



A.No.27 of 2022 in O.P.No.486 of 2016

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O.P.No.486 of 2016**

**P.VELMURUGAN,J.**

This application has been filed under Section 31(1) (aa) and 32(11) of the State Financial Corporation Act seeking to reject the Original Petition in O.P.No.486 of 2016.

2. The applicant is the 2<sup>nd</sup> respondent in the main O.P. and he is the guarantor to the loan. He has filed the present application to reject the main original petition in O.P.No.486 of 2016 stating that to invoke the personal guarantee, there is a limitation of 3 years and therefore beyond that, the personal guarantee cannot be invoked which is barred by limitation.

3. The learned counsel appearing for the applicant/2<sup>nd</sup> respondent submitted that the first respondent/petitioner in the petition itself averred that foreclosure notice was issued on 30.10.1996 and the mortgaged property was taken over on 09.06.1999. The petitioner corporation, on 08.10.2009, handed over the mortgaged property to M/s.TIIC being the pari passu holder, who in turn sold the



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properties and on 24.11.2011 released a sum of Rs.1,06,80,388/- from and out of sale proceeds to the petitioner Corporation. The learned counsel further submitted that it is to be noted that from that day i.e. 24.11.2011 within 3 years the personal guarantee should have been invoked whereas, the present petition has been filed in the year 2016 which is after the lapse of 5 years. Therefore, it is barred by limitation and he has placed reliance on the judgment of the Hon'ble Supreme Court reported in **2006(4) CTC 89 (Maharashtra State Financial Corporation vs. Ashok K. Agarwal and others)** in which the Hon'ble Supreme Court held that the period of limitation for invoking personal guarantee is 3 years and as per the Article 136 and 137 of the Limitation Act,, the application to invoke personal guarantee for recovery of short fall amount is barred by limitation. The application under Section 31 and 32 of the State Financial Corporation Act, is not the way of execution of a decree or order of any civil suit. Therefore, the petition is beyond the period of limitation of 3 years and hence the main original petition has to be rejected.

4. The learned Counsel for the first respondent/petitioner would submit that there is no quarrel with reference to the proposition of law that invoking personal



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guarantee, the period of limitation is 3 years whereas, against the company, it is 12 years. Therefore, the citations referred to by the learned counsel for the applicant/2<sup>nd</sup> respondent is not applicable to the present case and the application is liable to be dismissed.

5. Heard and perused the records.

6. Admittedly the applicant/2<sup>nd</sup> respondent is the personal guarantor for the loan availed by the second respondent/1<sup>st</sup> respondent company. The first respondent/Corporation is a deemed Financial Corporation within the meaning of the Section 46(1) of the State Financial Corporations Act, 1951. Since the applicant company committed default in repaying the loan, foreclosure notice was issued and the assets of the company were also taken over by the first respondent/petitioner and handed over to M/s.TIIC. The mortgaged properties were sold by the 5<sup>th</sup> respondent/TIIC and released a sum of Rs.1,06,80,388/- on 24.11.2011 to the first respondent/petitioner. Thereafter, the first respondent filed the petition in O.P.No.486 of 2016 under Section 31(1) (aa) of the State Financial Corporation Act invoking the personal guarantee after the lapse of five years.



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Even a bare reading of the averment in the petition itself shows that the petitioner received the pro-rata share from the sale proceeds from the M/s.TIIC on 24.11.2011 itself. The first respondent/petitioner should have filed the petition to invoke personal guarantee under section 31 (1) (aa) of the State Financial Corporations Act, 1951, within 3 years, whereas, it has been filed only in the year 2016 which is beyond limitation. Therefore the main original petition is liable to be rejected on the ground of limitation.

7. Accordingly, this application is allowed and the main petition in O.P.No.486 of 2016 is rejected.

**24.03.2022**

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