

State Industries Promotion Corporation Vs Hannic Aromatics Ltd.

Court: Madras High Court

Date of Decision: Jan. 17, 2013

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 2(2)
State Financial Corporations Act, 1951 â€” Section 27, 29, 30, 31, 31(1)

Citation: (2013) 3 BC 483 : (2013) 3 BC 1 : (2013) 1 CTC 654

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Advocate: Narmada Sampath, for the Appellant;

Final Decision: Dismissed

Judgement

Vinod K. Sharma, J.

State Industries Promotion Corporation of Tamil Nadu Limited, a Company registered under the Companies Act

and having its registered office at No. 19-A, Rukmani Lakshmi pathy Road, Egmore, Chennai-600 008, a notified Financial Institution defined

under the State Financial Corporations Act, 1951, has filed this Petition u/s 31(aa) of the State Financial Corporations Act, 1951, for recovery of

Rs. 8,49,46,899.50/- (Rupees eight crores forty nine lakhs forty six thousand eight hundred and ninety nine and paise fifty only) together with

future interest @ 14.5% per annum from 1.3.2001 till realisation and for costs. M/s. Hannis Aromatics (P) Limited, Respondent No. 1 herein,

registered under the Companies Act, approached the Petitioner for loan assistance for construction of building and purchase of machinery. The

Respondent No. 1 was sanctioned term loan of Rs. 80,00,000/- (Rupees eighty lakhs only) on 30.1.1985. On request of the Respondent No. 1,

second term loan of Rs. 10,00,000/- (Rupees ten lakhs only) was sanctioned on 31.8.1998. In addition, the Respondent No. 1 was also granted

IDBI Seed Capital Soft loan of Rs. 10,00,000/- (Rupees ten lakhs only) on 5.3.1985. The Petitioner also participated in equity of Rs. 3,00,000/-

(Rupees three lakhs only) on 27.3.1985 with stipulation of buy-back. The Respondent No. 1 was also granted subsidy of Rs. 14,77,000/-

(Rupees fourteen lakhs seventy seven thousand only).

2. The Respondent No. 1 secured the loan referred to above by Deed of Hypothecation, Deed of Undertaking, registered Mortgage and

Equitable Mortgage, dated 28.3.1985. These documents were executed to secure the 1st term loan of Rs. 80,00,000/- (Rupees eighty lakhs

only). For the II term loan, Deed of Hypothecation, Deed of Undertaking and Equitable Mortgage were executed on 29.9.1988. IDBI Seed

Capital Soft loan of Rs. 10,00,000/- (Rupees ten lakhs only) was secured by deed of agreement, dated 7.3.1985 and the Deed of Personal

Guarantee, dated 28.3.1985.

3. Whereas an agreement was executed for repurchase of equity shares on 15.4.1985. Similarly, Central subsidy of Rs. 14.77,000/- (Rupees

fourteen lakhs seventy seven thousand only) was secured as per the Deed of Agreement, dated 15.4.1985 and deed of Personal Guarantee.

Guarantee Deeds were executed by the Respondents 3 & 5 guaranteeing the loan and financial assistance granted to the Respondent No. 1.

4. The First Respondent-Company had agreed to repay the loan amount as per repayment schedule in the Loan Agreement. On default by the

Respondent No. 1 in repayment of loan amount as per schedule, the Petitioner in exercise of its powers under the terms of the Loan Agreement,

foreclosed the loan on 15.9.1992.

5. This action of the Petitioner was challenged by the Respondent No. 1 in W.P. No. 18968 of 1992 and operation of the order foreclosing the

loan was stayed by this Court.

6. The Writ Petition was thereafter admitted and interim stay was granted subject to the condition that the Respondent No. 1 should deposit a sum

of Rs. 25,00,000/- (Rupees twenty five lakhs only) on or before 31.12.1992. The Respondent No. 1 failed to comply with the conditional order

which resulted in the Petitioner taking possession of the unit of the Respondent No. 1 on 8.1.1993 in exercise of powers conferred u/s 29 of State

Financial Corporations Act.

7. The Petitioner thereafter advertised for the sale of mortgaged assets of the First Respondent and offer of M/s. Modern Steel Industries of Rs.

57,00,000/- (Rupees fifty seven lakhs only) was accepted on 6.12.1995. The credit of this amount was given to the Respondent No. 1.

8. It is the case of the Petitioner that as on 28.2.2001 a sum of Rs. 8,49,46,899.50 (Rupees eight crores forty nine lakhs forty six thousand eight

hundred and ninety nine and paise fifty only) was still due from the Respondent No. 1. Whereas Writ Petition filed by the Respondent No. 1 was

dismissed by this Court on 6.3.1996.

9. It is pleaded case of the Petitioner that legal notice was issued on 6.8.1999 to the Respondents invoking Personal Guarantee to pay the

outstanding amount due from the Respondent No. 1. The Petitioner was notified to be Financial institution and provisions of Sections 27, 29, 30,

31, 32A to 32G, 41A & 46B of the State Financial Corporations Act, 1951 were made applicable to the Petitioner.

10. It is the case of the Petitioner that Application u/s 31(aa) of the Act is in the nature of execution and therefore, it is within time.

11. On the pleadings referred to above, it is prayed that this Court may pass order in favour of the Petitioner against the Respondents, determining

the liability of the Respondents and directing the Respondents 2 & 3 jointly and severally to pay a sum of Rs. 8,49,46,899.50/- (Rupees eight

crores forty nine lakhs forty six thousand eight hundred and ninety nine and paise fifty only) together with future interest.

12. The pleadings in this case shows that the Petitioner had foreclosed the loan on 15.9.1992 and the stay order granted by this Court stands

vacated on 31.12.1992 because of non-payment of Rs. 25,00,000/- (Rupees twenty five lakhs only) being the condition precedent to interim

order of stay.

13. It is also proved on record that possession of the Unit was taken on 8.1.1993 and the property was sold on 6.12.1995 for sale consideration

of Rs. 57,00,000/- (Rupees fifty seven lakhs only). Therefore, cause of action to take steps to recover the amount agreed to be repaid, arose

against the Respondents 2 & 3 on 6.12.1995 and in any case on 13.3.1997, when the amount of Rs. 57,00,000/- (Rupees fifty seven lakhs only)

was given credit to the account of the Respondent No. 1 leaving balance still due.

14. The question to be considered in this case therefore is:

Whether this Petition can be treated to be within limitation?

15. Mrs. Narmada Sampath, learned Counsel for the Petitioner very ably argued that the Deed of Guarantee executed by the Respondents 2 & 3

is continuing guarantee and therefore, cause of action to proceed against the Respondents 2 & 3 arose when the guarantee was invoked to claim

the balance amount on 6.8.1999. This Petition being in the nature of execution, filed on 12.4.2001 therefore is within limitation and this case be

posted before the Master for recording evidence.

16. In support of this contention, the learned Counsel placed reliance on the judgment of this Court in Tamil Nadu Industrial Investment

Corporation Ltd. Vs. Tvl. Trinity Music Records and 2 others, wherein this Court was pleased to lay down as under:

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 Corporations 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 v. Jaiswal Industries, Neemach. and also Rajas than Financial Corporation v. Banwari Lal. It is stated that where an application is

Filed by State Financial Corporations 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.

17. The learned Counsel for the Petitioner also placed reliance on the judgment of the Hon"ble Rajasthan High Court in Rajasthan Financial

Corporation Vs. Banwari Lal and Others, laying down that Application for enforcing liability of sureties is not a Plaint and is in the nature of

Execution proceeding, therefore not barred u/s 137 of the Limitation Act.

18. Reliance was also placed on the judgment of the Hon"ble Supreme Court in Syndicate Bank Vs. Channaveerappa Beleri and Others, , laying

down that Suit for enforcement of Guarantee Bond, Guarantor's liability depends on the terms of the contract, a continuing guarantee is different

from ordinary guarantee. There is also a 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. It was also laid down that depending on the terms of guarantee, the liability of a

Guarantor is limited to a particular sum.

19. In order to appreciate the arguments raised by the learned Counsel for the Petitioner, it would be necessary to go by the pleadings. It is a case

of the Petitioner that the loan was foreclosed on 15.9.1992. It is also admitted that the stay granted by this Court stood vacated on 31.12.1992.

Not only this, that the Petitioner invoked Section 29 of the State Financial Corporations Act, 1951 on 8.1.1993 and took it to logical conclusion

by sale of the property mortgaged and hypothecated to secure the loan.

20. The Hon"ble Madhya Pradesh High Court in Dogar Tools Private Limited and Others Vs. Madhya Pradesh Financial Corporation and

Another, , was pleased to lay down as under:

8. After hearing the Counsel for the Appellants, we are of the opinion that the Appeal deserves to be dismissed. It appears that it is a case where

borrower is clearly interested in delaying the repayment. The unit is lying closed since the year 1982-1983 and all efforts for settlement have come

to an end. It is a case of long drawn litigation. Initially proceedings u/s 31 were started. Ultimately they were withdrawn long back in the year

1996. Still the Petitioners did not pay any amount to the Corporation. Liberty was given to proceed u/s 29 though no such liberty was required or

called for as the scope of proceedings u/s 29 of the State Financial Corporations Act to recover dues in case of default, by sale of mortgaged

property is an independent right. u/s 29 of the Act, the Financial Corporation has the right to take over the management or possession or both of

the industrial concern as well as the right to transfer by way of lease or sale the industrial unit and realise the amount of loan and such a transfer

shall be treated as if it had been made by the owner of the property. Section 31 contains the special provision for enforcement of claims by

Financial Corporation. An application can be made to the District Judge praying for the reliefs of an order for the sale of the property pledged,

mortgaged or hypothecated or assigned as security for the loan or advance, or for enforcing the liability of any surety, or for transferring the

management of the industrial concern to the Financial Corporation, or 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. There is no effect on proceedings u/s 31. The matter came up for consideration by the Apex Court in the case of Andhra

Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, . It has been candidly laid down by the Apex Court that the

Financial Corporation has a remedy available to it u/s 29 of the Act even after having obtained an order or a decree after invoking the provisions of

Section 31 of the Act but without executing that decree/order. The legislature has left the choice to the Corporation to act u/s 31 of the Act in the

first instance and save its rights and remedies u/s 29 to be availed at a later stage. However, the Corporation cannot simultaneously pursue two

remedies at the same time. The reach and scope of the two remedies is essentially different. A decree u/s 31 of the Act not being a money decree

or a decree for realisation of the dues of the Corporation, recourse to it cannot debar the Corporation from taking recourse to the provisions of

Section 29 of the Act by not pursuing the decree or order u/s 31 of the Act. Similarly, if the Corporation has taken recourse to the provisions of

Section 29 of the Act, there is no bar for it without taking Recourse proceedings to their logical conclusion to abandon them and approach the

Court u/s 31 of the Act. It is also open to the Corporation to proceed u/s 31 in the first instance and to proceed subsequently u/s 29 of the Act. In

the instant case, proceedings u/s 31 have been withdrawn in the year 1996 to start the proceedings u/s 29. Hence, there is no impact of the

withdrawal of the proceedings u/s 31 of the Act.

21. Not only this, the question whether Article 136 or 137 would apply to recover the amount from the sureties has been decided by the Hon'ble

Supreme Court in Maharashtra State Financial Corporation Vs. Ashok K. Agarwal and Others, wherein the Hon'ble Supreme Court was pleased

to lay down as under:

2. According to the Respondents Article 137 of the Limitation Act was applicable and as per that provision such an application could be made

within a period of three years. Article 137 applies in cases where no period of limitation is specifically prescribed. It was submitted that as no

period of limitation is prescribed for an Application under Sections 31 & 32 of the Act, Article 137 would apply. The Addl. District Judge upheld

the contention of the Respondents and the Application of the Corporation was dismissed as barred by limitation. The Appellant-Corporation filed

an Appeal against the said order in the High Court of Judicature at Bombay, Bench at Panaji. The Appeal was dismissed by the High Court by the

impugned order dated 22nd July, 1998. The High Court upheld the reasoning of the Additional District Judge.

3. The learned Counsel for the Appellant placing reliance on Article 136 of the Limitation Act argued that the said Article prescribes a limitation

period of twelve years in cases of execution of decrees and orders passed by Civil Courts and therefore, the Courts below erred in rejecting the

Application as barred by limitation. Article 136 is reproduced below:

4. The argument is that an Application u/s 31 is in the nature of Execution proceedings, therefore, Article 136 applies which allows a period of

twelve years for execution of decrees and orders and the Application was, thus, within time. It was submitted that the Courts have upheld the legal

fiction that Applications u/s 31 of the State Financial Corporations Act are treated in the nature of Execution proceedings. In support of this

submission the learned Counsel referred to Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others, It was

observed by this Court in this case that "the substantive relief in 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.

5. Sections 31 of the Act contains special provisions for enforcement of claims by State Financial Corporations. It is by way of a legal fiction that

the procedure akin to execution of decrees under the CPC 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 u/s 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 the case of Gujarat State Financial Corporation (supra) found support in Everest Industrial Corporation and Others Vs.

Gujarat State Financial Corporation, Again in Maganlal Vs. Jaiswal Industries, Neemach and Others, , this Court noticed that an order u/s 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 & 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 u/s 31 are treated as akin to Execution proceedings. In fact this

Court has observed that there is no decree to be executed nor there is 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 & 32 of the State Financial Corporations

Act is not by way of execution of a decree or order of any Civil Court.

6. Article 137 of the Limitation Act applies in the facts of the present case. When Article 137 is applied, the application moved by the Appellant-

Corporation on 2nd January, 1992 for proceeding against the sureties i.e. the Respondents herein, was clearly barred by time and the Courts

below were correct in holding so. To recall the facts of the present case, the notice demanding repayment of the amount of loan was issued against

the borrower, that is, M/s. Crystal Marketing Private Limited on 8th March, 1983 and the Application under Sections 31 & 32 of the State

Financial Corporation was filed against the said borrower on 25th October, 1983. The liability of sureties had crystallised then.

The amendment u/s 31 of the State Financial Corporations Act which authorises the State Financial Corporations to take action u/s 31 of the Act

for enforcing the liability against the sureties, was brought about in the year 1985 by introduction of sub-section (aa) in Section 31(1) of the Act.

Even after this amendment the Appellant did not wake up to take any step against the sureties in the present case. Notice was issued to the sureties

only on 7th December, 1991 and the Application for enforcement of liability against them was filed on 2nd January, 1992. The Application,

therefore, was clearly barred by time and the decisions of the Courts below cannot be faulted. The Courts below rightly dismissed the Application

on the ground that it was barred by limitation. The Appeal has no merit. It is dismissed with no order as to costs.

22. In view of the authoritative pronouncement by the Hon"ble Supreme Court, the law laid down by this Court in Tamil Nadu Industrial

Investment Corporation Ltd. Vs. Tvl. Trinity Music Recorders and 2 others, and law laid down by the Hon"ble Rajasthan High Court in Rajasthan

Financial Corporation v. Banwari Lal and others, AIR 1997 Raj. 273 (supra), cannot be said to be good law.

23. Once it is held that the cause of action arose to the Petitioner on 16.3.1995, when property was sold by invoking Section 29 of the State

Financial Corporations Act, 1951, and the amount recoverable was still outstanding. The cause of action to proceed therefore arose on

16.3.1995. The limitation to recover money from surety is only three years. The Application filed in the year 2001 is even beyond the period of

three years, if the date of receipt of amount of Rs. 57,00,000/- (Rupees fifty seven lakhs only) i.e. 13.3.1997 to be taken as the date for cause of

action.

Consequently, this Petition being time barred is ordered to be dismissed, but with no order as to costs.