

(2013) 11 MAD CK 0272
In the Madras High Court
Case No : O.S.A. No. 258 of 2013

The Tamil Nadu Industrial Investment Corporation Ltd.	APPELLANT
Vs	
M/s. Decolyte Engineering Industries and Mr. P. Nagarajan	RESPONDENT

Date of Decision : 21-11-2013

Acts Referred:

Citation : (2013) 6 CTC 647 : (2013) 5 LW 804

Hon'ble Judges : R. Sudhakar, J; Pushpa Sathyanarayana, J

Bench : Division Bench

Advocate : S. Parthasarathy, SC for Mr. K. Magesh, for the Appellant; B.S. Sreenivasan for R1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Pushpa Sathyanarayana, J.—Aggrieved by the order of the learned single Judge dated 05.12.2012 wherein and by which the Original Petition No. 300 of 2012 filed for determining the liability and for direction to the Respondents 2 and 3 to pay a sum of Rs. 25,27,329.30 jointly and severally with interest at the rate of 16% p.a., was dismissed as time barred, the Tamil Nadu Industrial Investment Corporation Limited has preferred the present Appeal. The Appellant Tamil Nadu Industrial Investment Corporation Limited [for short Appellant Corporation] is a public financial institution incorporated under the Companies Act to grant loans and advances to industries in the State of Tamil Nadu and Pondicherry on the security of hypothecation and mortgages. The First Respondent M/s. Decolyte Engineering Industries, which had set up an Engineering Unit at Karapakkam for the manufacture of pressed components, applied for loan with the Appellant Corporation and it sanctioned a term loan of Rs. 9.90 Lakhs and a soft loan of Rs. 0.70 Lakh on 20.4.1990 and 05.6.1990 respectively on certain terms and conditions. The Respondents also agreed to the terms and conditions for availing the loan as per which the term loan is to be repaid in 10 equal half yearly instalments and the soft loan is to be repaid in 4 equal half yearly instalments. The First Respondent mortgaged the factory by the Deed of Mortgage, D. No.

3903 dated 28.6.1990 and also hypothecated the machinery by a Deed of Hypothecation dated 28.6.1990.

2. Though initially the First Respondent remitted the instalments amount regularly, defaulted in paying the subsequent instalments which constrained the Appellant Corporation to initiate legal action by issuing notice. As no response was forthcoming from the Respondents, the Appellant Corporation preferred Original Petition before this Court in O. P. No. 300 of 2012 on 23.01.2012 for recovery of a sum of Rs. 25,27,329.30 with interest at the rate of 16% per annum from the date of petition till the date of realization.

3. The learned single Judge, on consideration of the materials available on record, dismissed the Original Petition on the ground of limitation holding that limitation to recover the amount due is only three years and as such, the claim of the Appellant Corporation is barred by time. Feeling aggrieved, the Appellant Corporation is before this Court.

4. The only issue arises for consideration in this Appeal is as to whether the claim of the Appellant Corporation is barred by limitation.

5. Heard Mr. S. Parthasarathy, learned Senior Counsel appearing for the Appellant Corporation and Mr. B.S. Sreenivasan, learned counsel for the Respondents 2 and 3 and perused the records.

6. In support of the contentions raised, the Appellant Corporation has filed the following documents:-

S. No.

Date

Description of Documents

Remarks

1.

03/05/1990

Terms and Conditions of Term Loan

Original

2.

18/06/1990

Terms and Conditions of Soft Loan

Original

3.

28/06/1990

Registered Mortgage

Copy

4.

28/06/1990

Deed of Hypothecation

Original

5.

29/06/1990

Equitable Mortgage Letter

Copy

6.

28/06/1990

Deed of Guarantee

Original

7.

29/01/2011

Notice of first respondent

Copy

8.

18/08/2006

Sale Deed

Copy

9.

11.11.2003

W.P. No. 31927/03

Copy

10.

28/09/2006

Order in WA No. 556/2004

Copy

11.

29/01/2011

Notice by First Respondent

Copy

12.

28/04/2011

Reply Notice

Copy

7. From the materials available on record, it is seen that the First Respondent secured loan from the Appellant Corporation by a Deed of Mortgage dated 28.6.1990 and also hypothecation of machinery by a Deed of Hypothecation dated 28.6.1990. On default, the appellant Corporation brought the property to sale. The last payment was received on 27.02.2006 by selling the assets mortgaged to the Appellant Corporation.

8. At this stage, it is relevant to take note of the other litigations initiated by the First Respondent in this regard. Originally, the First Respondent filed Writ Petition in W.P. No. 31927 of 2003 challenging the legal action taken by the Appellant Corporation and the same was dismissed on 11.11.2003. Aggrieved by the same, the First Respondent filed appeal being W.A. No. 556 of 2004, which also stood dismissed on 13.12.2005. Feeling dissatisfied, the First Respondent preferred an appeal before the Hon"ble Supreme Court in Special Leave to Appeal (Civil) No. 1446 of 2006 and got it dismissed on 10.7.2006. Subsequently, the First Respondent filed a petition for Modification of the order of this Court dated 13.12.2005 passed in W.A. No. 556 of 2004 by permitting them to pay the One Time Settlement to the Appellant Corporation and the same was also dismissed on 28.9.2006. Therefore, it is clear that the sale of the secured assets of the First Respondent in public auction on 27.02.2006 reached finality after disposal of the SLP and the Modification Petition filed by the First Respondent.

9. Not contented with the above proceedings, the First Respondent also filed a Writ Petition being W.P. No. 1127 of 2012 seeking for a Mandamus directing the Appellant Corporation to initiate appropriate action in the light of the representation dated 28.02.2009 and to direct the Appellant Corporation to set aside the sale deed dated 18.08.2006. The said Writ Petition was dismissed on 27.01.2012.

10. At this juncture, it is relevant to refer to paragraph No. 7 of the Original Petition No. 300 of 2012, which reads as follows:-

The cause of action arose at Chennai, where the term loan was granted on 20/04/1990 when the term loan was sanctioned, on 05/06/1990 when the soft loan sanctioned, on 05/06/1990 when the loan documents were executed, on

29/01/2011 when notice of query raised by the first respondent, on 28/04/2011 when the reply notice was sent by the petitioner Corporation.

11. From the above facts, it is clear that the last payment was received on 27.02.2006 by selling the assets mortgaged with the Appellant Corporation and the amount was crystallised in 2011. Therefore, the contention of the learned Senior Counsel appearing for the Appellant Corporation that the limitation period has to be calculated from the date when the last payment was received and not from the date of execution of the Mortgage Deed cannot be brushed aside. In this regard, it will be useful to extract Article 62 of the Limitation Act, 1963, which reads as follows:-

Description of Suit

Period of Limitation

Time from which period begins to run

62. To enforce payment of money secured by a mortgage or otherwise charged upon immovable property.

Twelve years

When the money sued for becomes due.

If the date of receipt of the last payment is to be counted, the period for recovering the amount is available till 24.02.2018, i.e., twelve years from the last payment.

12. It is admitted fact that the loan was secured by a Deed of Mortgage dated 28.6.1990 as also the hypothecation of machinery. It is also not in dispute that the term loan was agreed to be paid in ten equal half yearly instalments whereas the soft loan was to be repaid in 14 equal half yearly instalments. Therefore, from the above terms and conditions of the contract, it is clear that the money becomes due only after five years.

13. In this regard, the decision of this Court and the Hon'ble Apex Court are relevant to decide the question of limitation in the nature of proceeding initiated by appellant.

14. In this case, action has been taken and Original Petition is filed under the provision of Section 31 of the State Financial Corporations Act, 1951. It is, therefore, necessary to consider the import of Section 31 of the Act. Section 31 reads as follows:

31. Special Provision for enforcement of claims by Financial Corporations-

(1) 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 the 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 required an industrial concern to make immediate repayment of any loan or advances u/s 30 and the industrial concern fails to make such repayment then, without prejudice to the provisions of Section 69 of the Transfer of Property Act, 1982 any officer of the Financial Corporation generally or specially authorised 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 the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance; or

(aa) for enforcing the liability of any surety; or

(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.

(2) An application under sub-section (1) shall state the nature and extent of the liability of the industrial concern to the Financial Corporation, the ground on which it is made and such other particulars as may be prescribed.

15. From the reading of the above, it is evident that the special procedure contained in Section 31(1) is not something akin to a mortgage suit to recover the money by sale of mortgaged property. An application thereunder is neither a plaint as contemplated by the Court Fees Act. The reliefs contemplated by Section 31(1) on being granted does not result in a money decree or decree for recovery of outstanding loans or advances. An application u/s 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. This question is answered in the case of Maganlal Vs. Jaiswal Industries, Neemach and Others, decided by the Apex Court.

16. In Maganlal Vs. Jaiswal Industries, Neemach and Others, , the Hon"ble Apex Court, in paragraph 24 of the judgment, observed as follows:-

24. The purpose of enacting Sections 31 and 32 of the Act was apparently to provide for a speedy remedy for recovery of the dues of the Financial Corporation. This purpose however was, in cases covered by clause (a) of sub-section (1) of Section 31 confined to the stage of obtaining an order akin to a decree in a suit, in execution whereof the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance could be sold. Sections 31 and 32 of the Act cut across and dispense with the provisions of the Code from the stage of filing a suit to the stage of obtaining a decree in execution whereof such properties as are referred to in

clause (a) of sub-section (1) of Section 31 could be sold. After this stage was reached sale in execution of an order u/s 32 of the Act was for purposes of execution put at par with the sale in execution of a decree obtained in a suit, by enacting sub-section (8) of Section 32 of the Act. This sub-section as noted earlier provides that an order of attachment or sale of property under this section shall be carried into effect as far as practicable in the manner provided in the Code of Civil Procedure, 1908 for the attachment or sale of property in execution of a decree as if the Financial Corporation were the decree-holder.

17. Similar view was expressed in *Rajasthan Financial Corporation Vs. Banwari Lal and Others*, and the relevant passage in paragraph 8 of the judgment reads as follows:-

8. The observation of the court below that the application was barred by the limitation in view of Article 137 of the Limitation Act, is also perverse and bad in law. The court below was not appreciated sections 31 and 32 of the Act in right perspective. As already stated the application u/s 31(1) of the Act cannot be treated as plaint. The substantive relief sought in the application is alike the relief sought in the execution application.

18. This Court in *Tamil Nadu Industrial Investment Corporation Ltd. Vs. Tvl. Trinity Music Recorders and 2 others*, held in paragraph 11 as follows:-

11. Learned counsel for the petitioner also relied on *Eswari Industries, Shencottai and Others Vs. Tamil Nadu Industrial Investment Corporation Ltd.*, wherein it is observed that the order passed u/s 31 of the State Financial Corporation Act is not a decree under the Code and procedure of making, the calculation held, was a process of execution of a decree already passed under the Act. Learned counsel for the petitioner also relied upon *Maganlal Vs. Jaiswal Industries, Neemach and Others*, , and also *Rajasthan Financial Corporation Vs. Banwari Lal and Others*, . It is stated that where an application is filed by State Financial Corporation u/s 31(1) for enforcing the liabilities of the sureties which are co-extensive with the principal debtor who did not make the repayment of loan, the substantive relief sought in the application is like the relief sought in an execution proceedings. Hence, it cannot be treated as a plaint and it would not be barred by limitation provided under Article 137 of Limitation Act. These decisions are applicable to the case on hand.

19. Further, in the case of *Tamil Nadu Industrial Investment Corporation Limited Vs. Kalathi and Co. and Others*, , which was decided by one of us (R. Sudhakar, J.), in respect of the very same Appellant Corporation, this Court answered the point of limitation in favour of the Appellant Corporation. We are in agreement with the reasoning contained therein as it is in consonance with the decision of the Apex Court in *Maganlal's* case (cited supra).

20. In the light of the above discussion, it is clear that the last payment received by the Appellant Corporation was on 27.02.2006 by selling the secured assets and the Original Petition was filed on 23.01.2012, i.e., after 5 years, 10 months

and 27 days, however, within twelve years. As such, O.P. No. 300 of 2012 is not barred by limitation. The finding of the learned single Judge that limitation to recover the amount due is only three years, is unacceptable as the Application under Sections 31(a), 31(aa) and 32 of the State Financial Corporation Act, 1951 is not a plaint and it is to be treated as a decree. In view of the aforesaid position in law, it is an inevitable one to conclude that the period prescribed under Article 136 of the limitation Act is applicable and not Article 137 as decided by the learned single Judge. We answer the issue in favour of the appellant. In view of the foregoing reasons, the finding given by the learned single Judge for dismissing the Original Petition as barred by limitation cannot be sustained and the same is liable to be set aside. Accordingly, the O.S.A. is allowed and the order of the learned single Judge passed in O.P. No. 300 of 2012 is set aside. The Original Petition is allowed as prayed for. No costs.