application for which no period of limitation is provided elsewhere in the Division.	Three years	When the right to apply accrues.
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12.3.The Hon'ble Suprem Court in the case of ***Maharashtra State Financial Corpn. Vs. Ashok K.Agarwal*** reported in ***2006 9 SCC 617*** has held that three years period commences from the date of sale of property of principal borrowers. Applying the said principle, the claim of the appellant corporation is also barred under Article 137 of the Limitation Act for the reason that they have not made the claim within three years either from the date of the sale that took place on 11.08.2003 or from the date of the appropriation of sale amount in the account of the principal borrower on 30.12.2003.



C.M.A(MD).No.964 of 2016

13.Applicability of Article 55

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Article 55 is extracted hereunder for discussion:

<i>Article No.</i>	<i>“Description of Suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
55.	For compensation for the breach of any contract, express or implied, not herein specially provided for.	Three years	When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases.

13.1.The applicability article 55 has elaborately considered by the Hon'ble Supreme Court in the following cases and held that the period of limitation starts from the date of the sale of the principal debtor and the relevant portion is as follows:



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<i>Deepak Bhandari v. H.P. State Industrial Development Corpn. Ltd., (2015) 5 SCC 518</i>	<i>H.P. Financial Corpn. v. Pawna, (2015) 5 SCC 617 :</i>
28. The mortgage may have come to an end, but the contract of indemnity, which was an independent contract, did not. <i>The right to claim for the balance arose, under the contract of indemnity, only when the sale proceeds were found to be insufficient.</i> 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.	10... <i>The right to sue on the contract of indemnity arose only after the assets were sold off.</i> It is only at that stage that the balance due became ascertained. It is at that stage only that a suit for recovery of the balance could have been filed. Merely because the Corporation acted under Section 29 of the Financial Corporations 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 on 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.

13.2. In this case, the respondents executed a deed of guarantee on 22.05.1992. The principal borrower had committed default in the year 1995. Therefore, liability has occurred and foreclosure notice under Ex.P.5 was issued to the principal borrower and guarantors on 05.07.1995. According to the appellant corporation, they have served the said foreclosure notice and the said acknowledgment card alone marked under Ex.P.6 series. The same was served upon the guarantor on 07.07.1995. Further, the notice of demand has not been issued before initiating the claim proceedings under



C.M.A(MD).No.964 of 2016

Section 31 of the State Financial Corporation Act. According to P.W.1, no notice was issued apart from the foreclosure notice dated 05.07.1995. The guarantor has not repaid the amount mentioned in the foreclosure notice.

13.3. According to the appellant corporation, the guarantors acknowledged the debt upon receipt of the foreclosure notice dated 05.07.1995. This Court perused the records and finds no material to substantiate the said plea. Further, P.W.1 also admitted that they have not produced any documents to prove the acknowledgment of the debt and the following relevant portion of the evidence is as follows:

4, 5 பிரதிவாதிகள் பொறுத்தவரையும் கடன் நிலுவை ஒத்துக்கொண்டு ஆவணங்கள் எழுதி கொடுத்துள்ளார்கள். அந்த ஆவணத்தை நீதிமன்றத்தில் தாக்கல் செய்துள்ளேனா என்றால் அவர்கள் தனிப்பட்ட முறையில் எழுதி கொடுத்த ஆவணங்களை தாக்கல் செய்யவில்லை. நாங்கள் கேட்பு கடிதத்தை பெற்றுக்கொண்டதற்கான ஒப்புகை கடிதத்தை தாக்கல் செய்துள்ளோம். அந்த அஞ்சல் ஒப்புகை அட்டை தான் 4, 5 பிரதிவாதிகள் கடன் நிலுவை ஒத்துக்கொண்டதற்கான ஆதாரம் என்றால் ஆமாம்.

13.4. Therefore, there was a breach of contract and contract also was broken. Hence, as per Article 55 of the Limitation Act, the appellant



corporation ought to have filed the claim application within a period of three years from 09.07.1995.

14.Applicability of “*vigilantibus et non dormientibus jura subveniunt*”:

On 05.09.1996, the appellant corporation had taken possession of the property of the principal borrower on the basis of the foreclosure notice dated 05.07.1995. Thereafter, they had conducted seven public auctions on various dates as stated above. Finally, on 11.08.2003, the property was sold and on 30.12.2003, proceeds of the sale was credited to the loan account. The sale price was Rs.52,00,000/- and the liability of the guarantor still persisted on the date of the sale i.e., 11.08.2003. In the said circumstances, the appellant corporation has filed claim application dated 07.12.2009 under Section 31 of the State Financial Corporation Act, to recover the due amount of Rs.23,80,85,905/- by calculating the interest up to the period of 30.11.2009. P.W.1 who was examined on the side of the appellant corporation has not explained the delay and he stated that there was a delay in conducting auction of the property and hence, there was a delay in filing the application in the year 2009 for the debt of the year 1992 and the



C.M.A(MD).No.964 of 2016

relevant evidence is as follows:

1992ல் வழங்கப்பட்ட கடனுக்கு 2009ல் வழக்கு
போடுவதற்கு காரணம் உள்ளதா என்றால் ஏலம்
விடுவதற்கு தாமதம் ஆகிவிட்டது.

Apart from that, the corporation has claimed interest at the rate of 27.75% till the realization. In this case, as per the case of the principal borrower, original sanctioned loan amount is Rs.84,60,000/-. The corporation only disbursed Rs.76,40,000/-. The corporation in all fairness is duty bound to disburse the remaining capital amount of Rs.8,20,000/- and the principal borrower is also entitled to Rs.20,00,000/- capital subsidy for the reason that the industry is in the most backward area. The moratorium period also is 2 years from the first disbursement of loan. The repayment of principal amount of Rs.76,40,000/- is to be done in 14 half yearly instalments commencing from 01.01.1995 to 01.07.2001. Due to the non-disbursement of the remaining capital amount and the capital subsidy there was a delay. Apart from that, there was delay in getting the license from the Government and hence, they started production in October 1994 and continued production upto 31.05.1995. The appellant corporation declined to sanction over run costs of Rs.25,00,000/- the corporation is duty bound to disburse the entire loan amount stage by stage. In this case, the same was also not



done. But, they issued the foreclosure notice without even considering the legitimate request of the principal borrower to sanction the over run cost and closed the unit and sealed the unit on 05.07.1995. Therefore, the principal borrower was unable to pay the due and settle the due. After the closure of the unit on 05.07.1995, the sale was concluded only in the year 2003 ie., on 11.08.2003. According to the principal borrower, even the sale amount was low and the value of the property and machineries was more than a sum of Rs.3,56,00,000/-. In the foreclosure notice, even though they disbursed Rs.76,40,000/-, they calculated interest for Rs.84,60,000/-. Therefore, there is no *bonafides* in the entire proceedings of the appellant Corporation in all aspect. The authorities slept over from the date of the issuance of the foreclosure notice dated 05.07.1995 onwards and further they were not vigilant to make the claim within the reasonable time from the date of sale on 11.08.2003. Their action is clearly hit by the theory of intentional latches and hence, in this case, this Court finds that the authorities were not vigilant and hence, they are not entitled to any relief as per the legal maxim “*vigilantibus et non dormientibus jura subveniunt*”. This view is fortified by the Hon'ble three Member Bench of the Supreme Court in the case of ***Sagufa Ahmed v. Upper Assam Plywood Products (P)***



C.M.A(MD).No.964 of 2016

Ltd. reported in **2021 (2) SCC 317** and the relevant paragraph is as follows:

17. ...It is needless to point out that the law of limitation finds its root in two Latin maxims, one of which is vigilantibus et non dormientibus jura subveniunt which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.

15. In view of the above discussion in all aspect, all the questions raised in this case are answered against the appellant and this Court finds no reason to differ with the finding of the learned trial Judge that the claim of the appellant made under Section 31 of the State Financial Corporation to recover the due amounts of the principal borrower from the guarantor is hopelessly barred by limitation.

16. Accordingly, this Civil Miscellaneous Appeal stands dismissed.

[P.V.J.] [K.K.R.K.J.]
02.09.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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C.M.A(MD).No.964 of 2016

**P.VELMURUGAN, J.
AND
K.K.RAMAKRISHNAN, J.**

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C.M.A.(MD). No.964 of 2016

02.09.2024