(2014) 09 AP CK 0139

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 4722, 6391 of 2006, 24423, 24615 of 2007, 1690 of 2008 and 5375 of 2010

M. Mohammed Rafi APPELLANT

Vs

The Andhra Pradesh RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Andhra Pradesh Revenue Recovery Act, 1864 — Section 52, 59, 8
Companies Act, 1956 — Section 617
State Financial Corporations Act, 1951 — Section 29, 32G, 46B, 9

Citation : (2014) 09 AP CK 0139

Hon'ble Judges : A. Ramalingeswara Rao, J

Bench : Single Bench

Advocate : B. Chandrasen Reddy, Advocate for the Appellant; Y.N. Lohita, Advocate for the Respondent

Judgement

A. Ramalingeswara Rao, J.—These Writ Petitions are being disposed of in view of the involvement of common issue under the provisions of the Andhra Pradesh Revenue Recovery Act, 1864, for the recovery of debts due to the respondents and the defenses taken by the petitioners that those proceedings are barred by limitation.

2. Heard the learned Counsel for the petitioners and the learned Standing Counsel.

WRIT PETITION No. 4722 of 2006:

3. The petitioner was a Director of the company by name Economic Roofing (P) Limited having its registered office at Plot No. 13, Industrial Development Area, Renigunta Mandal in Chittoor District Andhra Pradesh. It was established as a small scale industrial unit for the manufacture of high quality asphalt roofing. The petitioner addressed a letter to the respondent on 07.07.1984 revoking his personal guarantee and the respondent replied on 18.07.1984 stating that they are not willing to release the guarantee. Thereafter, correspondence ensued. But

all of a sudden on 30.11.1998 the respondent issued a notice to the petitioner and two other persons who are the Managing Directors of the company informing that the assets of the company fetched only Rs. 30.15 lakhs and calling upon them to pay the said sum to the respondent. The petitioner replied on 15.12.1998 stating that he had already revoked the guarantee and was not under an obligation to the respondent. The respondent wrote a letter on 23.02.2000 informing the petitioner and two others that the assets of the company had been brought to sale and the highest bid was of Rs. 2.34 lakhs and calling upon them to pay the said amount to the respondent. The respondent addressed a letter to the petitioner on 05.07.2000 informing that they took possession of the Unit on 12.02.1998 and since the Unit was fetching low price they requested the petitioner to identify the buyers for the properties of the company. The petitioner replied to the respondent on 14.07.2001 pointing out that he ceased to be the Director and no longer interested in the company. The respondent sent a demand notice on 20.01.2006 to the petitioner and two others calling upon them to pay Rs. 680.72 lakhs failing which it was stated that proceedings under the Andhra Pradesh, Revenue Recovery Act would be initiated. They also sent another demand notice on 21.02.2006 demanding to pay an amount of Rs. 7,10,73,549/-. Challenging the same, the present Writ Petition was filed.

4. No counter affidavit is filed by the respondent.

WRIT PETITION No. 6391 of 2006:

5. The petitioner is a Director of the company by name Economic Roofing (P) Limited having its registered office at Plot No. 13, Industrial Development Area, Renigunta Mandal of Chittoor District in Andhra Pradesh. It was established as a small scale industrial unit for the manufacture of high quality asphalt roofing. The company approached the respondent for a term loan in the year 1978 and an amount of Rs. 13.69 lakhs was sanctioned. The petitioner gave personal guarantee to the said loan. Later on the Unit became sick. The loan account became irregular by 1983/84 and a sum of Rs. 17,63,305.30 became outstanding and overdue as on 30.06.1983, and the debt came to be recalled by the respondent. The respondent issued a letter dated 20.10.1983 threatening to take recourse to Section 29 of the State Financial Corporations Act. The petitioner revoked the personal guarantee by letter dated 21.08.1985 and the same was received by the respondents. But the respondents stated on 04.09.1985 that they were not willing to release the guarantee. The respondents issued a letter dated 23.02.2000 asking the petitioner to pay the balance amount as the sale fetched only an amount of Rs. 2.34 lakhs. On 28.04.2000 the petitioner wrote a detailed letter to the respondents stating that the remedy was barred by limitation. Without considering the said letter, the respondents sent a reply on 09.05.2000 holding that the petitioner continued to be liable and the petitioner stood by his reply dated 08.07.2000. The respondents issued another notice on 05.07.2001 informing that they have taken possession of the Unit on

12.02.1998 and the Unit was fetching very low price and requested the petitioner to identify the buyers for the property. The petitioner replied on 13.07.2001 stating that he is no longer interested in the affairs of the company. While so, on 20.01.2006 the respondents sent a demand notice to the petitioner and the erstwhile co-directors calling upon them to pay Rs. 680.72 lakhs and threatening proceedings under the Andhra Pradesh Revenue Recovery Act. Challenging the same as barred by limitation, the present Writ Petition was filed.

6. No counter affidavit is filed by the respondents.

WRIT PETITION No. 24423 of 2007;

7. The petitioner states that he is a retired Senior General Manager of Nizam Sugars Limited. He was on the Board of Directors of Pancom Chemicals Limited, Chittoor District, but has no financial interest in the same. The said company was initially a sick Unit and was purchased in sale by the Andhra Pradesh State Financial Corporation. The company availed the loan facility for a sum of Rs. 38.71 lakhs in 1987-1988 from the Andhra Pradesh Industrial Development Corporation and the petitioner stood as a guarantor. Thereafter, he resigned from the company on 13.05.1990. While so, he received a communication on 27.10.2004 making demand for a sum of Rs. 486.70 lakhs showing the principal amount of Rs. 38.71 lakhs and interest as Rs. 445 lakhs. The said notice was issued under the provisions of the Andhra Pradesh Revenue Recovery Act. It was followed by another notice by way of telegram on 20.01.2005 referring to the letter dated 27.10.2004. Yet again another telegram was issued on 07.05.2005. The petitioner states that he has nothing to do with the company and in any event the debt is time barred, The respondents again sent a communication on 02.03.2007 for the aforesaid sum of Rs. 486.70 lakhs. The petitioner thereafter received a distraint order on 07.11.2007 issued in exercise of powers under Section 8 of the Andhra Pradesh Revenue Recovery Act and challenging the same the present Writ Petition was filed.

8. This Court, by order dated 19.11.2007, granted interim stay for a period of four weeks initially, and thereafter the said order was not extended.

9. The second respondent filed a counter affidavit stating that the provisions of the State Financial Corporations Act are applicable to the respondents for recovery of dues to it. The Government of Andhra Pradesh issued Notification No. 88 published in the Andhra Pradesh Gazette No. 28-A dated 11.08.1983 in exercise of powers conferred by the proviso to Sub-section (1) of Section 52-A of the Andhra Pradesh Revenue Recovery Act declaring the loans and advances of other sums due to the respondent corporation to be recovered as arrears of land revenue. M/s. Pancom Chemicals Limited, formerly known as M/s. Nandini Trinity Polychemicals Limited, purchased the fixed assets of M/s. Chlorate India Limited in the year 1987 for a sale consideration of Rs. 41.00 lakhs in the sale conducted by the Andhra Pradesh State Financial Corporation. The second respondent sanctioned term loan of Rs. 20.42 lakhs to the company and subsequently the

company expanded the capacity at a cost of Rs. 62.29 lakhs against which the respondent sanctioned Rs. 25.25 - lakhs. The Andhra Pradesh State Financial Corporation also sanctioned a term loan of Rs. 62.73 lakhs to the company. The petitioner executed an agreement of guarantee with the respondents on 12.06.1993 making himself personally liable for the loan amount. Thus the resignation of the petitioner as Director of the company does not absolve the liability as the guarantor for the loan amount. When the company committed default in payment of dues, the respondent Corporation seized the assets of the company under Section 29 of the State Financial Corporations Act on 18.09.1998. The sale was approved by the Board of Directors of the Corporation on 27.12.2001 for a sale consideration of Rs. 13.00 lakhs and land and buildings on 29.12.2003 for a sale consideration of Rs. 19.25 lakhs. The second respondent received its pro rata share amount of Rs. 11.07 lakhs on 24.04.2004. After adjusting the sale proceeds, still the principal amount of Rs. 38,70,639.74, interest of Rs. 2,53,47,893.00 and penal interest of Rs. 1,68,47,511.00 is due from the company to the respondent Corporation as on 31.05.2004. A preliminary notice was issued under the provisions of the Andhra Pradesh Revenue Recovery Act on 27.10.2004 giving liberty to the petitioner to see if there is any dispute with regard to the correctness of the amount. Subsequently, a telegram was sent on 20.01.2005. The petitioner never met the officials of the Corporation after receipt of the telegram. Thereafter, a demand notice was issued to the petitioner on 02.03.2007 calling upon him to pay Rs. 486.70 lakhs.

10. Learned Counsel for the petitioner submits that the loan account is of the year 1987-1988, and the recovery proceedings initiated in the years 2005 and 2007 are barred by limitation. He submitted that he filed W.P. No. 21183 of 2008 challenging the proceedings of the Special Deputy Tahsildar of the Andhra Pradesh State Financial Corporation dated 20.08.2004 and the said Writ Petition was allowed by order dated 20.03.2012 and hence the present Writ Petition is also liable to be allowed, as the facts are identical in both the cases.

11. Learned Standing Counsel for the second respondent on the other hand submits that the second respondent therein was the Andhra Pradesh State Financial Corporation and in respect of the term loan of the year 1987 the plant and machinery was seized in the year 1998 under Section 29 of the State Financial Corporations Act and was sold in the year 2002. The land and buildings were sold in the year 2004. In those circumstances, this Court held that the recovery initiated by the respondents therein was barred by limitation. But, in the instant case after sale of the Unit on 27.12.2001 and 29.12.2003, a preliminary notice was issued on 27.10.2004 and it was followed by a telegram and demand notice on 02.03.2007. Hence, the learned Counsel for the respondents submits that the case is different on facts and is not barred by limitation. He relied on a judgment of the same learned Judge, who allowed W.P. No. 21183 of 2008, in W.P. Nos. 24912 of 2003 and 9900 of 2010 dated 05.06.2012, holding that the adjustments of the sale proceeds of the Unit towards loan account by way of part payments in January 2001 and the issuance

of impugned notice on 10.11.2003 was within time.

WRIT PETITION No. 24615 of 2007;

12. The petitioner states that he is a retired Senior General Manager of Nizam Sugars Limited. He was on the Board of Directors of M/s. Nagarjuna Chlorates Ltd., IDA, Bolaram, Medak District, but has no financial interest in the same.

13. The second respondent vide proceedings dated 11.12.2001 called upon the petitioner to pay a sum of Rs. 43,36,426/- with a threat to take action under the State Financial Corporations Act and the Andhra Pradesh Revenue Recovery Act in case of failure to pay the amount. A similar notice was also issued by the second respondent by proceedings No. AFC/SDT/RR Act/2004-05/8975 dated 09.02.2005 calling upon the petitioner to pay a sum of Rs. 3,63,69,394/- stating recovery of dues was effected under the Andhra Pradesh Revenue Recovery Act and also stating that the Unit was seized and sold under Section 29 of the State Financial Corporations Act. A notice was issued by the second respondent on 13.04.2005 asking to settle the loan account and failure to do the same would involve invocation of the provisions of the Andhra Pradesh Revenue Recovery Act. A similar notice was also issued by the second respondent on 06.06.2005 to pay the loan account amicably. Several notices were issued on 21.10.2005, 02.12.2005 and 09.09.2006. A notice was issued by the Tahsildar of APIDC Limited on 02.03.2007 to pay a sum of Rs. 580.92 lakhs which was due to the second respondent. On 04.07.2007 the original borrower addressed a letter to the Managing Director of Andhra Pradesh State Financial Corporation stating that he was prepared to repay the extent of principal amount which was due of his share of Rs. 14,50,500/- and enclosed a DD for Rs. 40,000/- on 03.07.2007. He also submitted an affidavit on 07.05.2007 stating that he intended to close the loan amount under one time settlement scheme. A telegram was served by the second respondent on 31.07.2007 requesting to submit the proposal for settlement of loan account. The petitioner personally met the officials and informed them that he had nothing to do with the Company and that in any event the debt was time barred. While so, a distraint order issued by the first respondent was received by the petitioner under Section 8 of the Andhra Pradesh Revenue Recovery Act on 07.11.2007, challenging which the present Writ Petition was filed.

14. A counter affidavit is filed by the first respondent stating that it sanctioned a term loan of Rs. 90.00 lakhs, and Rs. 11.00 lakhs towards equity and Rs. 9.07 lakhs as seed capital to M/s. Nagarjuna Chloride Limited, for establishing a unit at IDA, Bollaram, Medak District for manufacture of sodium chloride and potassium chloride. The Andhra Pradesh State Financial Corporation also sanctioned term loan to the company. The petitioner executed guarantee deeds dated 10.06.1981, 21.06.1983 and 25.03.1988 in favour of the first respondent Corporation making himself personally liable for the loan amount. When the company committed default in payment of dues to the financial institutions, the Andhra Pradesh State Financial Corporation, the lead institution seized the assets

of the company under Section 29 of the State Financial Corporations Act on 07.05.1995. Against the third advertisement for sale of plant and machinery of the company, an offer of M/s. Century Fibre Plate Private Limited for a sum of Rs. 32.50 lakhs was approved by the Board of APIDC on 31.05.1999 and the same was communicated to the Andhra Pradesh State Financial Corporation Limited. The first respondent received its pro-rata share of Rs. 18,43,847/- on 05.10.1999. After adjustment of the sale proceeds, still an amount of Rs. 95.68 lakhs towards principal, Rs. 276.31 lakhs towards interest and Rs. 177.68 lakhs towards penal interest is due to the first respondent as on 31.08.2000. A preliminary notice was issued on 05.11.1999 initiating action under the provisions of the Andhra Pradesh Revenue Recovery Act against the guarantors including the petitioner. Thereafter, a letter dated 06.10.2000 was addressed to the Collector, Hyderabad, requesting to issue instructions to the Sub-Registrar Offices not to entertain any transactions of the properties of the petitioner. Subsequently; a telegram was sent on 26.02.2003 to all the guarantors including the petitioner to attend the Corporation to settle the loan account. Thereafter, a demand notice was issued to the petitioner on 02.03.2007 calling upon him to pay Rs. 580.92 lakhs. After due procedure, final distraint order was issued under Section 8 of the Andhra Pradesh Revenue Recovery Act on 07.11.2007. The Government of Andhra Pradesh issued Notification No. 88 published in A.P. Gazette No. 28-A dated 11.08.1983 in exercise of powers conferred by proviso to sub-section (1) of Section 52-A of the Andhra Pradesh Revenue Recovery Act declaring the loans and advances or other sums due to the respondent Corporation to be recovered as arrears of land revenue.

15. The second respondent also filed a counter affidavit stating that it is an institution notified under Section 52 of the Andhra Pradesh Revenue Recovery Act as per G.O. Ms. No. 287, Revenue (N), dated 03.02.1978. The guarantees were furnished by the petitioner on 19.01.1983 and 23.02.1987. The borrower company availed the loans and made some payments till November 1989. When no payments were made thereafter, the Unit was seized in April 1995. The sale was held on 31.08.1999. The balance outstanding was Rs. 54,21,823/- which amount has to be paid with further interest from 01.02.1992. The second respondent issued a notice to the petitioner and other guarantors on 25.01.2000 which was sent to the addresses as given and received by the other guarantors. The Special Tahsildar of SFC wrote a letter on 02.08.2003 to the petitioner and the petitioner received the said notice personally on 02.08.2003. Thus, the action was taken within three years of the sale. The second respondent issued a notice on 11.12.2001 for payment of outstanding amount of Rs. 43,36,426/- followed by another notice on 09.02.2005 to pay a sum of Rs. 3,63,69,394/-, which includes interest and other charges that are liable up to the date of notice. They were issued under the provisions of the Andhra Pradesh Revenue Recovery Act.

WRIT PETITION No. 1690 of 2008:

16. The petitioner is a partnership firm under the name and style of Leo Lamp

Electrical & Electronics Industries. It manufactures GLS decorative and high voltage lamps, electrical and electronic tools and sells building construction materials. The petitioner applied for sanction of loan and the respondents, after considering the viability of the project, sanctioned a loan of Rs. 1,85,698/- under loan A/c. No. 69145016 and it was released between 15.04.1988 to 21.05.1988 in installments to the credit of the petitioner. Though the petitioner started production of lamps, due to Government''s restriction insisting for ISI mark which involves additional expenditure, the project did not go ahead. The petitioner approached the respondents for further loan to upgrade the machinery in order to comply with the directions of the Government. But, the respondents delayed the sanction of the additional loan amount and ultimately an amount of Rs. 47,000/- was released under loan A/c. No. 69145032 in the year 1990. In view of the delay, the petitioner sustained huge loss and was forced to shut down the manufacturing unit. It has become sick in the year 1993. The closure of the industry was informed to the respondents. The petitioner also requested for rescheduling of the loan and approached the respondents on several occasions, but no action was taken. In those circumstances, no amount could be paid after March 1993 to the respondents. The respondents seized the machinery on 17.05.1995 and released the sale advertisement inviting the tenders from the public in the "Eenadu" edition of 23.07.2001. In the mean while, the machinery became junk. In view of the long delay, the machinery worth Rs. 1,80,000/- could be sold for an amount of Rs. 3,000/-. Thereafter, after six years, the respondents issued a registered notice on 31.10.2007 under Section 52-A of the Andhra Pradesh Revenue Recovery Act indicating the principal amount of Rs. 1,85,698/- and the interest as Rs. 41,12,139/- in respect of loan A/c. No. 69145016, and the principal amount of Rs. 47,000/- and interest as Rs. 8,28,584/- in respect of the loan A/c. No. 69145032. Thus, the total amount of demand was Rs. 51,93,356/-. The said notice dated 31.10.2007 is challenged in the present Writ Petition as barred by limitation under Article 64 of the Limitation Act.

17. A counter affidavit is filed on behalf of the respondents stating that in spite of issuing several notices on 17.10.1992, 05.06.1993 and 15.09.1993 and finally another recall cum sale notice on 30.05.1996, the petitioner failed to take steps either to run the Unit properly or clear the arrears payable to the Corporation and finally they abandoned the Unit and intentionally made the Unit sick. The petitioner also shifted the entire machinery from the original place of Ragolu Village to Srikakulam Town in the year 1996 unauthorisedly without obtaining the prior approval of the Corporation and certain parts of the machinery were missing. The first respondent lodged a Police complaint also on 25.05.1998 for the missing parts. The respondents finally exercised the power under Section 29 of the State Financial Corporations Act and seized the machinery on 24.09.1996. A notice for sale of the machinery was published in the newspapers more than ten times. However, with great difficulty the Corporation sold the machinery for Rs. 9,500/- on serviceable and non serviceable basis on two occasions i.e., one

in January 2001 and the balance in March 2002. The sale proceeds were adjusted to the loan accounts. Though the respondents issued several notices, all the notices were returned unserved on the ground that the addressees were not residing in the place furnished by the Corporation. Thereafter, the Officers of the Corporation made discrete enquiries and came to know that the partners of the petitioner firm left Srikakulam and presently staying in Hyderabad. After obtaining the addresses of the petitioner, the notices under the Andhra Pradesh Recovery Act were issued on 31.10.2007 to the petitioner and other partners. Sri M. Pydi Raju, one of the partners of the firm, approached the second respondent and during discussions he agreed to settle the loan account on one time settlement scheme if the Corporation was ready to extend the concessions. Accordingly, the second respondent had furnished the statement of accounts to the petitioner on 21.11.2007. The particulars mentioned by the petitioner are not correct as the first term loan of Rs. 2,33,900/- was sanctioned on 18.09.1987 and the second term loan for acquiring ISI certification was sanctioned for Rs. 52,200/- on 26.03.1990 and disbursed an amount of Rs. 2,07,839/- and Rs. 47,000/- from the first and second term loans respectively. The other allegations in the affidavit in support of the Writ Petition were denied. It is also submitted that the respondents never gave up their efforts to recover their amount and in view of the shifting of the petitioner and change of their addresses, it took some time and the notices under the Andhra Pradesh Recovery Act were issued on 31.10.2007 to the petitioner. Under Section 32-G of the State Financial Corporations Act, the Corporation has got every right to recover the amounts due to it under the provisions of the Andhra Pradesh Revenue Recovery Act as arrears of land revenue. It is also submitted that the provisions of the State Financial Corporations Act prevail over other laws and they have the overriding effect over other laws as per Section 46-B of the State Financial Corporations Act.

18. Learned Counsel for the petitioner relied on a decision reported in N.A. Radha and others Vs. State of Andhra Pradesh and others, and submits that the amount barred by limitation cannot be recovered under the provisions of the Andhra Pradesh Revenue Recovery Act. On the other hand, learned Counsel for the respondents submits that the said decision has no application and relied on a Full Bench judgment of the Kerala High Court in Kerala Fisheries Corporation Ltd. Vs. P.S. John and Others, .

WRIT PETITION No. 5375 of 2010:

19. The case of the petitioner is that he along with three others promoted a company by name M/s. Kolleru Papers Limited, as a joint venture company with APIDC, the first respondent herein. The petitioner executed an agreement of guarantee in the year 1977. Thereafter, a decision was taken to transfer the shares of the promoters to a new group consisting of Sri T.R. Datla and Associates. The proposal was given to the first respondent and it includes the transfer of personal guarantees also. The proposal was accepted by the first respondent by letter dated 26.11.1982 and thus the petitioner and one

Seshavataram were relieved of the personal guarantees for the loans advanced by the institutions. After taking over of the company by the T.R. Datla and Associates, the name was changed to M/s. Guardian Papers Limited. While so,'' on 17.11.2007 the petitioner received a notice issued by the first respondent stating that an amount of Rs. 44.42 lakhs was advanced to M/s. Guardian Papers Limited upon execution of agreement of guarantee deeds and that there was a default and the outstanding is Rs. 45.72 lakhs towards principal and Rs. 2,399.56 lakhs towards interest. They were asked to show cause why the said amount should not be recovered under the provisions of the Andhra Pradesh Revenue Recovery Act. A reply was given by the petitioner on 13.12.2007 stating that he was not liable in view of the transfer of guarantee accepted by the consortium of banks including the first respondent by their letter dated 26.11.1982. On 16.02.2010, the second respondent came to the rented house and effected attachment of property under Section 9 of the Act. Challenging proceedings No. AGM(RR)TAH/GPL/2273/07 dated 17.11.2007 issued under Section 52A of the Andhra Pradesh Revenue Recovery Act, the present Writ Petition was filed.

20. A counter affidavit was filed by the first respondent stating that a temporary demand loan of Rs. 44.42 lakhs and equity of Rs. 41.49 lakhs were sanctioned to M/s. Guardian Papers Limited. Pursuant to the winding up order of this Court, an Official Liquidator was appointed and he took possession of the assets of the company. Later on they were sold to M/s. Sri Venkateswara Old Iron Merchants, Vijayawada. The first respondent did not receive pro-rata share of sale consideration since it was an unsecured loan and hence initiated action against the guarantors under the provisions of Andhra Pradesh Revenue Recovery Act. As on 31.08.2008, a total amount of Rs. 4718.19 lakhs is due. The petitioner executed and signed personal guarantee as co-promoter on 19.07.1977 at the time of obtaining temporary demand loan along with three other persons who promoted the company. The first respondent admits that the letter dated 26.11.1982 was issued in favour of the Directors of M/s. Kolleru Papers Limited, but states that there was a clause/provision that the existing promoters shall transfer shareholdings in favour of Sri T.R. Datla and Associates and new promoters shall furnish personal guarantees for the loans granted by the institutions in view of the change of management of the company. Since, the new promoters did not furnish any personal guarantee, the guarantees of the original promoters were continued. A preliminary notice was issued on 17.11.2007 by the first respondent to the petitioner and three other promoters. Since the new promoters did not furnish new guarantees, the old promoters continued to become liable as they were not relieved of the personal guarantees.

APPLICATION OF LIMITATION TO RECOVERIES:

21. In view of the rival contentions it has to be seen whether the provisions of the Limitation Act are applicable to the recovery of the dues by the financial corporations and what is the relevant date for staring the point of limitation.

22. The Andhra Pradesh Revenue Recovery Act was enacted consolidating the

laws relating to the collection of public revenue and simplifying them. Section 52-A of the said Act reads as follows:

"52-A. Recovery of sums due to certain banks and other public bodies as arrears of land revenue:--

Without prejudice to any other made of recovery which is being taken or may be taken, all loans granted and all advances made to any person-

(i) by any bank to which the re-payment of the said loans and advances is guaranteed by the State Government or;

(ii) by such corporation established by or under a Central Provincial or State Act, or Government Company as defined in Section 617 of the Companies Act, 1956, or such other public body as may be notified in this behalf by the State Government in the Andhra Pradesh Gazette;

(iii) by any Bank under any welfare scheme or programme, such as Prime Minister''s Rozgar Yojana and the like, sponsored by the State or Central Government as may be notified therein in this behalf by the State Government in the Andhra Pradesh Gazette;

together with interest on such loans and advances and all sums, such as rents, margin money and the like, due to the bodies mentioned aforesaid may be recovered in the same manner as arrears of land revenue under the provisions of this Act:

Provided that the State Government may, by notification in Andhra Pradesh Gazette, specify the loans and advances together with interest thereon, and other sum due to the bodies mentioned in item (ii) and item (iii) above which may be recoverable under the provisions of this Section."

23. Section 57-A deals with the revisional power of the State Government. Section 59 provides for filing of suits by the persons aggrieved within a period of six months from the time at which the cause of action arose.

24. The Supreme Court had an occasion to consider the provisions of the Kerala Revenue Recovery Act in State of Kerala and Ors Vs. V.R. Kalliyanikutty and Anr, . It was held therein that claims which are time barred on the date when a requisition is issued under Section 69(2) of the Kerala Revenue Recovery Act are not "amounts due" under Section 71 and cannot be recovered under the said Act.

25. This Court had an occasion to consider the issue of limitation in N.A. Radha and others Vs. State of Andhra Pradesh and others, . This Court speaking through a learned single Judge, following the judgment of the Supreme Court held that the Limitation Act applies to the recoveries under the provisions of the Andhra Pradesh Revenue Recovery Act and the amounts barred by limitation cannot be recovered under the Act.

26. However, a Division Bench of the Punjab and Haryana High Court in Jagdish

Rai Vs. The Haryana Financial Corporation, while interpreting Section 32-G of the State Financial Corporations Act held that the provisions of the Limitation Act are not applicable to the proceedings under Section 32-G of the Act.

27. A learned single Judge of the Madras High Court in Tamil Nadu Industries Investment Corporation Ltd. Vs. Kaleeswari Industries and Others, held that the guarantee given by the guarantor is continuing one and is not barred by limitation when the Corporation enforces the guarantee and files a petition within three years from the date of public auction. Another learned single Judge of the same High Court in Tamil Nadu Industrial Investment Corporation Ltd. v. T.V.L. Trinity Music Recorders I (2001) BC 186 also held to the same effect.

28. The Full Bench of the Kerala High Court in Kerala Fisheries Corporation Ltd.''s case (supra) held that the provisions, of the Limitation Act are not applicable to the proceedings under the Kerala Revenue Recovery Act and also the State Financial Corporations Act. It relied on a decision of the Supreme Court in A.S. Krishnappa Chettiar and Others Vs. Nachiappa Chettiar and Others, .

29. As already stated above, a learned single Judge of this Court in the case of the petitioner himself in W.P. No. 21183 of 2008, on the basis of the facts of that case and relying on the decisions in V.R. Kalliyanikutty''s case (supra) and N.A. Radha''s case (supra) held that the provisions of the Limitation Act are applicable to the proceedings for recovery of amounts under the Andhra Pradesh Revenue Recovery Act. His Lordship was not inclined to follow the Division Bench judgment of the Punjab and Haryana High Court in Jagdish Rai''s case (supra).

30. The Division Bench of this Court in K. Raja Rao Vs. A.P. Industrial Development Corporation Ltd. and The Mandal Revenue Officer, held that the recovery of the land revenue as well as dues falling under Section 52-A of the Andhra Pradesh Revenue Recovery Act stand on the same footing and can be recovered only in accordance with the provisions of the Limitation Act. In the said case it was noticed that the petitioner was a guarantor and a notice was issued to the borrower under Section 29 of the State Financial Corporations Act on 28.03.1990. It was followed by another letter dated 28.05.1992. Only a part payment was secured by sale of the Unit on 29.12.1993 and a notice was issued to the petitioner/guarantor for the first time on 22.03.1996 for recovery of the amount due under the Andhra Pradesh Revenue Recovery Act. It was held that the liability against the petitioner was crystallized on 28.03.1990, and though a notice was issued to the debtor to take steps under Section 29 of the State Financial Corporations Act for sale of the Unit, by their letter dated 22.03.1996, the debt became time barred as against the petitioner and the debt against the borrower being alive could be of no consequence. On analyzing the decisions of the Supreme Court on the point, the Division Bench deduced the following points:--

"1. Under the scheme of Section 52-A of the Revenue Recovery Act without prejudice to any other mode of recovery, which may have been taken or may be taken by banks and other public bodies were also brought on par with land revenue for the purpose of recovery under the Act and thereby all loans and advances granted by the State Government, corporation established by or under State or Central Act or Government Company or any public body notified as such in the Andhra Pradesh Gazette or by any bank was entitled to invoke the provisions of Revenue Recovery Act for recovery of loans with interest including all sums such as rents, margin money or the like.

2. The provisions of the Revenue Recovery Act have to be interpreted in such a manner so as to accord with the principles of natural justice and that the party sought to be proceeded against should at least have the minimum safeguard of having an opportunity to know the basis and the material on which the liability is sought to be imposed upon. In other words, a party ought to have an opportunity at such quantification of his dues and such quantified/ascertained sums can be recovered under the Revenue Recovery Act.

3. All claims which are legally recoverable and are not time- barred on the date when the process for recovery of the amounts by the sale of movable properties as land revenue was taken up by the District Collector can be recovered under the Revenue Recovery Act.

4. The liability of the sureties would crystallize when the proceedings under the State Financial Corporation Act would be initiated for sale of properties of the borrower company.

5. Limitation as to guarantor''s liability depends on the terms and conditions of contract and limitation starts running only when actually a demand for payment is made and it was refused by guarantors, however, such a demand should not be time-barred against the principal debtor i.e. it should be a live claim and cessation of operation of accounts cannot be treated as refusal to pay by the principal debtor.

6. A continuing guarantee is different from ordinary guarantee. There is difference between a guarantee which stipulates that the guarantor is liable to pay only on a demand by the creditor, and a guarantee which does not contain such a condition. The liability to pay may arise, on the principal debtor and guarantor, at the same time or at different points of time. A claim may be even time-barred against the principal debtor, but still enforceable against the guarantor. The parties may agree that the liability of a guarantor shall arise at a later point of time than that of the principal debtor. A claim may be time-barred against the principal debtor, but still enforceable again the guarantor.

7. Limitation against a guarantor under a continuing guarantee (which specified that the liability of the guarantor is pay on demand) would not run from the date of each advance, but only run from the timed when the balance was constituted and a demand was made for payment thereof.

8. In a case where the guarantor liable to pay on demand the limitation begins to

run when the demand is made and the guarantor commits breach by not complying with the demand.

9. When the demand is made by the creditor on the guarantor, under a guarantee which requires a demand as a condition precedent for the liability of the guarantor, such demand should be for payment of a sum which is legally due and recoverable from the principal debtor. If the debt had already become time-barred against the principal debtor, the question of creditor demanding payment thereafter, for the first time, against the guarantor would not arise. When the demand is made against the guarantor, if the claim is a live claim (that is a claim which is not barred) against the principal debtor, limitation in respect of the guarantor will run from the date of such demand and refusal/non-compliance. Where guarantor becomes liable in pursuance of a demand validly made in time the creditor can sue the guarantor within three years, even if the claim against the principal debtor gets subsequently time-barred.

10. Ceasing of operation of accounts by the borrower for some reason or the other would amount to a demand by the bank on the guarantor to pay the amount due in the account or refusal by the principal debtor and guarantor to pay the amount due in the accounts"

31. Another Division Bench of this Court to which one of the Judges of the Division Bench in K. Raja Rao''s case (supra) is also a party, in The A.P. State Financial Corporation Vs. Duvvuru Rajasekhar Reddy, , held that the provisions of the Limitation Act are applicable to the recoveries made under Section 32-G of the State Financial Corporations Act as well as the proceedings under the Andhra Pradesh Revenue Recovery Act. The Division Bench followed the decisions in V.R. Kalliyanikutty''s case (supra), Maharashtra State Financial Corporation Vs. Ashok K. Agarwal and Others, and N.A. Radha''s case (supra) and held the decision of the Division Bench of the Punjab and Haryana High Court in Jagdish Rai''s case (supra) as contrary to the decision of the Supreme Court in V.R. Kalliyanikutty''s case (supra).

32. Another Division Bench of this Court in V.K. Roy Vs. Commissioner of M.C.H., Hyderabad and Others, while dealing with the recovery of property tax as arrears of land revenue, held that the property tax cannot be recovered under the Andhra Pradesh Revenue Recovery Act when the claim is barred by limitation. For coming to the said conclusion, the Division Bench of this Court relied on the decision of the Supreme Court in V.R. Kalliyanikutty''s case (supra).

33. In view of the legal position, the facts in each case have to be examined.

RELIEF:

34. In W.P. Nos. 4722 and 6391 of 2006 the petitioners are the Directors of the company. The loan was sanctioned to the petitioners in the year 1978 and the petitioners gave personal guarantee to the said loan. Later on, the Units became sick. The respondents issued a letter on 20.10.1983 seeking to take recourse

under Section 29 of the State Financial Corporations Act. The respondents issued a letter on 23.02.2000 asking the petitioners to pay the balance amount as the sale fetched only an amount of Rs. 2.34 lakhs. In the meanwhile, the possession of the Unit was taken on 12.02.1998 and it was put to sale. On 20.01.2006 the respondents sent a demand notice to the petitioners and the erstwhile co-directors calling upon them to pay the outstanding amount by which time it became time barred. In view of the same, the Writ Petitions are allowed.

35. In W.P. No. 24423 of 2007 the petitioner is a guarantor. The company availed loan facility during the year 1987-1988. He received a communication demanding the outstanding amount on 27.10.2004. The respondents state that the petitioner executed an agreement on 12.06.1993 and the machinery was seized on 18.09.1988. The same was approved for sale by the Board of Directors on 27.12.2001. The land and buildings were sold on 29.12.2003. A preliminary notice was issued under the provisions of the Andhra Pradesh Revenue Recovery Act on 27.10.2004. Thereafter, a notice was issued to the petitioner on 02.03.2007. In view of this, it cannot be held that the action by the respondents is barred by limitation. The Writ Petition is, accordingly, dismissed.

36. In W.P. No. 24615 of 2007 a notice was issued to the petitioner by the second respondent on 11.12.2001 calling upon him to pay the outstanding amount. A similar notice was issued by the first respondent on 09.02.2005. A notice was issued by the Tahsildar of APIDC Limited on 02.03.2007. Challenging the distraint order issued by the first respondent, the Writ Petition was filed. The first respondent states that they sanctioned a term loan and the petitioner executed deeds of guarantee on 10.06.1981, 21.06.1983 and 25.03.1988. The assets were seized for committing default of the dues on 07.05.1995. Against the third advertisement for sale, the sale was approved by the Board on 31.05.1999. The first respondent issued its pro-rata share of money on 05.10.1999. The preliminary notice was issued on 05.11.1999 initiating action under the provisions of the Andhra Pradesh Revenue Recovery Act against the guarantors including the petitioner. A telegram was sent to him on 26.02.2003. Thereafter, a demand notice was issued to the petitioner on 02.03.2007 and after following due procedure, a final distraint order was issued on 07.11.2007. The second respondent issued a notice on 11.12.2001 for the payment of outstanding amount followed by another notice on 09.02.2005. In the meanwhile, the Special Tahsildar of SFC wrote a letter on 02.08.2003 to the petitioner. The notice issued by the second respondent on 11.12.2001 was within the period of three years. The second respondent issued a notice to the petitioner and other guarantors on 25.01.2000 and later on, the Special Tahsildar wrote the letter on 02.08.2003 by which time the action of the second respondent under the Andhra Pradesh Revenue Recovery Act was barred by limitation. The second respondent issued the notice dated 11.12.2001 demanding payment of outstanding amount followed by another notice on 09.02.2005. Since the sale was held on 31.05.1999, the letter of the Special Tahsildar dated 02.08.2003 is not within the period of three years and hence the action of the second respondent cannot be

upheld but so far as the claim of the first respondent is concerned it is saved by limitation as the preliminary notice was issued on 05.11.1999 initiating action under the provisions of the Andhra Pradesh Revenue Recovery Act. In view of the same, the Writ Petition is partly allowed.

37. In W.P. No. 1690 of 2008 the petitioner is a partnership firm in whose favour the loan was released between 15.04.1988 to 21.05.1988. The Unit became sick in 1993. The respondents seized the machinery on 17.05.1995 and it was advertised for sale on 23.07.2001. After six years, a notice was issued under Section 52-A of the Andhra Pradesh Revenue Recovery Act. But the respondents state that the machinery was seized on 24.09.1996. The same was published more than ten times and it ultimately the Unit was sold in January 2001 and March 2002. The loan became due in January 2001 and the Unit was sold for the first time. Hence the proceedings taken after the period of limitation are not valid and accordingly, the Writ Petition is allowed.

38. In W.P. No. 5375 of 2010 the petitioner is the promoter of the company as well as the guarantor. He executed an agreement of guarantee in the year 1977. The company went into liquidation pursuant to the winding up order passed by this Court. The petitioner received a notice from the first respondent demanding payment of outstanding amount. The rented house was attached on 16.02.2010. Thereafter, challenging the notice dated 17.11.2007 issued under Section 52-A of the Andhra Pradesh Revenue Recovery Act, the Writ Petition was filed. The counter affidavit was filed by the respondents stating that the petitioner executed personal guarantee on 19.07.1977 and a preliminary notice was issued on 17.11.2007. It appears that the Official Liquidator by his letter dated 01.05.2003 stated that the Unit was sold to Sri Venkateswara Old Iron Merchants. The preliminary notice was issued by the first respondent on 17.11.2007, much beyond the period of limitation. In view of this, the Writ Petition is liable to be allowed, and the same is accordingly allowed.

39. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

