

R.N. Shetty and anr. Vs. Karnataka Industrial Investment and Development Corporation Ltd.

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SooperKanoon Citation : sooperkanoon.com/379218

Court : Karnataka

Decided On : Jan-31-2005

Reported in : [2005]126CompCas145(Kar)

Judge : S.R. Nayak and ;B.S. Patil, JJ.

Acts : [State Financial Corporations Act, 1951](#) - Sections 29, 31, 31(1), 32 and 32(9); ;[Limitation Act, 1963](#) - Schedule - Article 137; ;[Transfer of Property Act, 1882](#) - Sections 69

Appeal No. : Miscellaneous First Appeal No. 597 of 2004

Appellant : R.N. Shetty and anr.

Respondent : Karnataka Industrial Investment and Development Corporation Ltd.

Advocate for Def. : V.F. Kumbar, Adv.

Advocate for Pet/Ap. : K. Shashi Kiran Shetty, Adv.

Disposition : Appeal allowed

Judgement :

1. This miscellaneous first appeal preferred under Section 32(9) of the [State Financial Corporations Act, 1951](#) (for short, 'the Act'), is directed against the order

dated January 3, 2004, passed in Misc. P. No. 25 of 1994 on the file of the Court of the Sixth Additional City Civil Judge, Bangalore.

2. The respondent herein had filed miscellaneous petition under Section 31(1)(aa) of the Act for enforcement of liability against the appellant along with two other alleged guarantors. The respondent had further sought for a direction to pay jointly and severally a sum of Rs. 18,40,000 along with interest. The said miscellaneous case came to be decreed by means of an order dated November 24, 2001, by the Sixth Additional City Civil Judge, Bangalore. The appellant herein filed M. F. A. No. 1146 of 2002 and M. F. A. No. 1293 of 2003 in this court calling in question the order dated November 24, 2001, passed by the court below on the ground that no notice was issued to the appellants herein and the paper publication was defective and was not in accordance with law. This court by its order dated July 13, 2002, allowed the above appeals and set aside the order dated November 24, 2001, passed in Miscellaneous Petition No. 25 of 1994 and directed the court below to dispose of the same within a period of eight months.

3. After the remand of the proceedings, the court below by its order dated January 3, 2004, allowed the petition of the respondent-corporation with costs and directed respondents Nos. 1 to 4 to pay jointly and severally a sum of Rs. 60,64,827 which was due as on September 30, 1993, along with future interest at the rate of 13 per cent. per annum on the said amount till the payment of the entire amount due. Being aggrieved by the said order this appeal was initially presented by respondents Nos. 3 and 4 in Miscellaneous Petition No. 25 of 1994. However, subsequently, the name of the second appellant (respondent No. 4 in Miscellaneous Petition No. 25 of 1994) was deleted as per the court's order dated August 17, 2004.

4. The parties are referred to as they are arrayed in Miscellaneous Petition No. 25 of 1994 for the sake of convenience. The case of the respondent-corporation is as follows :

5. Respondents Nos. 1 to 4 in the miscellaneous petition are the promoters and directors of a company called 'Electro Mobile (India) Ltd.' (hereinafter referred to as 'EMIL'). At the request of EMIL, the petitioner-corporation had sanctioned a

term-loan of Rs. 60,00,000, vide sanction communication letter dated November 20, 1976. Later on the said sum of Rs. 60,00,000 was reduced to Rs. 30,00,000, vide communication dated December 2, 1977. The EMIL informed that the execution of the mortgage and hypothecation deed would take considerable time and requested to release the amounts on the strength of the personal guarantees of respondents Nos. 1 to 4. As such, the petitioner-corporation released the sum of Rs. 8,40,000 at the first instance on personal guarantee given by respondents Nos. 1 to 4. Further, an additional sum of Rs. 10,00,000 was released on personal guarantee deed executed by the respondents on June 22, 1977. The said loan was to be repaid in 16 half yearly instalments from the date the first drawal of the loan together with interest at 13 per cent. per annum. The petitioner further contended that the respondents who are the promoters/directors of the company provided security for the repayment of the loan by executing personal deed of guarantee on November 29, 1976, in favour of the corporation. Pursuant to this, a sum of Rs. 8,40,000 was released. This was followed by another personal deed of guarantee dated June 22, 1977, based on which another sum of Rs. 10,00,000 was released by the corporation as requested by the company to meet the pressing commitments of the company. The personal guarantee was offered on condition that the liability of the surety shall remain in force until the loan amount is fully repaid to the corporation. It is the further case of the applicant that in spite of accommodation provided and in spite of issuance of demand notices by the corporation, the company failed to pay the sum of Rs. 18,40,000 released and paid to the company and it went into liquidation under the orders of the honourable High Court of Karnataka. Contending that the respondents were jointly and severally and personally liable to pay the amount of Rs. 18,40,000 along with interest, legal notice dated July 22, 1992, was issued by registered post invoking the personal liability of all the respondents in terms of the guarantee bonds and demanding the payment of the loan amount. While the notices sent to respondents Nos. 1 and 2 by registered post acknowledgment due were returned unserved, notices sent to respondents Nos. 3 and 4 were duly served and were replied by them denying their liability. Despite the notices issued, the petitioner contended that no payment was made and the liability was thus not discharged. Hence, the applicant-corporation was constrained to file the application under Section

31(1)(aa) of the SFC Act.

6. It is the specific contention of the applicant that on July 23, 1992, the registered notices having been issued to the respondents invoking their personal guarantee demanding the amounts due to the corporation, upon the failure of the respondents to discharge the amount, the application was filed and hence the same was within the period of limitation as provided for enforcement of the liabilities of the guarantors. Thus, an amount of Rs. 18,40,000 towards the principal and a sum of Rs. 42,24,847 towards interest as on September 30, 1993, at 14 per cent. is claimed totally amounting to a sum of Rs. 60,64,847. The petitioner-corporation has claimed future interest at the rate of 14 per cent. per annum from the date of presentation of the petition till the date of realisation.

7. Respondents Nos. 3 and 4 in response to the claims made have filed their statement of objections. The contentions taken by the respondents inter alia are that the petition filed was barred by limitation and the same was liable to be dismissed on that ground alone ; that, the petition was bad for non-joinder of necessary party as the company-Electro Mobiles India Ltd. the principal debtor had not been made a party to the petition. That the respondents were unaware of the sanction of the loan to the company and as to whether the same was accepted by the company or not. They further contended that their signature was obtained to the deed of guarantee in their capacity as promoter/director of the company and not in the individual capacity as a surety. It is the further allegation of the respondent that the signature to the deed were obtained by misrepresentation by the petitioner-corporation and therefore the guarantee deeds were not enforceable under law. Likewise, the execution of another guarantee deed dated June 22, 1977, guaranteeing the payment of Rs. 10,00,000 was also denied by the respondent. It is the further contention of the respondent that there being no explanation given as to why the signatures of two other guarantors namely KIMCO and MSIL (Government of Karnataka undertakings) whose names were shown in both the guarantee deeds were not taken on the guarantee bonds, the guarantee given was unenforceable. Because of the continued losses, the EMIL suspended its operation and closed the unit in December 1982. In the meanwhile, the EMIL came to be wound up by the orders of this court dated April 9, 1987. In the

circumstances, the petitioner-corporation was left with no alternative but to invoke the personal guarantees given by all the respondents as the respondents failed to pay the outstanding dues. It is on the basis of these facts and circumstances, the petitioner-corporation filed the petition under Section 31(1)(aa) of the Act for the recovery of Rs. 60,64,827, the amount that was due as on the date of filing the petition.

8. Respondents Nos. 3 and 4 in response to the notice issued in the miscellaneous petition put in appearance and filed their objections. The sum and substance of the objections filed by the respondents is that by a resolution, the first respondent, namely, Sri Madhan M. Behl was authorised to approach the petitioner-corporation for loan. The fourth respondent is not aware of the sanction of loan of Rs. 60,00,000 by the petitioner corporation or the fact that it was subsequently reduced to Rs. 30,00,000. The fourth respondent also denied the execution of the deed of personal guarantees and also the disbursement of loan of Rs. 18,40,000 and Rs. 10,00,000 subsequently. It was also contended by the answering respondents that the EMIL which was a necessary and proper party, was not made a party to the miscellaneous petition and, therefore, the petition was liable to be dismissed for non-joinder of necessary parties. It was also contended that the EMIL was already wound up and, therefore, the petitioner-corporation had no locus standi to file petition under Section 31(1)(aa) of the Act against the respondents. It was alternatively contended that if at all the petitioner-corporation can recover the outstanding dues, it has to first proceed against the assets of the EMIL. Furthermore, it was specifically contended that the petition was barred by limitation.

9. In the premise of the above pleadings of the parties, the court below framed the following points for consideration :

- '1. Whether the petitioner corporation is entitled to recovery certificate against respondents Nos. 1 to 4?
2. Whether the respondent proves that the petition is barred by time ?
3. What order?'

10. The petitioner-corporation in order to prove its case examined PW-1 and produced and got marked 16 documents as exhibits P1 to P16. On behalf of the respondents, the fourth respondent, namely, Sri N. Bhoomananda Maney was examined as RW-1. But no documents were produced.

11. The court below having appreciated the oral and documentary evidence, by the impugned order dated January 3, 2004, allowed the petition with costs and directed respondents Nos. 1 to 4 to pay jointly and severally a sum of Rs. 60,64,827 which was due as on December 30, 1993, along with future interest at the rate of 13 per cent. per annum on the said amount till the payment.

12. Being aggrieved by the above judgment and decree, respondents Nos. 3 and 4 jointly filed this appeal on January 21, 2004. However, subsequently, the fourth respondent who is the second appellant in this appeal filed a memo dated August 9, 2004, seeking permission of the court to withdraw the appeal in so far as he is concerned. This court dismissed the appeal as withdrawn in so far as the second appellant is concerned vide its order dated August 17, 2004 and accordingly the cause title of the memorandum of appeal was amended in pursuance of the extension of time vide the court's order dated September 8, 2004. As a consequence, this appeal is confined to the interest of the third respondent who is the first appellant, now the sole appellant.

13. We have heard Sri K. Shashi Kiran Shetty, learned counsel for the appellant and Sri V.F. Kumbar, learned counsel for the respondent. We are taken through the entire pleadings and the evidence on record including the documents produced and exhibited by the respective parties. It is to be seen that the case of the respondents is one of total denial. The respondents have chosen to deny the very payment of the amount to the company. They have stated that their signature on the guarantee bonds were obtained by misrepresentation. They have further stated that the two sureties who were supposed to sign the guarantee deed did not sign the same and in the absence of their being parties to the document, the respondents cannot be held liable. It is the further contention urged by learned counsel for the appellant that the proceedings initiated by the petitioner-corporation were barred by limitation as Article 137 of the Limitation Act is

applicable to the claim made under Section 31 of the [State Financial Corporations Act, 1951](#) and the right to sue having accrued as back as on January 14, 1987, when the first notice was admittedly issued by the corporation to the principal debtor of the company, and the suit having not been filed within three years from that date, the same was barred by limitation. In this regard, learned counsel has placed reliance on a judgment of the Full Bench of this High Court in the case of Karnataka State Financial Corporation v. Smt. Jaya Menon [2004] ILR Karnataka 2735 ; [2005] 124 Comp Cas 289. He has invited our attention to paras. 22 to 24 of the said decision wherein it is held that in respect of applications filed under Section 31 of the State Financial Corporations Act, the period of limitation applicable is three years as provided under Article 137. Learned counsel for the appellant has thus very vehemently contended that in view of the decision of the Full Bench referred to supra, the claim lodged by the corporation was hopelessly barred by limitation and therefore the petition deserved to be dismissed.

14. Per contra, learned counsel appearing for the respondent-corporation contends that the limitation for the purpose of the claim against the surety as per the surety bond read along with the notice issued to them commenced from the date when the notice dated July 23, 1992, was issued by the corporation invoking the personal guarantee. The contention of learned counsel for the respondent is that as can be seen from the guarantee bonds executed vide exhibit P 3 and exhibit P 4, it is clearly stated that the personal liability of the guarantors shall remain in force until the entire principal sum together with interest has been fully repaid to the corporation and that any indulgence or other concession shown to the borrower or any one or more of the guarantors by the corporation shall not absolve the liability of the sureties under the agreement. This clause which is found in both the guarantee agreements at paragraph II(b), according to learned counsel for the respondent, would preclude the appellants from contending that the limitation for filing a petition under Section 31 was statutorily barred. Elaborating this contention, counsel further contends that the liability of the surety as per the guarantee agreements exhibits P3 and P4 is distinct and separate from the agreement that is entered into with the principal debtor while releasing the amount. For the purpose of limitation, the terms of the guarantee agreement have to be looked into. If as per the terms of the guarantee agreement, limitation to

proceed against the surety is persisting then it is not necessary to examine any other aspect of the matter. It is his submission that even if it is taken that Article 137 of the Limitation Act is applicable, the relevant date on which the right to sue accrued was the date when the corporation invoked the personal guarantee, particularly because the guarantee deed mentioned that--'the personal liability of the guarantors shall remain in force until the entire principal sum together with interest was fully paid to the corporation and any indulgence or concession shown to the borrower or any of the guarantors by the corporation shall not absolve the liability under the agreement'.

15. In the wake of the respective contentions urged by learned counsel on either side and in the face of the findings recorded by the court below, the points that arise for our consideration in this appeal are as under :

(i) Whether in view of the decision reported in Karnataka State Financial Corporation v. Smt. Jaya Menon [2004] ILR Karnataka 2735 ; [2005] 124 Comp Cas 289 [FB], the claim made by the petitioner/the respondent-corporation herein is barred by limitation as per Article 137 of the [Limitation Act, 1963](#),

(ii) Whether the petitioner/the respondent-corporation herein prove that it is entitled for issue of certificate for the recovery of the amount as sought for by it in a sum of Rs. 18,40,000,

(iii) Whether the findings recorded by the court below and the conclusion arrived at are illegal and perverse so as to warrant interference by this court.

Point No. 1 :

16. It is the main thrust of the argument of the appellant that the matter is covered by the decision of the Full Bench in Karnataka State Financial Corporation v. Smt. Jaya Menon [2004] ILR Karnataka 2735 ; [2005] 124 Comp Cas 289. It is no doubt true that as per the said judgment, it has been conclusively held by referring to the decisions of the apex court that Article 137 of the Limitation Act applies to an application made under Section 31 of the State Financial Corporations Act. Considering the provisions of Sections 31 and 32 of the State Financial

Corporations Act, and the nature of the duty exercised by the District Judge under these provisions, it is held that he is not regarded as persona designata but a civil court of ordinary civil jurisdiction. It is further held that while considering the application under Section 31 of the Act, the District Judge exercised his jurisdiction vested in a civil court and therefore, the application filed before the District Judge under the provisions of the Act, namely, Sections 31 and 32 did fail within the purview of the provisions of the Limitation Act and hence, Article 137 of the [Limitation Act, 1963](#), would be applicable to such application. However, in the facts and circumstances of this case, this proposition of law will not solve the question that is raised in these proceedings. Still the question that remains to be addressed in this case is as to what is the date on which the 'right to apply' can be said to have accrued to the creditor as against the surety as per Article 137 of the Limitation Act.

17. Under Article 137, the period of limitation for an application begins to run from the date when the right to apply accrues. This date may not be the same in all cases. When the right to apply accrues, depends on the particular facts of each case. In this case, it is the contention of the appellant that the right to sue accrued at least as on January 14, 1987, when the corporation issued the legal notice to the principal debtor demanding the amount. The same having remained un-replied and no payments whatsoever being made, the right to apply accrued to the creditor soon after the receipt of the said notice by the principal debtor.

18. It is an admitted fact that the company has not made any payment. Not even a single instalment is paid. As seen from the statement of accounts produced at exhibit P11, the company was given 16 instalments to pay the principal amount. The last of the instalment was due on June 30, 1986. The statement of accounts discloses that the interest overdue was calculated and the same was spread over into 34 instalments, the last of which was due on September 30, 1993. None of the 16 instalments pertaining to the principal amount are admittedly paid by the company. It is an admitted fact that as back as in the year 1987, notice is issued by the corporation to the principal debtor. Although, all the instalments fell due, the corporation did not choose to initiate any proceedings. The right to apply against the sureties certainly accrued when the corporation invoked its powers and made

a demand by issuing a notice in the year 1987 calling upon the company to make the payment despite which no amount was paid. The contention of learned counsel for the respondent stating that the right to apply accrued only during the year 1992 when the corporation choose to invoke the personal guarantee of the surety cannot be accepted inasmuch as accrual of right to apply to a court is not dependent upon the exercise of that right at the sweet will of the creditor at any point of time. If that argument is accepted, even after keeping quiet for 5 decades, the corporation can choose to invoke the personal guarantee and say that as and when the personal guarantee is invoked the right to apply accrued. Accrual of the right to sue, here in this case is relatable to and dependent upon the default committed by the principal borrower in discharging his liability. When the principal borrower has not paid even a single paise and has continuously defaulted in paying all the 16 instalments, spread over from December 31, 1978, to June 30, 1986 and when the creditor has taken note of the same and called upon the company, the principal debtor to make the payment by issuing a notice in the year 1987, it cannot be said by any stretch of imagination that a corresponding right to apply against the sureties did not accrue at least when such consistent and congruent default was committed by the principal debtor. To hold otherwise, would result in extension of the period of limitation at the option of the creditor as against the surety which is not at all permissible. The question as to when the right to apply arises to proceed against the surety in case where the breach is committed by the principal debtor can also be understood by referring to Section 31 of the State Financial Corporations Act. Section 31(1) reads as under :

'31. Special provisions for enforcement of claims by Financial Corporation.--(1) Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof or in 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 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 financial corporation as security for the loan or advance ; or

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

19. It is thus clear from a reading of Section 31 that upon a breach being committed by an industrial concern in any repayment of the loan or any instalment thereof 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 payment, then it may apply to the District Judge for one or more of the following reliefs namely :

(aa) for enforcing the liability of any surety.

20. This would clearly indicate that even for enforcing the liability of a surety, the right to apply arises upon the breach being committed by the industrial concern in paying any instalment or the corporation requires the industrial concern to make immediate repayment of any loan under Section 30 and the industrial concern fails to make such repayment. In this case, both these conditions are satisfied inasmuch as there is a breach committed by the industrial concern, the company herein, in paying the instalment inasmuch payment of all the instalments are defaulted. Secondly, the corporation has called upon the industrial concern to make the repayment by issuing a notice during the year 1987 itself. Thus, therefore, even according to the statutory prescription laid down under Section 31, the right to proceed against the surety for enforcing the liability of the surety has arisen upon the breach being committed by the loanee in paying the instalment or when the corporation required or when the corporation called upon the company to make the payment of the loan amount by issuing notice in the year 1987. The legal position regarding the application of Article 137 of the Limitation Act is held in favour of the corporation by the decision of the Full Bench. That being the position, the right to apply against the surety having accrued at least, latest by January 14,

1987, the petition ought to have been filed within three years from the said date on or before January 14, 1990. But, the petition is filed in the instant case, in the year 1994. Therefore, the only irresistible conclusion that is possible under the facts and circumstances of this case and having regard to the foregoing discussion made on point No. 1 is that the proceedings initiated by the respondent-corporation for issue of the recovery certificate are clearly barred as per Article 137 of the Limitation Act.

Point No. 2 :

21. Although it may appear unnecessary to examine the other points that are raised for consideration, having regard to the fact that we have come to the conclusion that the proceedings were barred by limitation, we deem it appropriate to deal with these points having due regard to the fact that the trial court has held on these points in favour of the corporation negating the contention of bar of limitation raised by the respondent. We do not also want to leave any aspect raised before us unconsidered having regard to the nature of the proceedings initiated.

22. The contention urged by the appellant-guarantor in this case is that signatures of respondents Nos. 3 and 4 to the guarantee deeds were taken by misrepresenting the fact. It is their further case that no amount was paid to the company as stated by them that the omission on the part of the corporation to take the signatures of two other guarantors to the guarantee bonds has the effect of discharging the other sureties. It is the further case of the contesting respondents that though the company is a party to the guarantee deeds, the company has not executed the documents and is not a signatory to the same.

23. It is relevant to refer to the evidence of the parties who have been examined in this case so as to deal with these points raised. PW-1 who is examined by the corporation is the manager of the petitioner-corporation. He has clearly stated that the term loan was sanctioned by sanction letter dated November 20, 1976 and the earlier sanction made at Rs. 60,00,000 was reduced to Rs. 30,00,000 and that ultimately as per the request made by the company and as a result of the guarantee deeds executed a total sum of Rs. 18,40,000 was released. He has

spoken to the sanction of loan and has produced exhibit P1 and exhibit P2 in this regard. He has produced the guarantee deeds vide exhibit P3 and exhibit P4 and he has also produced the correspondences exchanged between the petitioner-corporation on the one hand and the respondent-sureties on the other including the legal notice and the reply exchanged. In the cross-examination of this witness, nowhere is it suggested that the signature of the guarantors were taken by misrepresentation, though it is elicited in the evidence that two of the guarantors have not affixed their signatures to the guarantee bonds and that the company itself has not signed and its seal is not forthcoming on exhibit P3 and exhibit P4. The cross-examination of the witness does not in any manner elicit the important contentions that the respondents have taken assailing their liability and of the denial of receipt of the very loan by the company.

24. If two of the guarantors are not parties and they have not put their signature, unless the said fact has the effect of excluding the liability of the other signatories to the guarantee deed, as per the terms of the deed, it is not open for the appellants to contend that the said fact alone ipso facto absolve them from the liability that they have undertaken. A perusal of the term in the guarantee bond as already extracted above in para. II(b) of exhibit P 3 would clearly disclose that the personal liability undertaken is to remain in force until the entire sum together with interest is fully repaid and any indulgence or other concession shown to the borrower or any one or more of the guarantors by the corporation shall not absolve the liability under the agreement. It is also further seen from the guarantee bonds that the liability undertaken by the sureties is joint and several. In this view of the matter, it is not open to the appellant to contend that they were absolved from the liability as the signatures of two other sureties named in the surety bond were not obtained.

25. The mere fact that the company has not signed the document will also not absolve the sureties from the liability. Essentially, it is a guarantee deed. The parties are the creditor and the guarantor. Though the principal debtor is represented by the promoter and the promoters have also signed as representatives of the principal debtor, the mere absence of the signature on behalf of the company and the absence of the seal of the principal debtor-

company does not absolve the liability of the sureties. The contract between the corporation and the sureties is not affected by the same.

26. The appellants have taken up a contention denying the very grant of loan or release of the amount to the principal borrower-company. It is to be stated here that exhibit P3 which is a guarantee deed dated June 22, 1977, clearly spells out and makes a mention of the corporation having released a sum of Rs. 8,40,000 on the basis of a previous guarantee of the promoter vide guarantee deed dated November 29, 1976. The promoters are signatories to the deed dated November 29, 1976 and also to the deed dated June 22, 1977. The fact that they ventured even to deny the payment of this Rs. 8,40,000 under the face of their signature to this document itself shows that they are not credible and their version cannot be believed. The case put forward by the corporation is more probable and is consistent with the events that have happened whereas the plea and the defence taken up by the respondents with regard to the non-payment of the amount to the company is unfounded and baseless. The findings recorded by the court below on this aspect of the matter are reasonably probable and are based on the materials on record. The same cannot be said to be illegal or perverse having regard to the facts and the probabilities in this case. Therefore, we answer point No. 2 accordingly and hold that the petitioner-corporation has proved the transaction and the release of the amount. But we are constrained to hold that the corporation cannot be issued with the recovery certificate having regard to the fact that the proceedings initiated are barred by limitation. Therefore, we hold that the petitioner-corporation has proved the due execution of the guarantee, the release of the amount and as also the liability under the transaction of the respondents-sureties. However, the certificate sought for cannot be granted as the cause is barred by limitation.

Point No. 3 :

27. In view of our discussion made in answering points 1 and 2 above, we are of the considered view that the findings of the court below regarding the valid execution of the guarantee bonds and the liability flowing thereunder as against the sureties is just and proper and does not suffer from any illegality or perversity.

However, as already held by us, the proceedings initiated are barred by limitation. This aspect of the matter is very distressing to note inasmuch as the authorities of the respondent-corporation have not chosen to initiate any action either against the principal debtor or against the sureties although there has been a total default committed by the company inasmuch as not even one instalment or part of it is discharged and no payment whatsoever is made. Admittedly, the last of the instalment was due as back as in the year 1986 and the notice against the principal debtor was issued as back as in the year 1987. Till 1992, what action has been taken by the corporation and its authorities for recovering such a huge sum is not mentioned nor any explanation is forthcoming anywhere either in the pleadings or in the evidence. This clearly shows a total callous approach of the authorities in dealing with the public money. The guilty who are responsible for such huge money belonging to the public undertaking being lost have to be dealt with in accordance with law. The lethargy in initiating the recovery proceedings within the time of limitation and in allowing the whole claim to be barred by limitation smacks of complicity of the authorities. Such things shall not be allowed to go uninvestigated and uninquired.

28. It is seen from the proceedings that respondents Nos. 1 and 2 have not chosen to contest the matter. The order passed by the District Judge has attained finality in so far as respondents Nos. 1 and 2 are concerned as they have not chosen to challenge the order passed by the District Judge in Miscellaneous Case No. 25 of 1994. As regards appellant No. 2 herein, he has withdrawn the appeal and an order to this effect is passed on August 17, 2004, by this court recording his memo and dismissing the appeal as withdrawn so far as the second appellant is concerned. Thus, what remained to be examined in this appeal is the challenge made by the sole appellant who is prosecuting this appeal. The order impugned having attained finality as regards the other guarantors except the appellant herein, we would like to make it clear that the relief to be granted in this case is confined only to the appellant and not to others. It is open for the corporation to proceed against the other sureties in accordance with law. In the result, we pass the following :

ORDER

29. The appeal filed by the appellant is allowed. The order under challenge passed by the City Civil Judge, Bangalore, in Miscellaneous Case No. 25 of 1994 dated January 3, 2004 is hereby set aside only in so far as it pertains to the liability of the appellant herein. In the circumstances of the case, parties to bear their respective costs.

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