KAMS010062982025

R.A./154/2025

IN THE COURT OF THE IV ADDL. DISTRICT AND SESSIONS JUDGE, MYSURU

Dated this the 17th day of April 2026

:PRESENT:

Sri. P.J.Somashekar, B.A. LL.M.,
IV Addl. District & Sessions Judge
Mysusru

R.A./154/2025

Appellant/ Plaintiff		Sri S.V.Padmaprasad S/o S.A Vasantharajaiah, Aged about 56 years, Managing partner M/s Chandranatha Brick Industries, Sy.No.83/1, Saraguru, H.D.Kote Taluk, Mysuru District. (By **Sri C.G.Ramamohan-**Adv.,)
		V/s
Respondents/ Defendants	1.	Karnataka State Financial Corporations A body corporate established under The State Financial Corporations Act 1951 having its Head office at No.1/1, Thimmaiah Road, Bengaluru-560 052 Branch office at

No.13 and 13/1,
8th Cross,
Kamakshi Hospital Road,
Saraswathipuram,
Mysuru-570 009

By its Asst.General Manager.

2. Sri S V Shivaram
S/o P Venkatachalaiah,
Aged about 55 years,
Residing at
D.No.MIG-938,
20th Cross, 1st Stage,
D-Block, J.P.Nagar,
Mysuru - 570 008.
(R1 By **Sri A.S.Nataraj-Adv.,**
R2-Sri J M Aiyanna-Adv.,)

::JUDGMENT::

This is memorandum of civil Appeal filed under Order XLI Rule -1 R/w.Sec. 96 of CPC., by the Appellant / plaintiff and sought for to set-aside the Judgment and Decree passed by the Senior Civil Judge and JMFC., at H.D.Kote in O.S.No.11/2015 dated 02.04.2025.

2. For the sake of convenience, the rank of the parties to the instant appeal will be referred to their original ranks as they stood before the Trial Court.

3. **Nutshell of the plaint are as under:-**

The Respondents being the Defendants and the Appellant being the Plaintiff filed the suit in O.S.No.11/2015 for declaration and consequential relief of Permanent Injunction, to declare that he is the absolute owner in possession and enjoyment of the schedule property and the Sale Deed dated 21.07.2009 executed by the 1st Defendant in favour of the 2nd Defendant is null and void which is not binding on him and restraining the Defendants and the persons who are claiming under them from interfering with his peaceful possession and enjoyment of the plaint schedule property on the ground the schedule property belongs to one Smt.Kanaka Prabhamma W/o Late S.P.Anantha Rajaiah who donated the plaint schedule property in his favour at the time of Gift Deed came to know the plaint schedule property has been converted for non-agricultural purpose, in fact, the donation was caused in his favour for the purpose of running a brick industry in the name and style of Chandranatha Brick Industry. The conversion of the plaint schedule property has taken place on 11.03.1996 based on an order passed by the Asst. Commissioner, Hunsur District, Hunsur, after the donation in the natural sense of the term, came to be conferred with the statute of holder of the property in question required of him to pay the assessment payable on the property which came to be remitted by him, for the purpose of running the brick industry approached the first Defendant and in response to his Application the 1st Defendant visited the property, valued it and initially recommended a loan of Rs.14 ,00,000/- and additional sum of Rs.2,80,000/-, in total Rs.16,80,000/-, later on reduced to a sum of Rs.9,21,000/- by releasing the said amount in 2 installments of Rs.6,41,000/- and Rs.2,80,000/-, based on the said sanction the 1st Defendant released the loan in phases in the form of installment with the help of said loan raised the brick industry and the business did not run well as a result of which sustained loss and approached the 1st Defendant for extension of time for payment of the debt. However, the 1st Defendant remained a glorious spectator not whispering anything to him. After raising the loan has repaid a sum of Rs.2,00,000/- and thereafter, a sum of Rs.1,00,000/- on 26.11.2009, an additional sum of Rs.2,98,000/- and Rs.2,000/- on 29.03.2010 totally a sum of Rs.6,00,000/-.

4. The Plaintiff in the plaint has further alleged the 1st Defendant added interest to the principal which showed that the repayment undertaken by him had no impact on the quantum of loan, during the said period, on man occasions approached the office of the 1st Defendant with a plea to remove the phenomenal interest that had been charged and restrict to repayment to bare minimum with an option to repay the same under one time settlement, however, the 1st Defendant neither responded nor positive but negative manner and has presumed that his request had been taken on board by the 1st Defendant and was being considered, in the mean time, it was a bolt from the blue when the 1st Defendant barged into the plaint schedule property and he was shocked to know no bounds and trying to get in touch

with the officers of the 1st Defendant and these events in a day or two from then, the 1st Defendant removed all the movable equipments that were found in the property in question which had by least consideration amount to a sum of Rs.15,00,000/- and he was felt as though the sky was falling on him, without loss of any time, rushed to the 1st Defendant and questioned the prudence of the claim and move made by them in barging into the plaint schedule property and removing all the movable items found in the suit schedule properties. The 1st Defendant was cool as a cucumber and replied that under powers vested in it under the provisions of the State Financial Corporation Act had done so and they would sell it and thereafter, deducted the same towards the repayment of the loan and he did not have enough words to refute the said claim, however, regained his composure as to who could the unit be sold without even informing him, for which the 1st Defendant answered that they had sent the notice to him, but he did not received it and at no point of time has received any notice from the 1st Defendant and the

1st Defendant avoided the said question but maintained that notice was deemed to have been served and he has not received any notice and if he had received the notice he would have served on him and arrangement to repay it. The alleged seizure of unit said to have been done on 08.10.2001 is high handed, unlawful and illegal because of the 1st Defendant has not followed the prescribed procedure in issuing the show cause notice U/Sec. 29 of the State Finance Corporation Act, 1951. The alleged State Finance Corporation Act, dated 28.01.2001 said to have been issued is not in accordance with the prescribed procedure and formal of the 1st Defendant, before initiating the action U/Sec. 29 of State Finance Corporation Act, it was mandatory to issue the legal notice informing the proposed action giving detailed statement of account showing the principal dues, interest dues and other debits which has fallen due to on the date of issuance of legal notice giving sufficient time of 15 days to regularize the account and in default followed by proper show cause notice in the prescribed format. Calling upon the borrower to repay the outstanding amount or to show cause only why the proposed action should not be taken within 15 days and cause shown by the loanee shall be considered by the 1st Defendant, the order to take over the unit should be take over the unit should be sent to the loanee well in advance to enable him to dues unfortunately 1st Defendant has not followed the prescribed procedure, the act of seizure of the unit is done in great haste, since the order passed to take over the unit and mahazar said to have been drawn at the time of seizure of the industrial concerned are on the same date i.e. on 08.10.2001 as defective and created for the purpose of C C of show cause notice.

5. The Plaintiff in the plaint has further alleged that the 1st Defendant has not adopted legal course and did not expect such enhance and trying to pacify by saying that they would looked into actual situation later and he has been continued in possession of the plaint schedule property and he has not allowed anyone to get into the plaint schedule property and the 1st Defendant had no answer and could not

refuse the said claim. The Defendant No.1 issued a letter dated 24.12.2002 informing that subsequent to the alleged take over of the unit by the 1st Defendant was given to him and consequent to the default sale notice was issued in Andolana newspaper dated 08.11.2002 and nobody has come forward to buy the assets, because the unit is not in his possession and if the loan has been regularized within seven days as per sec.29 of State Finance Corporation Act, which implies the possession of the unit is with him, the unit has not taken over by the 1st Defendant and alleged seizure of the unit U/Sec. 29 of State Finance Corporation Act, was aborted and 1st Defendant did not initiated fresh action for seizure of the unit after following due process of law, but the Defendant No.1 illegally went on issuing sale notifications in Andolana local paper on 08.11.2002, 30.01.2003, 09.06.2003 and 13.01.2008 which has not evolved response from the buyers again the Defendant No.1 got issued sale notice in Andolana local paper dated 07.08.2008 calling for tenders from independent buyers and alone bid of Respondent No.2 for

RS.5.25 lakhs was accepted and issued the sale letter which is unfair and unjust act on the part of the 1st Defendant, followed by registration of Sale Deed dated 21.07.2009 to which is null and void, sale of unit U/Sec. 29 of State Finance Corporation Act, is statutory sale and the 1st Defendant will get power to sell only after take over of the unit physically and step into the shoes of the owner and empowered to transfer the title as a deemed owner. By following the due process of law and which is violation of statute and the Sale Deed which executed is null and void liable to be set-aside.

6. The Plaintiff in the plaint has further alleged that the 1st Defendant put forth the blemishful claim which mentioned that the amount had been repaid by him had been deducted from the interest and quoted a phenomenal interest in addition to the principal, they required him to pay the same atlest they would resolve to other action, he realized that the 1st Defendant in order to wriggle out of the situation and avoid some consequences of the legal suit contemplated to be filed by him had resorted to the issuance of such frivolous,

meaningless notice which was bereft of any worth in it, he readily reacted to the same, he maintained that the 1st Defendant had committed the most charitable and deceitful act in removing the movable from the plaint schedule property . The 1st Defendant realized that it would be soup in order to bounce back, the first Defendant initiated a proceedings under sec.31 of Karnataka State Finance Corporation Act, in miscellaneous petition 2/2007 on the file of the III Addl.District Judge, Mysuru thereby, he has decided that to taught a lesson to the 1st Defendant and conciliators intervened by saying that the miscellaneous petition filed by the 1st Defendant would be withdrawn without injuring the interest of him, when the persuasive tactics, he was impressed to drop his contemplated proceedings against the 1st Defendant in recovering all that he lost in the very bad bargain he had not even dreampt of in wildest of his dreams, and imposed two conditions, one is return of the documents including one relating to the other property and holding the possessed by him and 2nd he should conferred with the title of the plaint schedule property free from all charges as in any event of the matter he needed the same, the additional reason for him have insisted on the property was that he had done nothing in and upon the property in question after removal of the movable items in the property in question in the year 2011 and therefore, practically the 1st Defendant did not turn replied him at the first instance and thereafter, they would return the documents of the plaint schedule property to him by discharging and charge created by them, the Plaintiff did not suspect the move made by the 1st Defendant and the 1st Defendant had been informed that his claim being considered, based on the discussion by and in between them, the Defendant No.1 reported to the Court that the miscellaneous petition made had been closed under the process of full satisfaction of the claim.

7. The Plaintiff in the plaint has further alleged on 21.12.2013 he was summoned by the office of the 1st Defendant and required to execute the documents before the title deeds were returned and informed that the execution of

the documents which required being taken in usual course of events and there was nothing special about it and documents of title were arranged by the 1st Defendant and signed the letter received the documents of title and moved out and has questioned the return of documents relating to the property in question and 1st Defendant replied in a cool manner to that the plaint schedule property had already been sold to the 2nd Defendant thereby, approached the Defendant while pursuing his claim that he will arrange the things in the said direction after visiting the office of the 1st Defendant on many occasions, he was exhausted, finally on 28.08.2014 went to the office of the 1st Defendant and taken the documents. The 1st Defendant adopted the unlawful and most uncharitable moves while releasing the loan and the Defendant No.1 itself assessed value of the property more than Rs.16,80,000/- and interest a sum of Rs.9,30,000/- had been released by way of loan two installments and alleged invocation of powers U/Sec. 29 of the Act was knowing, but short of unlawful act. The Defendant No.1 did not issued any notice but at his back stealthily auctioned property to the Defendant No.2 thereby deprived his right and Defendant No.1 conspired with 2nd Defendant by which it stealthily sold the eniter unit including the immovable property for a very low price when at the relevant point of time the property valued more than 5 times. The conspired in between the 1st and 2nd Defendant was for unlawful purpose by which has been rendered to the situation of colossal loss, grave injury and hardship, the valuation of unit for the purpose of determining adequacy of offer or for determining if bid offered was adequate should always be intimated to the unit holder to enable him to file objections as he is vitally interested in getting the maximum price, if tenders are invited than the highest price on which tender is to be accepted must be intimated to the unit holder. If the unit holder is willing to offer the same price as the tenderer then he should be offered same facility and unit sholud be transferred to him and areas of removing thereafter, should be reschedule by recovered in installments with interest, but procedure which adopted by the Defendant No.1 is known to law and even at the time of collecting documents did not respond properly and the act of obtaining the undertaking behind his back threatening with dire consequences and Defendants have inflicted misery to him and his rights the acts of the Defendant are unlawful, the cause of action for the suit which arose on 21.12.2013 when he has approached the 1st Defendant and discussed the issue when he was made known that the Defendant No.1 has secured its rights at his cost and unrighteously and when he has paid umpteen visit the office of the 1st Defendant within the jurisdiction of this Court and prays for decree the suit.

8. In response of the suit summons, the Defendant No.1 and 2 were appeared through their respective counsel and filed the independent written statement.

9. The Defendant No.1 in his written statement has alleged the suit which filed by the Plaintiff is not maintainable in law or on facts and the Plaintiff has challenged the proceedings after lapse of 6 years which is barred by

limitation and suit has been brought by the Plaintiff in individual capacity and extended the loan to the partnership firm namely M/s Chandranatha Brick Industries, on this ground alone the suit is liable to be dismissed and the averments which are made in para No.2 of the plaint that the Plaintiff got the property by way of gift from Smt.Kanaka prabhamamma and duly converted in the name and style of Chandranatha Bricks for running brick industry is true and correct and averments made in para No.3 of the plaint that the corporation has sanctioned loan of Rs.14,00,000/-, additional term loan of Rs.2,80,000/- is also correct and the Plaintiff has not implemented the project and had not invested the stipulated amount of Rs.6,00,000/-, as such loan was limited to Rs.6,50,000/- and submitted letter dated 05.06.1998 and 12.06.1998 stating that he has no capacity and would acquire the tractor and trailer after some time, in response to the letter after ascertaining his inability to mobilize the equity required for implementation completion of the project was scaled down and it was revised from Rs.28,60 lakhs to Rs.10.35 lakhs as per the revised project cost of Rs.10.35 lakhs and the Plaintiff was eligible for amount of Rs.6.50 lakhs and balance amount of Rs.3.85 lakhs required for the completion of the project was to be brought, the revision in the project cost and the loan amount has been intimated to the Plaintiff on 16.06.1998 and the Plaintiff was once again approached in the month of February 1999 and the Plaintiff was filed writ Petition No.12470/2002 before the Hon'ble High Court of Karnataka challenging that the corporation has not released Rs.14.00 lakhs released only to an extent of Rs.6.50 lakhs, after hearing the matter the Hon'ble High Court of Karnataka has dismissed the petition on 16.06.2003 and held the relief of the Petitioner after 4 years clearly dis-entitles the relief on the ground of latches and the averments made in para No.4 of the plaint that is not admitted by the Defendant and the Plaintiff has to strict proof of the same.

10. The Defendant No.1 in the written statement has further alleged that the averments made in para No.5 of the

plaint is correct and the Plaintiff has paid the amount towards closure of his loan accounts under the ONE TIME SETTLEMENT of GOK and waived an interest of Rs.45,24,121/- which has been communicated to the Plaintiff vide closure letter issued by the Defendant dated 25.11.2013 and the Plaintiff has not brought to the notice of this Court and the Plaintiff has not approached the court with clean hands and the averments made in para No.6 of the plaint that he has added the interest which showed the repayment under taken by the Plaintiff had no impact on the quantum of the loan is not correct and he has not considered his request for one time settlement is not correct and he has not considered his request for one time settlement is not correct, in fact the account has been settled under one time settlement scheme of the Government by waiving huge interest and the averments made in para No.7 of the plaint is not admitted since the Plaintiff has failed to repay the loan as per the contract entered by the Plaintiff with the corporation and after giving sufficient opportunity and the Plaintiff has to strict proof of the same.

11. The 1st Defendant in the written statement has alleged the averments which are made in para No.8 of the plaint that the Plaintiff is in continuous possession of the property is not correct, after taking over the unit the Plaintiff has executed the agreement stating that the Plaintiff will look after and reserved its right to initiate further action U/Sec.29 of State Finance Corporation Act, and other averments which made in same para are all false and concocted story of the Plaintiff and the Plaintiff has to strict proof of the same and the averments which made in para No.9 of the plaint is totally incorrect and notice has been issued and charged the interest as per the contract entered in between them and the Plaintiff has to strict proof of the same and the averments made in para No.10 of the plaint that he has filed the miscellaneous petition in Misc.No.2/2007 is correct and the Plaintiff has also appeared and said petition was came to be allowed directing to pay an amount of Rs.30,43,589/- with agreed interest and the Plaintiff has not at all challenged the said order which remained unchallenged.

12. The Defendant No.1 in the written statement has further alleged that the averments made in para No.11 of the plaint that he has agreed to withdraw the miscellaneous petition is not correct and other averments made by the Plaintiff totally false and the Plaintiff has created the story only to impress the Court without bringing the genuine facts to the knowledge before the Court and the Plaintiff has to strict proof of the same and the averments made in para No.12 of the plaint is not at all correct, in fact, sale of the property was made in public after following the necessary procedure such as issue of paper publication and calling the Plaintiff to participate in the sale negotiation meeting and also a letter was also issued to the Plaintiff to bring the better offer before confirmation of the sale, only after following all these procedure the sale was confirmed in the name of 2nd Defendant Sri Shivaraj and also given an undertaking on 21.12.2013 and admitted the facts of the sale and also having knowledge of waiver of Rs.45,245,121/-and has considered the request of the Plaintiff on humanitarian

ground and executed the OTS scheme, inspite of the same the Plaintiff has suppressed the said facts to the knowledge, the averment by the Plaintiff is far away from truth and the Plaintiff has suppressed most of the facts which are in his knowledge and the Plaintiff has to strict proof of the same and the averments made in para No.12 of the plaint is not correct, in fact has brought the property for sale on 9 occasions and for 9th attempt Sri Shivaram the 2nd Defendant was successful bidder for Rs.5.25 lakhs and facts of the sale is within the knowledge of the Plaintiff, and undertaking given by him at the time of availing OTS benefit, inspite of the same has filed said false suit and suit is barred by limitation and denied the averments made in para No.14 and 15 of the plaint and Plaintiff has to strict proof of the same.

13. The Defendant No.1 in the written statement has further alleged that he has released Rs.6.41 lakhs and Rs.2.80 lakhs in favour of the Plaintiff as per the norms of the corporation, though it has been challenged before Hon'ble High Court of Karnataka in W.P No.12470/2002 which came to

be dismissed and he has followed the procedure as contemplated under State Finance Corporation Act, and other paras are totally false and the averments made in para No.16 is far away from truth and Plaintiff has to strict proof of he same and he has insisted the Plaintiff certain documents is not correct, in fact himself has signed the documents voluntarily and requested to settle the account on OTS basis. After extending the OTS facility has executed the Discharge Deed in favour of the Plaintiff on 13.12.2013 releasing the collateral security and issued a letter on 20.01.2014 cancelling the hypothication noted on the vehicle and followed the procedure and allegations made by the Plaintiff is far away from truth and has not approached the Court with clean hands and the averments made in para No.18 of the plaint that the sale made is not at all a sale is incorrect, in fact sale has been made after following of the procedures including issue of paper publication and informed to the Plaintiff to bring the better offers, but the Plaintiff has failed to bring the better offer and failed to clear the loan and the suit filed is not maintainable as barred by limitation and Plaintiff has knowledge about the loan as well as the sale proceedings and the very Plaintiff has approached for additional loan for Rs.2,80,000/-, after considering the request of the Plaintiff sanctioned the additional term loan of Rs.2,80,000/- and same has been intimated vide Sanction letter dated 16.06.1999 after drawing of the loan amount firm was not regular in repayment of the loan amount and was chronic defaulter in repayment of the loan and the loan amount was mounting has issued a notice U/Sec.29 of State Finance Corporation Act, on 28.05.2001 intimating the firm about further course of action, even after that firm was irregular in payment of the loan amount, so without alternative the assets of the corporation was taken over U/Sec. 29 of State Finance Corporation Act on 08.10.2001 and mahazar was drawn and Plaintiff has to strict proof of the same. The averments made in para No.19 of the plaint that he has already sold the property in the year 2019 and the allegation made in para are totally false, the suit is barred by limitation and suit which filed is not maintainable in a individual capacity and the cause of action which shown is not true and correct.

14. The Defendant No.1 in the written statement has further alleged that the loan of Rs.14,00,000/- has been sanctioned as term loan to the M/s Chandranath Brick industries a partnership firm represented by its partners one Smt.Kanaka Prabhamma and Plaintiff for establishment of Brick Factory at Bidarahalli Kanda like Hobli, H.D.Kote Taluk and communicated to the same from 26.12.1997 and the partners of the firm have mortgaged the schedule property as primary security to the loan along with other property as collateral security and the sale has been confirmed in the name of Shivaram for Rs.5,25,000/- and sale communication was issued on 02.12.2018 even after sale opportunity has been provided to the firm / partners to bring the better offers and failed to bring any better offers and sale has been concluded in favour of the 2nd Defendant and possession of the property was delivered to the 2nd Defendant.

15. After the sale of primary security for Rs.5,25,000/- and after adjustment of the sale proceeds to recover the balance amount has issued a notice to the firm and one Vasantha Rajaiah who is the collateral security property owner on 09.02.2010 under surfacie Act subsequently the firm has requested to settle the loan amount on GOK-OTS basis. Considering the facts that the firms primary assets have been sold and unable to clear the balance amount and the suit is not maintainable for non-joinder of the necessary parties and the Plaintiff in his individual capacity without bringing the real fact the loan has been extended and denied the other averments which made in the plaint and prays for dismiss the suit.

16. The Defendant No.2 in the written statement has alleged the suit which filed by the Plaintiff is far away from truth and the Plaintiff has to strict proof of the same and admitted the originally the schedule property belongs to one Kanaka Prabamma W/o Lat S.P Anantharajaiah and the plaintiff has acquired the said property by way of Gift Deed

and at the time of gift deed the property which involved in the gift deed was the non-agricultural property and after the gift deed khata has been changed in the name of the plaintiff and availed the loan from the 1st defendant for the purpose of running the brick factory. The land bearing junger No.224, land bearing resurvey No.181(83/1) measuring East-West :370.72 feet North-South: 235 feet and the Plaintiff purchased the said property under a Registered Sale Deed dated 21.07.2009 and the schedule property originally belongs to Kanaka Prabhamma bearing resurvey No.83/1 measuring 2 acres and for the purpose of running the brick factory has obtained the permission and the license from Assistant commissioner office and Kanaka Prabhamma executed the Gift Deed on 06.11.1997 same was came to be registered and the plaintiff has mortgaged the property and did not repay the loan amount to the 1st Defendant, because of that reason the mortgaged property has been brought for sale and published through local paper so by virtue of the said publication he has participated in the auction sale and purchased the schedule property for Rs. 5,25,000/- as highest builder and the general manager of the 1st defendant executed the registered sale deed on 21.01.2009 and on the very day of sale deed schedule property has been delivered in his favour and Khata has been changed in his name since from the date of purchase the schedule property is in his possession and enjoyment and one Kanakaprabhamma has started obstruction of his peaceful possession and enjoyment of the schedule property thereby has filed the suit in O.S.No. 175/2014 for Permanent Injunction and obtained the temporary injunction order, though filed the appeal which came to be dismissed and prays for dismiss the suit.

17. On the basis of the pleadings of the parties, the court below framed the following issues and additional issues:-

::ISSUES ::

1. Whether the plaintiff proves that he is the absolute owner, in possession of the plaint schedule property as on the date of institution of the suit?

2. Whether the plaintiff is entitled to the reliefs as claimed in the plaint?

3. What order or decree?

ADDITIONAL ISSUE DATED 06.03.2018

1. Whether the suit is barred by limitation?

ADDITIONAL ISSUES 02.04.2018

2. Whether the plaintiff proves that the Sale Deed dated 21.07.2009 in respect of plaint schedule property executed by defendant No.1 in favour of defendant No.2 is null and void as contended by him?

18. The plaintiff in order to prove his case has examined himself as PW1 and also examined 2 more witnesses on his behalf as PW2 and 3 and got marked the documents as Ex.P1 to 26. The Defendants in order to prove their defence the Defendant No.2 examined himself as DW1 and Defendant No.1 has examined its Senior Manager as DW2 and got marked the documents as Ex.D1 to 30.

19. The court below after hearing the arguments on both side recorded its findings as stated below.

Issue No. 1 :- In the **Negative.**

Issue No.2 :- In the **Negative.**

Addl.Issue No.1 :- In the **Affirmative.**

Addl.Issue No.2:- In the **Negative.**

Issue No.3 :- As per final orders.

20. In consequence, the suit of the plaintiff for the relief of declaration and permanent injunction came to be dismissed with costs. So feeling aggrieved by the said judgment and decree the plaintiff being the appellant has filed the instant appeal for the following:

::GROUNDS ::

1. The court below erred in coming to the wrong conclusion with out considering Section 29 of the State Financial Corporation Act 1951 in a prospective manner and by mere production of mahazar drawn on 08.10.2001 at the time of issuing unit itself is not sufficient to establish the legality of the power.

2. The court below erred in coming to the wrong conclusion and failed to consider non-production of vital documentS to prove the legality of exercise of statutory power under Section 29 of State Financial Corporation Act namely show cause notice issued to the borrower affording sufficient opportunity to repay the dues and order of take over/seizure of assets passed under Section 29 of the competent authority on 08.10.2001 and there is no sufficient time which granted by the defendant No.1 to repay the loan amount.

3. The court below erred in coming to the wrong conclusion and presumed in page No.18 of the judgment that on perusal of the mahazar it is stated that prior to the drawing of the mahazar notice has been issued to the plaintiff firm and the plaintiff failed to repay

the loan amount that is the reason why the respondent No.1 take over the schedule property by drawing the mahazar without substance and based on assumption and presumption.

4. The court below erred in coming to the wrong conclusion and failed to assess the implication of letter by DGM of Respondent No.1 dated 24.12.2002 marked as Ex.P19 informing the Plaintiff that the Police Station of the unit was given back to the Plaintiff on 02.01.2002 by obtaining undertaking to look after the assets as a custodian and the unit is in the possession of the Plaintiff which not taken into consideration by the court below and the court below mis-interpreted the impart of the letter and gave wrong finding of fact that the unit is given back to look after as a custodian and not permanently and

handed over the possession to the Plaintiff which is perverse and not sustainable in law.

5. The court below erred in coming to the wrong conclusion without considering the oral and documentary evidence in a prospective manner and erred in relying upon the oral evidence of DW2 and no document has been produced to prove the statement and the DW2 has admitted the possession was with the borrower and not with the Karnataka State Finance Corporation Ltd., which not taken into consideration by the court below.

6. The court below erred in coming to the wrong conclusion and wrongly concluded that repossessing the assets U/Sec. 29 of State Finance Corporation Act, is not required even after giving back assets to lonee and Respondent is empower to sell is setting a

wrong president unknown to law and it is clear violation of power of sale and conferring deemed ownership on the corporation U/Sec. 29 of State Finance Corporation Act, is illegal and unjustifiable and dilutes the statutory provision.

7. The court below erred in coming to the wrong conclusion regarding the numerous sale notification in Andolana newspaper having a limited circulation which not taken into consideration by the court below and Respondent No.1 has not issued the notification in a leading papers having a wide circulation to attract good bidders which is nothing but violation of prescribed procedure and finally sold for very meager amount of Rs.5,25,000/- but wrongly come to the conclusion and dismissed the suit which is not in accordance with law.

8. The court below erred in coming to the wrong conclusion without deriving the power of the sale U/Sec. 29 of the State Finance Corporation Act, by following due course of law has no legal authority to execute the Sale Deed in favour of the Defendant No.2 which is liable to be set-aside and the OTS scheme of Government of Karnataka was in force to settle the loan amount be extending waiver of interest which not provided to the Plaintiff.

9. The court below erred in coming to the wrong conclusion without considering the letter dated 22.10.2013 marked as Ex.D20 after paying Rs.3,00,000/- to the KSFC to issue loan discharge letter which not taken into consideration by the court below and came to know the same after 3 and ½ years of the auction sale when he went to Defendant No.1 to repay the loan due and he was not aware

of the auction sale.

10. The court below erred in coming to the wrong conclusion without considering the oral and documentary evidence and settled principles of law in a prospective manner and prays for allow the appeal.

21. In response of the notice, the Respondents have been appeared through their respective counsel.

22. Heard the arguments on both side.

23. The points that arise for court consideration are as under:

1. Whether the Appellant has made out the grounds that the court below erred in concluding the 1st Defendant corporation had complied with due course of law in exercise of its statutory power U/Sec. 29 of the State Finance Corporation Act, 1951 ?
2. Whether the Appellant has made out the grounds that the court below without

considering the oral and documentary evidence in a prospective manner has come to the wrong conclusion and dismissed the suit which is not in accordance with law?

3. Whether the Appellant has made out the grounds that the Judgment and Decree which passed by the court below is illegal, perverse and capricious and interference of this Court is warranted?

4. What Order?

24. My answer to the above points are as under:

Point No.1 : In the ***Negative.***

Point No.2 : In the ***Negative.***

Point No.3 : In the ***Negative.***

Point No.4 : As per final order for the following:

::REASONS::

25. **Points 1 to 3:** These points are inter-related to each other, hence, in order to avoid the repetition of facts and materials on record these points are discussed together, before embarking on these points it is just and necessary to narrate the gist of the case for the proper appreciation. The Appellant being the Plaintiff filed the suit in O.S.No.11/2015

for declaration and for consequential relief of Permanent Injunction on the ground that the Defendant No.1 corporation has sanctioned the term loan of Rs.14,00,000/- on 31.03.1997 and subsequently the loan amount was reduced to Rs.6,41,000/- and was released and the balance amount was cancelled, subsequently on 03.06.1999 an additional term loan of Rs.2,80,000/- was also sanctioned, to establish the brick industry in the name and style of Chandranath brick industry which is a partnership firm for which executed the mortgage deed, loan agreement along with other document. But the Plaintiff failed to repay the said amount as agreed, inspite of repeated request and demand. Thereby, taken over the schedule property and put into public auction and recovered the due amount by selling the schedule property in favour of Defendant No.2, so after full fledged trial by the court below dismissed the suit. So feeling aggrieved by the said Judgment and Decree the Appellant being the Plaintiff has filed the instant appeal.

26. The learned Counsel for the Appellant while

canvasing his arguments has submitted that the schedule property belongs to one Smt.Kanaka Prabhamma W/o Late S.P.Anantharajaiah who donated the plaint schedule property in favour of the Plaintiff since from the date of acceptance of the gift, the Plaintiff was in possession and enjoyment of the schedule property and the schedule property was a converted property and the Plaintiff approached the 1st Defendant for the loan for the purpose of running the brick industry in the name and style of Chandranath Brick Industry, so the 1st Respondent in response to the loan Application visited the property, valued it and initially recommended for loan of Rs.14,00,000/- and additional sum of Rs.2,80,000/-, in total a sum of Rs.16,80,000/- , later on reduced to sum of Rs.9,21,000/- by releasing the said sum of installments of Rs.6,41,000/- and Rs.2,80,000/-. The Plaintiff would not raised the brick industry and stating that business did not run well as a result of which the functionary was rendered to a loss and in default in payment of the loan amount, but the Defendant No.1 without any intimation nor the cause notice has brought the suit properties for public action and sold the schedule property very meager amount by colluding with the 2nd Defendant. The auction which initiated by the 1st Defendant is not in accordance with law, without granting sufficient opportunity to repay the loan amount, therefore, the sale deed which executed by the Defendant No.1 in favour of the Defendant No.2 not binding on the plaintiff. Even if the evidence of DW2 is taken into consideration the schedule property is in the possession of the Plaintiff not the Defendants, even no notice has been issued to sell the schedule property, but the court below without considering the oral and documentary evidence in a prospective manner has come to the wrong conclusion and dismissed the suit which is not in accordance with law. Though there is power to the KSFC to recover the due amount but it should be in accordance with law, and taking over the property of the Plaintiff has not been followed by the principles of natural justice and the Ex.D11 is the mahazar dated 08.10.2001 and the notice order passed dated 09.10.2001 has not been served by the Defendant No.1 and the schedule property is the non-agricultural land measuring 2 acres has been mortgaged and take over up the schedule property by the KSFC is not in accordance with law, though this fact was brought to the notice of the court below, but the court below come to the wrong conclusion and dismissed the suit which is not in accordance with law.

27. The KSFC without following the procedure conducted the auction sale which is not in accordance with law and the Defendant No.1 has not followed the due process of law and show cause notice has not been issued and admission of the DW2 is very much clear the suit which filed is maintainable and prays for allow the appeal.

28. Per contra, the learned Counsel for the Respondents in their arguments they have submitted the appeal which filed is not maintainable either in law or on facts, though sufficient opportunity has been granted to the Plaintiff to pay the due amount, even after the public sale the Defendant No.1 has brought to the notice of the Plaintiff to

repay the loan amount, but he did not do so, and the sale was taken place on 21.07.2009 as per Ex.D8, if the Ex.D8 is taken into consideration the suit which filed is not maintainable. But the reasons best know to the Appellant has not challenged the Sale Deed within the limitation as per article 59 of the limitation Act, therefore, the suit itself is not maintainable since the Plaintiff has filed the instant suit after lapse of 6 years from the date of sale deed and the documents marked on behalf of the Plaintiff clearly reveals that the Defendant No.1 has followed the procedure and conducted the public action in accordance with law, oral and documentary evidence on records clearly reflects that the Defendant No.1 has followed the procedure Under Sec.29 and 31 of Karnataka State Finance Act and prays for dismiss the appeal.

29. The Plaintiff in order to prove the plaint averments has filed his affidavit as his chief examination by reiterating the plaint averments stating that the schedule property originally belongs to Smt.Kanaka Prabhamma W/o Late S.P.Anantha Rajaiah and who executed the Gift Deed in

respect of the schedule property in his favour on 06.11.1997 and he is none other than her grand son since from the date of Gift Deed the schedule property is in his possession and enjoyment, the plaint schedule property was converted as non-agricultural purpose for the purpose of running a brick industry in the name and style of Chandranath Brick Industry, the conversion of the schedule property was taken place on 11.03.1996 based on the orders of Asst.Commissioner, Hunsur and for the purpose of running the brick industry approached the 1st Defendant and initially recommended a loan of Rs.14,00,000/- and additional sum of Rs.2,80,000/- in total sum of Rs.16,80,000/-, later on reduced to sum of Rs.9,21,000/- by releasing the said amount in two installments of Rs.6,41,000/- and Rs.2,80,000/- , based on the said sanction the Defendant No.1 released the loan in wages in the form of installments with the help money, and he has paid a sum of Rs.2,00,000/- and thereafter, a sum of Rs.1,00,000/- on 26.11.2009 and additional sum of Rs.2,98,000/- and Rs.2,000/- on 29.03.2010 totally a sum of

Rs.6,00,000/- only and no notice has been received regarding the public auction and the 1st Defendant avoided to answer his quieries without informing anything regarding the auction sale and not sent any notice nor received any notice and the 1st Defendant filed the Misc.Pet.No.2/2007 on the file of the III Addl.District Judge, Mysuru which came to be allowed.

30. The PW1 in the evidence has further stated the 1st Defendant has not followed the procedures laid down under the KSFC Act, though approached the 1st Defendant to transfer the title of the property, but the 1st Defendant did not do so and the Plaintiff is well aware of the loan which availed and in default of payment of the loan amount and the notice which brought to the Plaintiff for payment of the loan amount. But without taking steps in a proper manner for repayment of loan amount has filed the false suit.

31. The PW1 in his cross-examination has admitted himself and surety holder did not pay the amount that is the reason why the 1st Defendant had filed the Misc.Pet.No.2/2007 before the II Addl.District and Sessions

Judge at Mysuru and admitted that he was engaged the counsel to defend on his behalf, but pleaded ignorance that the said petition was came to be allowed and authorized the 1st Defendant to sell the property of the borrower and admitted that he has not challenged the orders passed by the Hon'ble High Court of Karnataka in Misc.Pet.No.2/2007 and pleaded ignorance about the appeal filed by him after disposal of the Misc.Petn.No.2/2007 and he came to know after receipt of the notice from the 1st Defendant khata has been changed in the name of 1st Defendant and he has also pleaded ignorance. The schedule property has been sold in a public auction on 27.07.2009 and he has pleaded ignorance prior to public auction on 08.10.2001 the Defendant No.1 and his authorities were drawn the panchanama and he was present and signed the panchanama and admitted the 1st Defendant had sanctioned the loan for the purpose of running the brick factory and admitted the notice has been served to him and Kanaka Prabha and he has also admitted that he has filed the Application to 1st Defendant and sought for time to repay the loan amount and he has also pleaded ignorance when he was in default of payment of the loan amount the public notice has been issued through the paper publication to calling upon the public to participate in the public auction and admitted the 1st Defendant availed the loan for which his father property has been given as security and admitted as on the date of filing of the suit the suit property standing in his name, now standing in the name of 2nd Defendant and have not filed any appeal before the Asst.Commissioner, after changing the khata in the name of the 2nd Defendant and admitted he has started the brick factory in the schedule property for which he has availed the loan of Rs.6,40,000/- from the 1st Defendant and admitted Rs.16,80,000/- has been sanctioned and denied that he has trespassed into the suit property and started obstruction to the 2nd Defendant that is the reason why 2nd Defendant filed the suit in O.S.No. 175/2014 and admitted in the said suit temporary injunction has been granted and miscellaneous was came be filed which was came to be dismissed and admitted he has been appeared through his counsel in Misc.No.2/2007 and as per Ex.P16 has not filed any appeal and S.V.Padmaprasad refers to him as per Ex.P16 to 20 and admitted the notice has been issued prior to execution of the Sale Deed in favour of the Defendant No.2.

32. The Plaintiff has examined 2 more witnesses on his behalf as PW2 and 3 who filed their affidavits as their chief-examination as PW2 and 3 in their evidence have stated that the Plaintiff is in possession and enjoyment of lane bearing resurvey No.83/1 measuring 2 acres and the Defendants are not in possession and enjoyment of the said properties and he has not seen 2nd Defendant nearby schedule property. PW2 in his cross-examination has admitted the schedule property is standing in the name of the Plaintiff and he has pleaded ignorance the schedule property standing in the name of the 2nd Defendant but admitted the Plaintiff is running the bricks factory in the schedule property and he has also pleaded ignorance since the Plaintiff was in default in payment of the loan amount and 1st Defendant put the schedule property for public auction and 2nd Defendant purchased the said property

and the said property falls within the Bidarahalli gram-panchayath and pleaded ignorance the schedule property is standing in the name of the 2nd Defendant, but admitted the schedule property has been converted into non-agricultural purpose.

33. The PW3 in the evidence has stated that the schedule property has been acquired by the Plaintiff through the Gift Deed since from the date of gift the Plaintiff is in possession and enjoyment of the schedule property and he never seen the Defendant in the suit schedule property . The PW3 in his cross-examination has admitted that the Plaintiff converted 2 acres of land for non-agricultural purpose and running the brick factory which comes within the jurisdiction of Bidarahalli Gram-panchayath and denied the 2nd Defendant is in possession and enjoyment of the schedule property and pleaded ignorance that the Plaintiff failed to repay the loan amount, thereby, the schedule property put into public auction.

34. The Defendant No.2 in order to prove his defence

the Defendant No.2 has filed his affidavit as his chief-examination as DW1 stating that the schedule property originally belongs to Kanaka Prabhamma who executed the Gift Deed in favour of the Plaintiff since from the date of Gift Deed the Plaintiff was in possession and enjoyment of the plaint schedule property, the Plaintiff has failed to repay the loan amount, thereby, it was brought into public auction and purchased the schedule property for Rs.5,25,000/- and 1st Defendant General Manager executed the Sale Deed and schedule property is in his possession and enjoyment. The DW1 in his cross-examination has admitted that he has filed the suit in O.S.No.174/2014 on the file of the Addl.Civil Judge for Permanent Injunction and obtained the temporary injunction order and admitted who is highest bidder in the public auction and before signing any document has to see the contents of the documents and the Plaintiff filed the suit for Permanent Injunction in the year 2014.

35. The Defendant No.1 in order to prove its defence has examined its Senior Manager as DW2 who filed the

affidavit as his chief-examination stating that the suit which filed is not maintainable either in law or on facts which is barred by limitation and the suit has been brought by the Plaintiff in his individual capacity is not maintainable, as per the records the loan has been sanctioned to the partnership firm, on this ground alone the suit is not maintainable and the Plaintiff got the property by way of gift from Smt.Kanaka Prabhamma and duly converted as non-agricultural purpose and the Plaintiff approached the 1st Defendant for loan for the purpose of running the brick factory, accordingly, loan has been sanctioned and released in favour of the Plaintiff, but the Plaintiff has failed to repay the loan amount inspite of repeated request and demand notice, though loan has been sanctioned of Rs.14,00,000/- but it was reduced, though the Plaintiff filed the writ petition in W P No.12470/2002 before the Hon'ble High Court of Karnataka challenging that the corporation has not released Rs.14,00,000/- and released only to an extent of Rs.6,50,000/-, though sufficient opportunity has been granted to the Plaintiff U/Sec. 29 of the

State Finance Corporation Act, the Plaintiff has failed to comply the conditions of the agreement, so after issuance of the notice the suit schedule property brought the sale in a public auction and the 2nd Defendant being successful bidder for Rs.5,25,000/- even after the sale calling upon the Plaintiff to pay the said amount and to recover the property, but did not do so and in the year 1999 additional term loan of Rs.2,80,000/- has been sanctioned and mahazar was drawn, though after public action informed to the Plaintiff to pay Rs.5,25,000/- for which did not do so, therefore, the sale was confirmed and Sale Deed has been executed in favour of the Defendant No.2.

36. The DW2 in his cross-examination has denied on 27.07.2009 colluding with the 2nd Defendant created the Sale Deed marked as Ex.D8 and admitted the loan was sanctioned in the year 2000 and got issued notice to the Plaintiff about due of loan amount and admitted before initiating the proceedings U/Sec.29 of the KFC Act show cause notice has to be issued and Ex.P8 reveals Rs.13,66,221/- was due to

the Defendant No.1 and Rs.6,41,000/- and Rs.2,80,000/- has been availed by the Plaintiff from the 1st Defendant for the purpose of running the brick factory and to purchase the Tractor and denied that they have created the Sale Deed of 2nd Defendant.

37. The learned Counsel for the Appellant while canvasing his arguments has much argued that the Defendant No.1 has not complied the mandatory provision U/Sec.29 of Karnataka State Finance Corporation Act, on this ground alone the Judgment and Decree which passed is not sustainable in law, but whereas the learned Counsel for the Respondents in their arguments have submitted the suit filed is not maintainable in law or on facts, the court below after considering the oral and documentary evidence rightly dismissed the suit, so before considering the oral and documentary evidence in a prospective manner it is just and necessary to know the legal aspect first for the proper appreciation. Thus, this Court drawn its attention on Sec.29 of the State Finance Corporation Act, 1951 which reads like

thus:-

Rights of Financial Corporation in case of default.

Section 29·:-(1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof [1][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, the Financial Corporation shall have the [2][right to take over the management or possession or both of the industrial concerns], as well as the [3][right to transfer by way of lease or sale] and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers[***] under sub-section (1), shall vest in the transferee all rights in or to the property transferred [5][as if the transfer] had been made by the owner of the property.

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

[6][(4) [7][Where any action has been taken against an industrial concern] under the provisions of sub-section (1), all costs, [8][charges and expenses which in the opinion of the Financial Corporation have been properly incurred] by it [9][as incidental thereto] shall be recoverable from the industrial concern and the money which is received by it [10] shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto.]***

(5) [7][Where the Financial Corporation has taken any action against an industrial concern] under the provisions of sub-section (1), the

> ***Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of [11][the concern].***

38. The above provision is very much clear where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concerns, thus it is clear by virtue of the provision which stated supra the Defendant No.1 having the right to take over the management of possession of both industrial concern, thus this Court drawn its attention on Sec.31 of State Finance Corporation Act, 1951 which reads like thus:-

<u>Special provisions for enforcement of claims by Financial Corporation.</u>

<u>Section 31·The State Financial Corporations Act, 1951</u>

> ***(1) Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof [1][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, [2][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)] 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 [3][Financial Corporation] as security for the loan or advance; or

[4][(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.

39. The above provision is very much clear where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof or otherwise fails to comply with the terms of its agreement with the Financial Corporation., order for the sale of the property mortgaged.

40. The learned Counsel for the Respondents while canvasing their arguments have submitted the suit which filed is barred by limitation as the Ex.D8 is the sale deed reveals the Defendant No.1 General Manager executed the Sale Deed on 21.01.2009 and prior to the Sale Deed and after the Sale Deed the Plaintiff was well aware of the demand notice and the Sale Deed. Thus, this Court drawn its attention on Article 59 of the Limitation Act which reads like this:-

To cancel or set aside an instrument or decree or for the rescission of a contract	***Three years***	***When the facts entitling the Plaintiff to have the instrument or decree cancelled or set aside***

or the contract rescinded first become known to him.

41. The above article is very much clear for cancellation or set-aside a decree on the instrument like a sale deed or a contract, the limitation is 3 years from the date of knowledge.

42. So, keeping the provisions which stated supra in mind let me know the oral and documentary evidence on record. The learned Counsel for the Appellant while canvasing his arguments has much argued that the Defendant No.1 has not issued any notice to the Plaintiff, therefore, the procedure which adopted by the 1st Defendant is not in accordance with law, admittedly, the PW1 in his cross-examination has admitted that himself and Kanaka Prabamma were in default in payment of the loan amount that is the reason why the 1st Defendant got issued a notice, in response of the notice has filed the Application and sought for time to repay the loan amount, but pleaded ignorance because of non-payment of the loan amount the 1st Defendant brought the suit property

for the public auction and same has been published through daily newspaper, so for the proper appreciation of the admission of the PW1 during his cross-examination is necessary for reproduction which reads like thus:-

> "ಸಾಲ ಮರುಪಾವತಿ ಇದ್ದುದೇ ಇದ್ದುದರಿಂದ **1** ನೇ ಪ್ರತಿವಾದಿಯು ನನಗೆ ಮತ್ತು ಕನಕಪ್ರಭರವರಿಗೆ ನೋಟೀಸನ್ನು ಜಾರಿ ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಬ್ರಿಕ್ ಫ್ಯಾಕ್ಟರಿ ಸರಿಯಾಗಿ ನಡೆಯುತ್ತಿಲ್ಲ ಸಾಲ ಮರುಪಾವತಿ ಮಾಡಲು ಕಾಲಾವಕಾಶ ಕೊಡಿ ಅಂತ **1** ನೇ ಪ್ರತಿವಾದಿಯ ಬ್ಯಾಂಕಿಗೆ ಒಂದು ಅರ್ಜಿಯನ್ನು ನೀಡಿದ್ದರು ಎಂದರೆ ಸರಿ. ನಂತರ ಒಟಿಎಸ್ ನಲ್ಲಿ ಸಾಲ ಮರುಪಾವತಿ ಮಾಡುತ್ತೇನೆ ಎಂದು ಹೇಳಿ ಮತ್ತೊಂದು ಅರ್ಜಿಯನ್ನು ನೀಡಿರುತ್ತೇನೆ ನಂತರವೂ ಸಹ ನಾನು ಸಾಲವನ್ನು ಮರುಪಾವತಿ ಮಾಡದೇ ಇದ್ದುದರಿಂದ **1** ನೇ ಪ್ರತಿವಾದಿಯು ಆಸ್ತಿಯನ್ನು ಹರಾಜು ಮಾಡಲು ಪತ್ರಿಕೆಯಲ್ಲಿ ಪ್ರಕಟಣೆ ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ"

43. So, if the admission of the PW1 which stated supra is taken into consideration notice has been issued to the Plaintiff calling upon him to repay the loan amount with interest and he has also pleaded ignorance that the 1st Defendant brought the suit property for sale and sale was taken place in the public auction, if at all the notice has been

not served on the Plaintiff question of admitting about the notice which issued by the Defendant No.1 does not arise, when the PW1 has categorically admitted about the receipt of the notice that itself is clear that the Defendant No.1 has got issued a notice to the Plaintiff calling upon him for the payment of the loan and admitted as on the date of filing of the suit schedule property was standing in his name and he has no impediment to produce the record of right to show as on the date of filing of the suit the schedule property is standing in his name and PW1 in the cross-examination has categorically admitted about the availment of Rs.6,41,000/- and Rs.2,80,000/-. So, for the proper appreciation of the admission of the PW1 during the cross-examination is necessary for reproduction which reads like thus:-

> ದಾನ ಪತ್ರದ ಪ್ರಕಾರ ದಾವಾ ಆಸ್ತಿಯು ನನ್ನ ಹೆಸರಿಗೆ ಖಾತೆಯಾಗಿರುತ್ತದೆ ನಂತರ ನಾನು ದಾವಾ ಆಸ್ತಿಯಲ್ಲಿ ಚಂದ್ರ ಕಾಂತ್ ಎಂಬ ಇಟ್ಟಿಗೆ ಫ್ಯಾಕ್ಟರಿಯನ್ನು ಪ್ರಾರಂಭಿಸಿರುತ್ತೇನೆ ಅಂದರೆ ಸರಿ. ಸದರಿ ಇಟ್ಟಿಗೆ ಫ್ಯಾಕ್ಟರಿಯನ್ನು ಪ್ರಾರಂಭಿಸಲು **1** ನೇ ಪ್ರತಿವಾದಿ ಸಂಸ್ಥೆಯಲ್ಲಿ ರೂ**.6.40** ಲಕ್ಷ ಹಣವನ್ನು ಸಾಲವಾಗಿ ಪಡೆದಿರುತ್ತೇನೆ. ನನಗೆ ಒಟ್ಟು ರೂ**.16.80** ಲಕ್ಷ ಹಣ **1** ನೇ ಪ್ರತಿವಾದಿ ಸಂಸ್ಥೆಯಿಂದ ಸಾಲವಾಗಿ ಮಂಜೂರಾಗಿರುತ್ತದೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಂತರ

ನಾನು ಸದರಿ ಸಾಲವನ್ನು **9.21** ಲಕ್ಷಕ್ಕೆ ಕಡಿತ ಮಾಡಿ ಮೊದಲನೆ ಕಂತಾಗಿ ರೂ**.6.41** ಲಕ್ಷ ಮತ್ತು **2** ನೇ ಕಂತಾಗಿ ರೂ**2.80** ಲಕ್ಷ ಹಣವನ್ನು ಪಡೆದುಕೊಂಡಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ**.** ಸದರಿ ಸಾಲವನ್ನು ಕಂತುಗಳ ಮೂಲಕ ಮರುಪಾವತಿ ಮಾಡುವುದಾಗಿ ಒಪ್ಪಿಕೊಂಡಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ**."**

44. So, if the categorical admission of the PW1 as stated supra are taken into consideration it is clear the Plaintiff has admitted about the availment of loan from the 1st Defendant, but denied that he has not paid the loan amount because of that reason notice has been issued and the PW1 during his cross-examination has denied on 17.04.2014 when the 2nd Defendant was in possession and enjoyment of the schedule property he has wrongfully trespassed to the said land. Thereby, the 2nd Defendant filed the suit in O.S.No.175/2014 on the file of the H.D.Kote Civil Judge and got obtained the temporary injunction order, though filed the miscellaneous appeal which came to be dismissed, so, if the admission of the PW1 is taken into consideration as stated supra, the 1st Defendant brought the property for public sale, after issuance of the notice to the Plaintiff calling upon him for the payment of the due loan amount, when he has failed to

pay the loan amount executed the Sale Deed in favour of the Defendant No.2 and when the Plaintiff and his family members started obstruction to the 2nd Defendant and the 2nd Defendant filed the suit in O.S.No. 175/2014 pending on the file of Civil Judge at H.D.Kote in O.S.No. 175/2014 though filed the miscellaneous appeal by the Plaintiff which came to be dismissed, so one thing is clear the Plaintiff availed the loan from the 1st Defendant for the purpose of running the brick factory by executing the mortgage deed and agreement as well as other documents and Plaintiff in default of repayment of the loan amount thereby, got issued a notice calling upon the Plaintiff for repayment of the loan amount, when the Plaintiff failed to repay the loan amount after conducting the procedure has brought the suit property for sale in public auction which is evident from the materials on record and the 2nd Defendant being the highest bidder got obtained the Sale Deed, though the PW2 and 3 have stated the Plaintiff is in possession and enjoyment of the schedule property as on the date of filing of the suit, but nothing has been placed on record to show the Plaintiff was in possession and enjoyment of the schedule property as on the date of suit as the Ex.P2 to Ex.P5 are the records of rights for the year 1991 to 2012-13 the Plaintiff name has been appeared in the column No.9 and Column No.12(2) but the reasons best known to the Plaintiff has not produced the record of right for the year 2015 to show as on the date of filing of the suit the schedule property was in his possession and enjoyment as the court below framed the issues in respect of the ownership of the Plaintiff and possession over the plaint schedule property, therefore, the burden on the Plaintiff to prove as on the date of filing of the suit the schedule property was in his possession and enjoyment and he became the absolute owner by virtue of the Gift Deed, but whereas Ex.P8 is the absolute Sale Deed dated 21.07.2009 reflects the Defendant No.1 brought the suit schedule property for sale since the Plaintiff was in default in repayment of the loan inspite of notice and put the suit property for public action and sold the highest bidder by executing Ex.D8 as the Ex.D25 is very much clear the Plaintiff is aware about the execution of Sale Deed dated 21.07.2009 and also admits that he will not object for changing of khata in the name of the Defendant No.2 nor his possession, so if the Ex.D 25 and the Ex.D3 are taken into consideration it is clear as on the date of filing of the suit the property is not in the hands of Plaintiff to show that as on the date of the suit the suit schedule property was in his possession and enjoyment as owner thereof as the Ex.D10 is the Misc.Appeal No.40/2015 filed by the S.V.Padma Prasad and Kanaka Prabhamma against the orders passed in favour of S.V.Shivaram being the Defendant No.2 restraining the very Plaintiff from interfering the possession and enjoyment of the Defendant No.2 over the suit schedule property which came to be dismissed and the order which passed by the court below that is additional Civil Judge and JMFC., H.D.Kote has been confirmed and the Plaintiff has not placed any materials on record to show that he has challenged the order passed by the Addl.Civil Judge and JMFC., H.D.Kote and the orders passed by the Senior Civil Judge and JMFC., at

H.D.Kote, therefore, the Ex.D10 is remained unchallenged that itself is clear as on the date of the suit the Plaintiff was not in possession and enjoyment of the schedule property that is the reason why the Temporary Injunction has been granted in favour of the Defendant No.2 by virtue of the Sale Deed which executed by the Defendant No.1. So, it is clear the Plaintiff has filed the suit in O.S.No. 11/2015 on 16.01.2015, but prior to filing of the suit the very Defendant No.2 filed the suit in O.S.No. 175/2014 and Temporary Injunction has been granted against the very Plaintiff, restraining him from interfering the 2nd Defendant's possession and enjoyment of the schedule property, therefore, the arguments which advanced by the learned Counsel for the Appellant holds no water. Thus if the Ex.D8 ,Ex.D10, Ex.D11, Ex.D12, Ex.D14 and Ex.D22 are taken into consideration it is clear that the Plaintiff is well aware of the Sale Deed which executed by the Defendant No.1 in favour of the Defendant No.2, but the reasons best known to the Plaintiff has not challenged the Sale Deed within 3 years from the date of knowledge. Therefore, the suit which filed is barred by limitation.

45. The learned Counsel for the Appellant while canvasing his arguments has much argued that no notice has been served on the Appellant nor granted sufficient opportunity to repay the loan amount. Admittedly, Ex.D19 is the notice has been issued by the 1st Defendant to the very Plaintiff on 24.12.2002 calling upon the Plaintiff to pay due amount to the Defendant No.1 within seven days for which the Plaintiff has failed to pay the due amount that itself is clear the Defendant No.1 has brought to the notice of the Plaintiff regarding the due amount and calling upon the Plaintiff to repay the due amount in the year 2002 itself. Ex.P14 is also clear that the Defendant No.1 got issued a notice on 17.09.2003 calling upon the Plaintiff to repay the loan amount, but the Plaintiff did not do so, thereby, the schedule property has been brought for public auction has been fixed on 03.09.2003 and same has been published through Vijaya Karnataka newspaper, thus if Ex.P14 is taken

into consideration it is clear the Defendant No.1 got issued a notice to the Plaintiff and brought to his notice regarding the due amount and non-payment of the loan amount. Ex.P16 is the petition filed U/Sec. 31(1)(aa) and 32 of the State Financial Corporation Act and sought for orders for enforcement of the liability of the Respondents as security to pay the amount of Rs.30,43,589/- with agreed interest and in the petition the Defendant No.1 has clearly stated inspite of demand made by the corporation the Respondents failed to repay the loan amount that is the reason why petition has been filed which came to be allowed. That itself is clear the Plaintiff is aware about the due amount and non-payment of the loan amount miscellaneous petition has been filed before the II Addl.District Court at Mysuru in Misc.Pet.No.2/2007. So, one thing is clear from the records the Plaintiff is aware that the Defendant No.1 is demanding for repayment of the loan amount, inspite of the same the Plaintiff has not taken any steps to repay the loan amount, because of that reason the Defendant No.1 filed the Misc.Pet.No.2/2007 which came to be allowed on 07.10.2009 and thereafter, the notice has been issued to the Plaintiff calling upon him to pay the due amount, inspite of the same did not appear nor paid the due amount that is the reason why finally got issued a notice and informed that non-payment of due amount brought the suit property for sale in public auction and the same has been published in the newspaper and the Defendant No.1 taken over the property by virtue of Ex.D11 in the year 2001. Admittedly, the sale deed was came to be executed by the Defendant No.1 in favour of the Defendant No.2 on 21.07.2009 as the Ex.D11 is the mahazar wherein the very Plaintiff being the signatory to the said document that itself is clear till execution of the Sale Deed dated 21.07.2009 from 08.10.2010 having sufficient time to discharge the loan, but the reasons best known to the Plaintiff has not taken steps to repay the loan amount, that is the reason why the Defendant No.1 has invoked the power U/Sec.29 of State Financial Corporation Act and brought the suit property for sale in a public auction and the Defendant No.2 is the highest bidder who purchased the schedule property, though this fact was brought to the notice of the Plaintiff by virtue of Ex.D14, even then he did not pay the said amount that itself is clear the Plaintiff having the notice about the due amount and the action which initiated by the Defendant No.1 inspite of sufficient opportunity did not repay the loan amount therefore, the Defendant No.1 has no other go except to invoke Sec.29 and 30 of the State Financial Corporation Act 1951. Accordingly, invoked the provisions of State Finance Corporation Act, and brought the suit property for sale in the public auction and the Defendant No.2 being the highest bidder purchased the schedule property, therefore, the arguments which advanced by the learned Counsel for Appellant on this aspect holds no water.

46. It is an admitted fact, the Plaintiff has not disputed about availment of the loan, but it is the specific case of the Appellant that the Defendant No.1 has not followed the procedure nor accorded sufficient opportunity to repay the loan amount and the Defendant No.1 colluding with

the Defendant No.2 created the Sale Deed to defeat the right of the Plaintiff, if the materials on record are taken into consideration the Defendant No.1 has granted sufficient opportunity to repay the loan amount, but the reasons best known to the Plaintiff did not taken any action to repay the loan amount that is the reason why the Defendant No.1 has no other go except invoke the provisions as per the State Finance Corporation Act, accordingly, invoked the provisions and sold the property which empowered by the Defendant No.1.

47. The learned Counsel for the Appellant while canvasing his arguments has much argued that the court below has not granted sufficient time and the Defendant No.1 created the Sale Deed in favour of the Defendant No.2 which is against to the principles of natural justice and drawn attention of the Court on the following Judgment:-

1. AIR 1981 Karnataka 193

2.1993 (2) SCC 299

3. 1996(5) SCC 65

4. 2002(3) SCC 496

5. ILR 1996 Karnataka 1853

48. On careful perusal of the above Judgments in the said Judgments their lordship held that the Managing Director has not followed the doctrine of audialteram partem and he has not given opportunity to the various loanees before come to the conclusion that so much of amount was due from them, thereby, the recovery proceedings has been vitiated and quashed and the proceedings which initiated if unfair or unreasonable or violation of any statute the proceedings which initiated will be vitiated and if the corporation violates any statute nor acts unreasonably then the interference is warranted and public auction must be given adequately publicity.

49. Admittedly, the Plaintiff has examined two more witnesses to show as on the date of suit the Plaintiff was in possession and enjoyment of the schedule property as owner

but if the materials on record and the admission of the PW1 and 2 are taken into consideration it is clear as on the date of suit the Plaintiff was not in possession and enjoyment of the schedule property as owner, because of that reason PW2 has pleaded ignorance, though PW2 has stated the Plaintiff is in possession of the property as on the date of the suit, but the documentary evidence reveals that the Plaintiff was not in possession of the suit schedule property as on the date of suit and if the materials placed on record are taken into consideration it is clear the Defendant No.1 has granted sufficient opportunity before invoking the provisions of statute calling upon the Plaintiff to repay the due amount, but the reasons best known to Plaintiff has not opted to repay the loan amount, because of that reason after exhausting all the remedies by invoking Sec.29 and 30 brought the suit property for sale in a public auction by issuing a vide publicity. Therefore, I do respect to the Judgments which relied but the said Judgment are not applicable to the case on hand and the Appellant failed to prove that the Judgment and Decree which passed by the court below is perverse, illegal and capricious, so question of interference of this Court does not arise. Hence, I am of the opinion that the ***Point No.1 and 2 are answered in the Negative.***

50. **Point No.3:-** In view of my answer to the point No. 1 and 2 as stated above, I proceed to pass the following:

::ORDER::

The Regular Appeal filed under Sec.XLI Rule-1 R/w.Sec.96 of CPC., is hereby ***Dismissed***.

In consequence, the Judgment and decree passed by Senior Civil Judge and JMFC., H.D.Kote in O.S.No.11/2015 dated 02.04.2025 is hereby ***confirmed***.

Draw decree accordingly.

No order as to cost.

(Dictated to the Stenographer Grade-III, transcribed by her and then corrected by me, signed and pronounced in the Open Court this the **17th day of April-2026**)

(P.J. SOMASHEKHAR)
IV Addl.District and Sessions
Judge, Mysuru.