IN THE COURT OF LXXXIX ADDL.CITY CIVIL & SESSIONS JUDGE, BENGALURU. (CCH-90)

Present: Sri.S.J.Krishna, B.Sc., LL.B.,
LXXXIX Addl.City Civil &
Sessions Judge, Bengaluru.

Dated: 20th JULY 2023

Com.Misc.No.1023/2003

PETITIONER			M/s.Karnataka State Financial Corporation, Peenya and Rajajinagar Branch, West of Chord Road, Rajajinagar, Bengaluru, Represented by its Asst., General Manager, Applicant is a Statutory body formed under State Financial Corporations Act, 1951. (By Dr.T.Somashekar, Advocate)
			-Vs-
RESPONDENTS	:	1)	Sri.S.Chinnappa, Major, S/o Chinnaswamy, Proprietor, M/s.Venkateshwara Mining

Corporation,
No.23, 4th Main Road,
5th Cross, West of Chord Road,
Manjunatha Nagar,
Bengaluru-560 010.

(Ex parte)

2) Sri.Parashuram,
S/o Late Venkatesh,
No.72, Micheal Palya,
New Thippasandra Post,
Bengaluru-560 075.
Since deceased by LRs

2(a) Smt.Eranistin
W/o Late Parashuram,
Aged about 72 years,
No.72, 1st Cross,
1st Main, Michal Palya,
Thippasandra,
Bengaluru-560 075.

(By Sri.Veerendra Babu,
Advocate)

2(b) 2(b). Smt.Anthumeri,
D/o. Late Parashuram,
Aged about 45 years, No.72,
1st Cross, 1st Main, Micheal
Palya,
Thippasandra,
BENGALURU-560 075.
(Ex parte)

2(c) Sri.Moses Beranclis,
S/o. Late Parashuram,

Aged about 43 years,
No.72, 1st Cross, 1st Main,
Michal Palya, Thippasandra,
BENGALURU-560 075.

(By Sri.Veerendra Babu,
Advocate)

2(d) Smt. Paulin
D/o. Late Parashuram,
Aged about 32 years,
No.72, 1st Cross, 1st Main,
Michal Palya, Thippasandra,
BENGALURU-560 075.

(Ex parte)

2(e) Smt.Sabina,
D/o. Late Parashuram,
Aged about 32 years,
No.72, 1st Cross, 1st Main,
Michal Palya, Thippasandra,
BENGALURU-560 075.

(Ex parte)

Date of Institution of petition		12.11.2003
Nature of suit (suit on pronote, suit for declaration and possession suit for injunction, etc.,)	:	Miscellaneous Petition us 31(1) (aa) & Section 32 of State Financial Corporation Act, 1951
Date of commencement of	:	10.12.2005(PW1) 15.02.2023(PW2)

recording of evidence				
Date of judgment	:	20.07.2023		
Total duration	:	Year/s	Month/s	Days
		19	08	08

(S.J.KRISHNA)
LXXXIX ADDL.CITY CIVIL &
SESSIONS JUDGE, BENGALURU.
(CCH-90)

JUDGMENT

The Petitioner Corporation has filed this petition under section 31(1)(aa) & 32(1) of the State Financial Corporation Act, 1951 against the respondents praying the Court to pass an order directing the respondents jointly and severally to pay a sum of ₹.33,99,928.73 due as on 10.06.2003 with interest and to pay further interest on ₹.7,90,000/- @ 19.50% pa., to pay further interest on ₹.25,67,431.25 @ 19.50%p.a., to pay further interest on ₹.42,497.48 @ 19.50% p.a. at overdue rate of interest on the balances from 10.06.2003 till the date of realization on the footing of compound interest on quarterly rest basis to the Petitioner Corporation; to direct the respondents to pay the cost of the proceedings; to pass an order of attachment and sale of the schedule properties and grant such other reliefs.

The Case of the Petitioner Corporation is as under:

02. The Karnataka State Financial Corporation has been established by the Government of Karnataka for the State of Karnataka, under section 3 of the Act and has been carrying on function specified in section 25 of the Act, in accordance with section 24 of the Act. The Applicant Corporation is the only statutory Public Financial established in the state of Karnataka with the object of rendering Financial Assistance to Industrial concerns. The moneys advanced and lent by it to the industrial concerns are in the nature of public moneys collected by way of refinance loans from Small the Industrial Development Bank of India and other Central Public moneys made available by the State Government and also raised by of debentures/ public deposits.

03. The Corporation has to deal with these funds on business principles with due regard being had to the interest of Industry, commerce and the General public as

required by Section 24 of the Act and for this purpose in accordance with the required financial discipline.

04. M/S. Venkateshwara Mining Corporation is proprietorship concern of Sri.Chinnappa having its regd. Office No. 70, Opp.Shakthi English School, Laggere, Bangalore-57. The respondent No 2 stood as a surety/guarantor to the said concern to the loans advanced to first respondent proprietor of the proprietorship concern.

05. At the request of the respondents on behalf of their proprietorship concern the corporation sanctioned term loan of ₹.10,60,000/- subject to the terms and conditions set out in the corporation’s communication Sanction letter dated 31.01.1995.

06. As security to the repayment of the said loans Sri.Chinnappa, proprietor of the proprietorship concern has hypothecated moveable and immovable properties, plant and machinery of the said unit situated at No.70, Opp.Shakthi English School, Laggere, Bengaluru-560 057 in favor of the Corporation and proprietor of the said unit has executed a Hypothecation Deed dt.23.03.1995.

07. Despite of the agreed terms and conditions as well as pre-installment demands made, the respondents committed defaults in the repayment of the installments necessitating the corporation to issue a Recall Notice Dt.09.01.1998 under Section 30 of State Financial Corporations, Act, recalling and demanding all the dues of the Corporation, Notice issued was endorsed and delivered to the respondents and they have acknowledged the said notices. Despite of the said notice the proprietor of the said proprietorship concern and the 2nd respondent surety failed to comply with the demands made under the said notice. In view of the continuous defaults committed by both respondents applicant Corporation has to approach this Hon'ble Court by filing this application.

08. Despite of giving innumerable opportunities the proprietor of the proprietorship concern/Surety (2nd respondent) Guarantor has failed to pay the amounts due to the corporation. The corporation has issued a legal notice dt.17.09.2003 calling upon both the respondents to pay to the applicant Corporation an amount of ₹.33,99,928.73 due as on 10.06.2003 with future interest. Despite of receipt of the said notice, the respondents failed to discharge their liability.

09. The Respondent No.2/the surety has entered into collateral Security Agreement Dt.23.03.1995 in favor of the Petitioner Corporation thereby agreed that as security for the aforesaid loans granted by the Corporation to 1st respondent he shall offer the Schedule Property bearing House List No.18, Khata No.117/1, situated at Michaelpalya, Manvartha Kaval, Byappanahalli Panchayath, K.R.Puram Hobli, Bangalore South Taluk.

10. In accordance with the terms of Loan Agreement, Hypothecation Deed dt.23.03.1995 executed by 1st respondent, as well as the collateral Security Agreement executed on 23.03.1995 by the respondent, in the context of both respondents failure to repay the amounts due, respondents are responsible and liable to pay the amounts due to the Petitioner Corporation.

11. The respondents are liable to pay the Corporation a sum of ₹.33,99,928.73 due as on 10.06.2003 with future interest at overdue rate of interest on the balances from 10.6.2003 till date of realization on the footing of compound interest at quarterly rest basis. To pay further debits if any debited with interest thereon from the date

of debit till the date of realization, on the footing of compound interest at quarterly rest basis as per the statement of accounts.

12. The liability of the respondents is joint and several. In view of the defaults committed by the respondents, charge has been created on the properties of the Surety the 2nd respondent has executed a collateral Security agreement, offering property bearing House List No.18, Khata No.117/1, situated at Michaelpalya, Manvartha Kaval, Byappanahalli Panchayath, K.R.Puram Hobli, Bengaluru South Taluk together with all the buildings and structures standing thereon. 2nd respondent has also created equitable mortgage of the said properties.

13. The Hon'ble Court has jurisdiction to deal with this matter, since the office of the proprietor 1st respondent concern and the place of business situated in the city of Bengaluru. Within the jurisdiction of this Hon'ble Court and the cause of action also arose within the territorial limits of this Hon'ble Court.

14. After the service of summons, the first respondent remained absent and is placed ex parte. The respondent No:2 appeared through his advocate and has filed the statement of objections as under:

15. The Respondent No.2 has denied the averments made in para 3 to 15 of the petition as false. The Respondent No: 2 denied that the cause of action accrued to the petitioner to file the petition within the jurisdiction of this Hon'ble Court. Only DRT has the jurisdiction to try this petition as the claim is above 10 lakhs and this Hon'ble Court has no jurisdiction to decide the dispute involved in the case.

16. There is no cause of action for the above petition either on 09.01.1998 or on 17.09.2003 or subsequently or at any time and hence the above petition is liable to be dismissed for want of cause of action. The second respondent has denied the averments made in paras 18 and 19 of the petition. If there is any due it is the first respondent alone is liable to clear the dues of the Corporation. The Second Respondent never stood as surety or guarantor to the alleged loan dues of the petitioner and hence the second respondent is not liable

to pay any amount to the petitioner. Hence, the petition is liable to be dismissed with exemplary costs.

17. The Petitioner Corporation has examined Sri.D.S.Suresh/Manager of the Corporation as PW1 and sought time to lead further evidence of PW1. The Petitioner Corporation has not exhibited any documents in support of its claim. On 14.06.2017, noting the absence of PW1 this Court has recorded further evidence of Petitioner as close and posted the case for evidence of Respondent No: 2. On 12.07.2017 the Court after noticing absence of respondent No:2 recorded that the evidence of respondent No:2 as nil and posted the case for arguments on merits. Subsequently, the petitioner Corporation has filed I.A.No.7, 10 and 11 to bring LRs of deceased Respondent No: 2, which applications were allowed vide order dated: 22.11.2022. Subsequently, the Corporation has furnished amended plaint. The LR No: 2(a) & (c) appeared through their advocate. The LR No: 2(b), (d) & (e) remained absent and are placed ex parte. The LRs of deceased respondent No.2 (a) & (c) have not field statement of objections to main petition. The case was posted for further evidence of PW1.

18. The learned Counsel for the Petitioner Corporation submitted that PW1 Sri.D.S.Suresh has retired from the services and the corporation is examining Sri.G.K.Umapathi, Deputy Manager (F & A)-PP2 Recovery Section as PW2. After nothing the absence of PW1 this Court has closed further evidence of PW1 on 14.06.2017. Hence, the evidence of PW1 is not considered as he has not adduced further evidence and offered for cross examination.

19. The Petitioner Corporation has examined Sri.G.K.Umapathi as PW2. The PW2 has exhibited Ex.P1 to Ex.P8. The Respondent No:2(a) & (c) got exhibited Demand Due statement as Ex.R1 in the cross examination of PW2. The Respondent No:2(c) has adduced evidence as RW1. RW1 has not exhibited any documents.

20. After the conclusion of the trial I have heard the arguments addressed by the learned Counsel for Petitioner Corporation and the Respondents No.2(a) & (c). They have also submitted their respective written arguments.

21. The learned counsel for the Petitioner Corporation has relied on the following decisions in support of his case:

Sl.No.	Name of the parties	Citation
01.	U.P.Financial Corporation Vs. M/S.Gem Cap (India) Pvt.Ltd., and others	AIR 1993 SC 1435
02.	Syndicate Bank V.Channaveerappa Beleri and Ors	2006 AIR SCW 2134
03.	Gulhati and Another Vs.KSFC	ILR 2007 KAR 44
04.	Rajasthan Financial Corporation V. Banwari Lal and other	AIR 1997 RAJ 273

22. The learned counsel for the LR No.2(a) & (c) Corporation has relied on the following decisions in support of his case:

Sl.No.	Name of the parties	Citation
01.	Sri.K.V.G.Rajan Vs. KSFC & Others	MFA No.1848/2010(KSFC) Dt:03.03.2017
02.	KSFC & Others Vs.Smt.Jaya Menon & Others	ILR 2004 KAR 2735
03.	Maharastra State Financial Corporation Vs.Ashok K.Agarwal and Ors.	AIR 2006 SC 1584
04.	Syndicate Bank V.Channaveerappa Beleri and Ors	2006 AIR SCW 2134

23. I have gone through the ratio of materials available on record and the ratio of above precedents.

24. The following points arise for my determination:

(1) Whether the Petitioner Corporation proves that the respondent No. 1 being the principal borrower and Respondent No. 2 being the guarantor are jointly, severally and personally liable to pay a sum of ₹.33,99,928-73 due as on 10.06.2003?

(2) Whether the Petitioner Corporation proves that the respondents No.1 being the principal borrower and Respondent No. 2 being the guarantor are jointly, severally and personally liable to pay further interest at 19.50 % p.a. on i) ₹.7,90,000/- ii) ₹.25,67,431.25, iii) ₹.42,497.48 from 10.06.2003 till the date of realization on the footing of compound interest on quarterly rest basis to the Petitioner Corporation?

(3) Whether the Petitioner Corporation proves that the LRs of deceased Respondent No:2 are liable to satisfy the petition claim made by the Corporation?

(4) Whether the Petition filed by the Petitioner Corporation is barred by law of Limitation?

(5) What Order?

25. My findings on the above points are as follows:-

Point No. 1 : In the **AFFIRMATIVE**;
Point No. 2 : In the **AFFIRMATIVE**;
Point No. 3 : PARTLY **AFFIRMATIVE**;
Point No. 4 : In the **AFFIRMATIVE**;
Point No. 5 : As per final orders for the following

REASONS

26. **Point No.1 to 3 :** The Petitioner Corporation has filed this petition under section 31(1)(aa) & 32(1) of the State Financial Corporation Act, 1951 against the respondents praying the Court to pass an order directing the respondents jointly and severally to pay a sum of ₹.33,99,928.73 due as on 10.06.2003 with interest and to pay further interest on ₹.7,90,000/- @ 19.50% pa., to pay further interest on ₹.25,67,431.25 @ 19.50%p.a., to pay further interest on ₹.42,497.48 @ 19.50% p.a. at overdue rate of interest on the balances from 10.06.2003 till the date of realization on the footing of compound interest on quarterly rest basis to the Petitioner Corporation; to direct the respondents to pay the cost of the proceedings; to pass an order of attachment and sale of the schedule properties and grant such other reliefs.

27. The Petitioner Corporation has examined Sri.G.K.Umapathi as PW2. The PW2 has exhibited Ex.P1 to Ex.P8.

28. The PW2 has reiterated the petition averments in his affidavit evidence. It is the case of Petitioner Corporation that M/S. Venkateshwara Mining Corporation is proprietorship concern of Sri.Chinnappa having its regd. Office No. 70, Opp.Shakthi English School, Laggere, Bangalore-57. The respondent No 2 stood as a surety/guarantor to the said concern to the loans advanced to first respondent proprietor of the proprietorship concern.

29. At the request of the respondents on behalf of their proprietorship concern the corporation sanctioned term loan of ₹.10,60,000/- subject to the terms and conditions set out in the corporation's communication Sanction letter dated 31.01.1995/ExP4.

30. As security to the repayment of the said loans Sri.Chinnappa, proprietor of the proprietorship concern has hypothecated moveable and immovable properties, plant and machinery of the said unit situated at No.70,

Opp.Shakthi English School, Laggere, Bengaluru-560 057 in favor of the Corporation and proprietor of the said unit has executed a Hypothecation Deed dt.23.03.1995 as per Ex.P5.

31. Despite of the agreed terms and conditions as well as pre- installment demands made, the respondents committed defaults in the repayment of the installments necessitating the corporation to issue a Recall Notice Dt.09.01.1998 under Section 30 of State Financial Corporations, Act, recalling and demanding all the dues of the Corporation as per Ex.P7, Notice issued was endorsed and delivered to the respondents and they have acknowledged the said notices. Despite of the said notice the proprietor of the said proprietorship concern and the 2nd respondent surety failed to comply with the demands made under the said notice.

32. Despite of giving innumerable opportunities the proprietor of the proprietorship concern/Surety (2nd respondent) Guarantor has failed to pay the amounts due to the corporation. The corporation has issued a legal notice dt.17.09.2003 calling upon both the respondents to

pay to the applicant Corporation an amount of ₹.33,99,928.73 due as on 10.06.2003 with future interest. Despite of receipt of the said notice, the respondents failed to discharge their liability.

33. The Respondent No.2 the surety has entered into collateral Security Agreement Dt.23.03.1995 as per Ex.P6 in favor of the Petitioner Corporation thereby agreed that as security for the aforesaid loans granted by the Corporation to 1st respondent he shall offer the Schedule Property bearing House List No.18, Khata No.117/1, situated at Michaelpalya, Manvartha Kaval, Byappanahalli Panchayath, K.R.Puram Hobli, Bangalore South Taluk.

34. The respondents are liable to pay the Corporation a sum of ₹.33,99,928.73 due as on 10.06.2003 with future interest at overdue rate of interest on the balances from 10.6.2003 till date of realization on the footing of compound interest at quarterly rest basis. To pay further debits if any debited with interest thereon from the date of debit till the date of realization, on the footing of compound interest at quarterly rest basis as per the statement of accounts as per Ex.P8.

35. The Petitioner Corporation is contending that the liability of the respondents is joint and several. In view of the defaults committed by the respondents, charge has been created on the properties of the Surety the 2nd respondent has executed a collateral Security agreement, offering property bearing House List No.18, Khata No.117/1, situated at Michaelpalya, Manvartha Kaval, Byappanahalli Panchayath, K.R.Puram Hobli, Bengaluru South Taluk together with all the buildings and structures standing thereon. 2nd respondent has also created equitable mortgage of the said properties.

36. In accordance with the terms of Loan Agreement, Hypothecation Deed dt.23.03.1995/Ex.P5 executed by 1st respondent, as well as the collateral Security Agreement executed on 23.03.1995/Ex.P6 by the respondent, in the context of both respondents failure to repay the amounts due, respondents are responsible and liable to pay the amounts due to the Petitioner Corporation.

37. The PW2 in his cross examination has deposed that the petition is filed in accordance with provisions of SFC Act, 1951. The petition is based on the agreement

executed by respondent No.1 in favor of petitioner Corporation. The Corporation has complied with the conditions enshrined in the hypothecation deed executed by respondent No.1. The Corporation has verified a credit worthiness of respondent No.1 before sanctioning the loan.

38. The respondent No.1 became a defaulter in 1996. He has admitted that the Corporation ought to have issued notice to the respondent No.1 on his first default itself. The Corporation had issued notice to the respondent No.1 in 1996. He has not furnished any documents to show that the Corporation has issued notice to the respondent No.1 on his first default itself. He denied that the Corporation has not complied with Sec. 30 of SFC Act. The Corporation has notified the respondent No.2 about the default committed by the respondent No.1. He has not furnished copy of said notice before the Court. He denied that the corporation has not issued any such notice to respondent No.2.

39. The PW2 has admitted ledger extract filed along with the petition and the same is marked as Ex.R1 (Ex.R.1

transaction pertains to respondent No.1). Ex.P.8 is also a ledger extract pertaining to transaction of respondent No.1 with the petitioner Corporation.

40. To the question What do you say that the entries made in Ex.R.1 and entries made in Ex.P.8 do not tally with each other, the PW2 has answered that Ex.P.8 is the summary of loan account and Ex.R.1 is the demand due statement.

41. The repayments made by the respondent No.1 are recorded in Ex.R.1. The payments shown in Ex.P.8 also find a place in Ex.R.1 also. He denied that in Ex.R.1 the payments made by the respondent No.1 are not recorded. Every repayment has a voucher and mode of payment. He has not furnished vouchers and other documents pertaining to payments made by the respondent No.1. He denied that in order to save the limitation to file the petition the Corporation has concocted the entries in Ex.P.8.

42. The Corporation has sanctioned loan under transport scheme to enable the respondent No.1 to

purchase the machinery. As per the scheme of loan the extent of liability of borrower and the guarantor are fixed as per Ex.P.6. As per Ex.P.6 the liability of respondent No.2 was fixed at 7.92 Lakhs. He is not aware whether the Corporation has determined the liability of respondent No.2 proportionate to the liability fixed under Ex.P.6. The Corporation had notified the respondent No.2 about the default committed by the respondent No.1 and the liability of respondent No.2 to clear the dues. He has not furnished any documents to show that the Corporation has issued such a demand notice to respondent No.2. He denied that the Corporation without following the provisions of SFC Act is trying to recover the dues from respondent No.2. He denied that the Corporation was not vigilant in executing its rights against principal borrower. As per Ex.P.5 the primary security for the repayment of loan is plant and machinery of respondent No.1. The Corporation was obliged to conduct quarterly audit of the financial condition of respondent No.1. The Corporation has not furnished copies of audit. He denied that as the Corporation has failed to take action in accordance with provisions of SFC Act against respondent No.1, the respondent No.2 is not liable to pay any amount to the

Corporation. He denied that the Corporation has slept over the matter since 1996 and is trying to make unlawful gain against the respondent No.2. He denied that as the Corporation has failed to properly monitor the loan status of respondent No.1, now it is not open for the Corporation to initiate any action against respondent No.2 for recovery of alleged dues. He denied that the respondent No.2 was not appraised of the details of loan, nature of loan and the liability of a surety before getting Ex.P.6 executed. The Corporation used to inform the borrower and the surety about the variation in rate of interest. He denied that the Corporation has not filed any supporting documents in respect of petition claim. He denied that the Corporation has not disclosed the outstanding balance amount, difference payable by the borrower and surety. He denied that the Corporation is not entitled to claim the interest from respondent No.2 as the Corporation has notified the respondent No.2 regarding the variation in rate of interest. He denied that the petition claim do not tally with the entries made in Ex.P.8. He denied that there is no nexus between the alleged petition loan transaction and LRs., of deceased respondent No.2. He denied that the Corporation has filed the present petition in collusion with respondent No.1 against the respondent to make unlawful gain.

43. The RW.1 has reiterated the averments made in the statement of objections filed by Respondent No:2 in his affidavit evidence. The Respondent No: 2(a) & (c) got exhibited Demand Due statement as Ex.R1 in the cross examination of PW2. The Respondent No:2(c) has adduced evidence as RW1. RW1 has not exhibited any documents.

44. The RW1 in his cross examination deposed that the name of his father is Parashuram. His father had 3 daughters and 1 son. He is the only son of his father. He is not aware that his father had executed an agreement in favor of petitioner Corporation as per Ex.P.6. He denied that his father was aware of loan taken from respondent No.1 and has executed the agreement as per Ex.P.6. He has identified the signature of his father as Ex.P.6 (a) in Page No.7 of Ex.P.6.

45. The RW1 denied that the petitioner Corporation had issued notices demanding payment of overdue amount. They have not received any notices from the Corporation. He denied that his father had offered petition

schedule property as security for repayment of loan borrowed by respondent No.1. He is one of the LRs., of his father. He denied that he is responsible to discharge the loan owed to Corporation by his father/respondent No.2. He denied that he being the LR., of his father/respondent No.2 who has offered surety for the loan borrowed by respondent No.1 he is responsible to discharge the loan.

46. He does not know the reason why the notice has been issued to him in this case. He has received a copy of petition along with the notice issued by the Court. He inquired with his lawyer about the notice. He is given to understand that the respondent No.1 has borrowed loan from the petitioner Corporation. He has contacted the Corporation after the receipt of notice issued by this Court. He denied that in order to escape his liability to discharge the loan he has contacted the petitioner Corporation. He has not made any representation to the Corporation to provide facility of one time settlement. He denied that Corporation has sent a letter informing him that if he pays ₹.40,00,000/- the Corporation would close the case. He denied that all the LRs., of respondent No.2 are responsible for discharge of outstanding dues to the Corporation. After the receipt of notice along with copy of

petition he came to know that the petitioner Corporation has filed the present petition for recovery outstanding dues. He has not initiated any legal proceedings against the petitioner Corporation challenging the recovery proceeding initiated by the corporation in the present case. He denied that he is legally bound to discharge the outstanding dues claimed by the Corporation. He denied that he is deposing falsely even though he is aware of petition loan transaction execution of agreement as per Ex.P.6 by his father with a view to escape the liability.

47. On a careful perusal of the materials available on record it is evident that the Petitioner Corporation has established petition loan transaction and the execution of loan documents by Respondent No: 1 and 2 as per Ex.P5 and Ex.P6. Though the LRs of deceased Respondent tried to deny the execution of Ex.P6 agreement for collateral security dated: 23.03.1995 by respondent No: 2, the RW1 has categorically admitted the signature of his father in Ex.P6. The RW1 has deposed that he has not initiated any legal proceedings challenging the recovery proceedings initiated by the Corporation.

48. From the evidence available on record it is evident that Ex.P8 is the summary of loan account and Ex.R1 is the demand due statement. As per the entries made in Ex.P8 and Ex.R1 it is clear that the Corporation has sanctioned a sum of ₹.10,60,000/- on 31.01.1995 and disbursed ₹.7,90,000/-. As per recitals of Ex.P6, the Respondent No:2 has offered collateral security undertaking due repayment of ₹.7,92,000/- together with interest, cots charges etc., Thus the principal sum was ₹.7,90,000/-. The accrued interest as on 10.06.2003 was ₹.25,67,431-25 and other debits was ₹.42,497-48. In all the Petitioner Corporation is claiming ₹.33,97,928-73 with further interest at 19.50% p.a.

49. The Respondent No;1 the principal borrower by remaining ex parte has lost an opportunity to contradict the claim of the Petitioner Corporation. The Respondent No:2, the surety/guarantor has made evasive vague denial of the claim of the Petitioner Corporation in his Statement of Objections. The LRs of deceased Respondent No:2 have no personal knowledge of the transaction. They have admitted the execution of Ex.P6 by Respondent No.2. There are no materials available on record to hold

that the Respondent No:1 and 2 are not liable to pay the petition claim to the Petitioner Corporation.

50. This Court has passed order of attachment against Respondent No:2 in respect of petition schedule property vide order dated: 13.11.2003. The LRs of deceased Respondent No:2 are liable to pay the petitioner corporation to the extent of property/estate inherited by them from the deceased Respondent No:2. From the materials available on record and discussion made above it is clear that the Petitioner Corporation has proved that the Respondent No:1 being the principal borrower and the Respondent No:2 being the guarantor are jointly and severally liable to pay a sum of ₹.33,99,928-73 due as on 10.06.2003; and further liable to pay further interest at 19.50 % p.a. on i) ₹.7,90,000/- ii) ₹.25,67,431.25, iii) ₹.42,497.48 from 10.06.2003 till the date of realization on the footing of compound interest on quarterly rest basis to the Petitioner Corporation.

51. As the Respondent No:2 passed away during the pendency of proceeding the liability of the Respondent No:2 has to be satisfied by his LRs to the extent of estate/ property inherited by them from the deceased

Respondent No:2. Accordingly, POINT No.1 and 2 are answered in the **AFFIRMATIVE**; POINT No.3 is answered **PARTLY AFFIRMATIVE**.

52. **POINT No. 4:** The LRs of Respondent No:2 are contending that the petition is barred by limitation. The Petitioner Corporation is contending that the Corporation has issued demand notice to the Respondents on 17.09.2003, which is well within the period of limitation.

53. The PW2 in his cross examination denied that the Corporation has not issued any notice to the respondents. The PW2 deposed that the Corporation has issued notice dated 09.01.1998 as per Ex.P7 to the respondents. He is not aware whether the Corporation has furnished postal acknowledgments to evidence the service of notice issued as per Ex.P.7 to the respondents. As per the procedure followed by the Corporation the respondents were given time to clear the dues of the Corporation.

54. The recitals of Ex.P7/Notice dated:09.01.1998 show that the Petitioner Corporation has notified the Respondent No:1 and 2 to pay ₹.15,29,307/- with interest

and penal interest forthwith under section 30 of SFC Act, failing which the Corporation would be constrained to take appropriate action under Sections 29 & 31(1) (aa)(a) of the SFC Act, 1951 and or any other law at the cost and risk and liability of the Respondents.

55. The PW1 has deposed that the Corporation has invoked Sec. 29 of SFC Act and proceeded against hypothecated assets before filing the present petition. Except Ex.P.1 to Ex.P.8, he has not furnished any other documents in respect of petition loan transaction. He denied that the Corporation has not complied with mandatory requirement of Sec. 29 of SFC Act. He denied that as the Corporation has not followed Sec.29 of SFC Act we have not furnished any documents pertaining to Sec.29 proceedings.

56. The Petitioner Corporation has stated in the petition that it has issued legal notice dated:17.09.2003. The Petitioner Corporation has not exhibited the copy of legal notice dated:17.09.2003 though a copy is furnished along with the petition. As the Petitioner Corporation itself has relied on the Legal Notice dated:17.09.2003 to contend that the petition is filed within the period of

Limitation there shall be no embargo to refer the said copy of legal notice dated;17.09.2003 to determine the question of Limitation.

57. At para 3 of Legal Notice dated:17.09.2003, the Petitioner Corporation has stated that “Some of the assets and machinery of 1st of you were taken over by this Corporation under Sec 29 of SFC’s Act on 29.05.97, and they were sold by due intimation to you. The amounts shown in this legal notice are fallen due from 1st and 2nd of you to this Legal Notice after adjusting the sale proceeds”. At para 4 of the Legal Notice it is averred that “A recall Notice dt.9.1.98 was issued under Sec.30 of SFC’s Act demanding the dues of the Corporation. And despite of giving number of opportunities to pay back the dues, the Proprietor and his unit/the surety, the collateral security owner has not paid any amounts due so far. And failed to honour their commitments towards legally recoverable dues of the Corporation and 1st & 2nd of you remained as defaulters since inception”.

58. It is significant to note that the Petitioner Corporation had invoked Sec. 29 of SFC Act on 29.05.97 and subsequently sold the plant and machinery of the first

respondent. The Petitioner Corporation has not disclosed the same in its demand Notice/Ex.P7 dated:09.01.1998. The Corporation has not disclosed the quantum of sale proceeds and adjustment of sale proceeds towards outstanding balance as on the date of appropriation of sale proceeds. The Corporation has not disclosed the amount of sale proceeds, the balance outstanding after the appropriation of sale proceeds either in Ex.P8 or in Ex.R1. The Corporation has not exhibited any other documents in this regard. It is evident that the Corporation has issued legal notice dated:17.09.2003 just before the filing of petition to circumvent the question of Limitation. The present petition is filed on 12.11.2003.

59. In this regard it is useful to refer to the following decisions of Hon’ble Supreme Court of India and the Hon’ble High Court of Karnataka.

1) 2014 AIR SCW 865

DEEPAK BHANDARI Vs. HIMACHAL PRADESH STATE INDUSTRIAL DEVELOPMENT CORPORATION LIMITED

“15. IT is thus clear that merely because the Corporation acted under Section 29 of the State Financial Corporation Act did not mean that the contract of indemnity came to an end. Section 29 merely enabled the

Corporation to take possession and sell the assets for recovery of the dues under the main contract. It may be that only the Corporation taking action under Section 29 and on their taking possession they became deemed owners. The mortgage may have come to an end, but the contract of indemnity, which was an independent contract, did not. The right to claim for the balance arose, under the contract of indemnity, only when the sale proceeds were found to be insufficient. The right to sue on the contract of indemnity arose after the assets were sold. The present case would fall under Article 55 of the Limitation Act, 1963 which corresponds to old Articles 115 and 116 of the old Limitation Act, 1908. The right to sue on a contract of indemnity/ guarantee would arise when the contract is broken.

16. THEREFORE , the period of limitation is to be counted from the date when the assets of the Company were sold and not when the recall notice was given. The up-shot of the aforesaid discussion is to hold that the present appeal is bereft of any merits. Upholding the judgment of the High Court, we dismiss the instant appeal, with costs".

2) LAWS(KAR) 2014 2 228, Karnataka State Financial Corporation Represented by its Branch Manager Vs. Smt. Vimala Kedia and Ors.

Having heard the learned counsel for the appellant we do not see any merit in this appeal for the following reasons: -

a) Admittedly the loan was granted on 17 -3 -1997. On account of non -payment of the amount by the principal borrower a demand notice for repayment was got issued by the appellant on 15 -10 -1998. When there is failure on the part of the principal borrower in not paying the dues as per the terms &; conditions of the agreement the cause of action for the appellant would accrue to proceed against the principal borrower on 15 -10 -1998 when a demand notice was issued and thereafter on 13 -1 -1999, the balance of sanctioned loan amount was not disbursed and the same was recalled on account of the principal borrower not discharging the loan.

b) It is also an admitted fact that the primary assets were sold by the appellant on 15 -3 -2002. At least when the primary assets were sold the appellant was required to consider it as a cause of action to proceed against the principal borrower or against the guarantor. It is also admitted that for the reasons best known to the appellant, the appellant has not proceeded to recover any money from the principal borrower. It is no doubt true that the appellant KSFC is entitled to proceed either against the principal borrower or against the surety. The date of filing the petition is 23 -2 -2006. The period of limitation is only 3 years for recovery of money from the date of cause of action. According to us the date of selling the primary assets has to be considered as the date of cause of action in

> the absence of any acknowledgment of debt by the respondents on subsequent dates. Therefore the appellant could not have proceeded against the principal borrower after 14 -3 -2005 onwards. Therefore we are of the view that when the appellant cannot proceed against the principal borrower, the appellant could not have filed the petition for recovery of dues from the guarantors beyond 3 years from the date of cause of action. In the circumstances we are of the view that no error is committed by the trial Judge in dismissing the petition. In the result, the petition is dismissed.

60. I have carefully gone through the ratio of the above decisions. The petitioner Corporation has sanctioned financial facility to the respondent No:1 vide sanction communication as per Ex.P4 dated:10.02.1995. The Corporation has disclosed that it had taken over the primary assets on 29.05.1997. The Corporation has not disclosed the date of auction sale of primary assets. As per the recitals made in legal notice dated:17.09.2003, the Corporation has sold the primary assets and appropriated the sale proceeds towards the balance amount. The Corporation has issued recall notice dated:09.01.1998 as per Ex.P7 without disclosing the amount realized through auction sale of primary assets

and the outstanding balance after adjustment of sale proceeds.

61. The petitioner corporation has filed the present petition on 12.11.2003 seeking enforcement of collateral security offered by Respondent No:2 as per Ex.P6 against respondents.

62. In such circumstances Article 55 of the Limitation Act 1963 is attracted to the case on hand, which reads as under:

Article 55	For compensation for the breach of any contract, express or implied not herein specially provided for	Three years	When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases.

63. It is incumbent upon the Corporation to safeguard the interest of public money as also the rights of the respondents. The Petitioner Corporation has failed in its duty to initiate action against Respondents within three

years at least from the date of recall notice dated:09.01.1998/Ex.P7 i.e. on or before 09.01.2001. The petition is filed on 12.11.2003 i.e. after the expiry of 2years 10 months 3 days. In view of Article 55 of the Limitation Act, the petition is barred by limitation.

64. In view of the above cited decisions, the petitioner Corporation is required to consider the date on which it has conducted the public auction of primary assets. The petition filed by the Petitioner Corporation is barred even under Article 137 of Limitation Act. Though the petitioner corporation has established the liability of the Respondent No:1 and 2, as on the date of petition and the execution of Ex.P5 and Ex.P6 by Respondent No.1 and 2 respectively the LRS of Respondent No.2 have established that the petition is filed beyond the period of limitation. Hence, the Petitioner Corporation cannot enforce the liability against the respondents, in the result the petition fails. Accordingly, Point No.3 is answered in the **AFFIRMATIVE.**

65. **POINT No.4:** In view of the above discussion and findings on Point No:1 to 3 I pass the following

ORDER

The Petition filed by the Petitioner Corporation under Section 31(1)(a) & (aa) and Section 32 of State Financial Corporation Act, 1951 is hereby dismissed with costs.

The interim order of attachment dated:13.11.2003 against respondent No:2 in respect of petition schedule property is hereby vacated.

The office is hereby directed to send a copy of the judgment to the Petitioner Corporation and LR No:2(a) & (c) through email as per Order XX Rule 1 CPC as amended by Section 16 of Commercial Courts Act, 2015.

(Dictated to the Stenographer, corrected, signed and then pronounced by me in the open court on **20th day of JULY 2023**)

(S.J.KRISHNA)
LXXXIX ADDL.CITY CIVIL &
SESSIONS JUDGE, BENGALURU.
(CCH-90)

ANNEXURES

List of witnesses examined for the petitioner:

P.W.1 Sri.G.K.Umapathi

List of documents exhibited on behalf of the petitioner:

Sl. No.	Particulars of documents	Ex.P.
1.	Copy of Gazette notification	Ex.P.1
2.	Typed copy of gazette notification	Ex.P.2
3.	Authorization letter issued by the petitioner Corporation in favour of PW2	Ex.P.3
4.	Communication of sanction dated 31.01.1995 issued by the petitioner Corporation to respondent no.1	Ex.P.4
5.	Original hypothecation deed dated 23.03.1995 executed by Sri.Venkatgeshwara Mining Corporation by its Proprietor	Ex.P.5
6.	Original agreement dated 23.03.1995 executed by Sri.Parashuram/ Respondent No.2.	Ex.P.6
7.	Office copy of demand notice dated 09.01.1998 issued by the petitioner Corporation to respondent No.1 and 2	Ex.P.7
8.	Statement of loan account	Ex.P.8

<u>List of witnesses examined for the respondents:</u>

RW 1 : Mr.Moses Beranclis

<u>List of documents marked for the respondents:</u>

Ex.R1 : Demand due statement

(S.J.KRISHNA)
LXXXIX ADDL.CITY CIVIL &
SESSIONS JUDGE, BENGALURU.
(CCH-90)

* * * *

S J
KRISHNA

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S J KRISHNA
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