IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

MISCELLANEOUS FIRST APPEAL NO. 932 OF 2018 (SFC)
C/W
MISCELLANEOUS FIRST APPEAL NO. 931 OF 2018 (SFC)

IN MFA NO. 932 OF 2018:

BETWEEN:

KARNATAKA STATE FINANCIAL CORPORATION
HAVING ITS HEAD OFFICE AT: No.1/1
THIMMAIAH ROAD
BENGALURU-560 052
REPSRESENTED BY ITS DEPUTY GENERAL
MANAGER-R-II

...APPELLANT

(BY SRI. P.S. MALIPATIL, ADVOCATE)

AND:

1 . M/S. SRI YADU MOSAIC (P)
LIMITED COMPANY
REGISTERED OFFICE AT:
No.27/3, BULL TEMLPLE ROAD
BENGALURU-560 019

2 . H.S. RAMASWAMY IYENGAR
(SINCE DECEASED BY HIS LEGAL
REPRESENTATIVES)

2(a). SMT. H.R. SHARADAMMA
W/O LATE H.S. RAMASWAMY IYENGAR
MAJOR

2(b). SRI. H.R. SRIVATSA
S/O LATE H.S. RAMASWAMY IYENGAR
MAJOR

2(c). SMT. CHITRA
D/O LATE H.S. RAMASWAMY IYENGAR
MAJOR

RESPONDENTS No.2(a) TO (c) ARE
R/AT No.127/3,
BULL TEMPLE ROAD
BENGALURU-560 019

3 . SMT. H.R. SHARADAMMA
W/O LATE H.S. RAMASWAMY IYENGAR
MAJOR, R/AT No.127/3
BULL TEMPLE ROAD
BENGALURU-560 019

4 . SRI. H.R. SRIVATSA
S/O LATE H.S. RAMASWAMY IYENGAR
MAJOR, R/AT No.127/3
BULL TEMPLE ROAD
BENGALURU-560 019

5 . SADASHIVA RAO
(SINCE DECEASED, BY HIS LEGAL
REPRESENTATIVES)

5(a). SMT. SHAKUNTALA
W/O LATE SADASHIVA RAO
MAJOR, R/AT No.2
K.H. ROAD
BENGALURU-560 027

5(b). MISS. ARCHANA
D/O LATE SADASHIVA RAO
MAJOR
R/AT No.2, K.H. ROAD
BENGALURU-560 027

...RESPONDENTS

(BY SRI. H.V. SUBRAMANYA, ADVOCATE FOR R5(a & b);
V.C.O. DATED 12.06.2023, SERVICE OF NOTICE TO
R1, R2(a) TO (c), R3 & R4 ARE HELD SUFFICIENT)

THIS MFA IS FILED U/S 32(9) OF STATE FINANCIAL CORPORATION ACT, 1951, AGAINST THE ORDER DATED 13.06.2017 PASSED IN MISC. PETITION No.766/1998 ON THE FILE OF THE XXXVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-38), BENGALURU CITY, DISMISSING PETITION FILED UNDER SECTION 31(1)(AA) OF THE STATE FINANCIAL CORPORATION ACT, 1951 AND ETC.

IN MFA NO. 931 OF 2018:

BETWEEN:

KARNATAKA STATE FINANCIAL CORPORATION
HAVING ITS HEAD OFFICE AT: No.1/1

THIMMAIAH ROAD
BENGALURU-560 052
REPSRESENTED BY ITS DEPUTY GENERAL
MANAGER-R-II

...APPELLANT

(BY SRI. P.S. MALIPATIL, ADVOCATE)

AND:

1 . M/S. SRI YADU GRANITES (P)
LIMITED COMPANY
REGISTERED OFFICE AT: No.27/3
BULL TEMPLE ROAD
BENGALURU-560 019

2 . H.S. RAMASWAMY IYENGAR
(SINCE DECEASED, BY HIS LEGAL
REPRESENTATIVES)

2(a). SMT. H.R. SHARADAMMA
W/O LATE H.S. RAMASWAMY IYENGAR
MAJOR

2(b). SRI. H.R. SRIVATSA
S/O LATE H.S. RAMASWAMY IYENGAR
MAJOR

2(c). SMT. CHITRA
D/O LATE H.S. RAMASWAMY IYENGAR

MAJOR

RESPONDENTS No.2(a) TO (c)
R/AT. No.127/3
BULL TEMPLE ROAD
BENGALURU-560 019

3 . SMT. H.R. SHARADAMMA
W/O LATE H.S. RAMASWAMY IYENGAR
MAJOR, R/AT. No.127/3
BULL TEMPLE ROAD
BENGALURU-560 019

4 . SRI. H.R. SRIVATSA
S/O LATE H.S. RAMASWAMY IYENGAR
MAJOR, R/AT. No.127/3
BULL TEMPLE ROAD
BENGALURU-560 019

5 . SADASHIVA RAO
(SINCE DECEASED, BY HIS LEGAL
REPRESENTATIVES)

5(a). SMT. SHAKUNTALA
W/O LATE SADASHIVA RAO
MAJOR, R/AT. No.2
K.H. ROAD
BENGALURU-560 027

5(b). MISS. ARCHANA
D/O LATE SADASHIVA RAO
MAJOR, R/AT. No.2
K.H. ROAD
BENGALURU-560 027

...RESPONDENTS

(BY SRI. H.V. SUBRAMANYA, ADVOCATE FOR R5(a) & (b);
V.C.O. DATED 12.06.2023, SERVICE OF NOTICE TO
R1, R2(a) TO (c), R3 & R4 ARE HELD SUFFICIENT)

THIS MFA IS FILED U/S 32(9) OF STATE FINANCIAL CORPORATION ACT, 1951, AGAINST THE ORDER DATED 13.06.2017 PASSED IN MISC. No.42/2000 ON THE FILE OF THE XXXVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-38), BENGALURU CITY, DISMISSING PETITION FILED UNDER SECTION 31(1)(AA) OF THE STATE FINANCIAL CORPORATION ACT, 1951 AND ETC.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 29.06.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN J.,** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)

Miscellaneous First Appeals No.932/2018 and 931/2018 are preferred against the Order dated 13.06.2017 passed by the XXXVII Additional City Civil and Sessions Judge (CCH-38), Bengaluru City ('Special Court' for short) in Misc. No.766/1998 and 42/2000, respectively.

2. We have heard Shri. P.S. Malipatil, learned counsel appearing for the appellant in both the appeals and Shri. H.V. Subramanya, learned counsel appearing for the respondent No.5(a) and (b) in both the appeals.

3. The only question which requires consideration in these appeals is whether Exhibit 'P14' Notice dated 14.09.1993 issued by the appellant - Karnataka State Financial Corporation (KSFC) amounts to invocation of guarantee to render the petition filed by the appellant under Section 31(1)(aa) of the State Financial Corporations Act, 1951 ('SFC Act') as one barred by limitation.

4. The short facts necessary for deciding the question are as follows:-

The appellant - KSFC sanctioned a term loan of Rs.35 Lakhs vide Sanction Letter dated 16.01.1988 in favour of respondent No.1 in M.F.A.No.931/2018 - M/s Sri. Yadu Granites (P) Limited. Thereafter, the appellant also sanctioned a term loan of Rs.36.60 lakhs together with a Soft Loan of Rs.4 lakhs, totalling Rs.40.60 lakhs, vide Sanction Letter dated 13.03.1989, in favour of respondent No.1 in M.F.A.No.932/2018 - M/s Sri. Yadu Mosaic (P) Limited.

As security, Late Shri. Ramaswamy Iyenger - Managing Director of the respondent companies along with respondents No.3 and 4 created Equitable Mortgage on 13.03.1989 by depositing the Title Deeds pertaining to their immoveable property in favour of the appellant. As further security, respondent No.1 executed a Deed of Hypothecation dated 13.03.1989, hypothecating the plant and machinery in favour of the appellant and the late Managing Director together with respondents No.3 and 4 executed a Deed of

Guarantee dated 13.03.1989 guaranteeing the due repayment of the loans advanced. Further, late Shri. Sadasiva Rao, executed a Surety Agreement dated 13.03.1989 depositing the Title Deeds in respect of his immoveable property to an extent of Rs.20 lakhs out of the term loan sanctioned.

Thereafter, on further applications made by M/s Sri Yadu Granites (P) Limited Company, the appellant sanctioned an additional term loan of Rs.7.35 lakhs which was communicated on 19.07.1989. The appellant further sanctioned an additional loan of Rs.1,40,000/- on 14.03.1991 in favour of M/s Sri. Yadu Mosaic (P) Limited Company, and as security the borrowers and sureties executed the Mortgage Deed, Hypothecation Deed and Guarantee Deed on 29.07.1989 and 14.03.1991 in favour of the appellant.

Respondent No.1 failed to repay the loan and consequently the appellant - Corporation issued a Notice to the respondents invoking Section 29 of the State Financial Corporations Act, 1951 ('SFC Act' for short) on 24.02.1993.

Thereafter, the appellant issued a Statutory Notice on 14.09.1993 under Section 30 of the SFC Act against M/s Sri. Yadu Granites (P) Limited and M/s Sri. Yadu Mosaic (P) Limited, recalling the entire dues, and on the respondents failing to pay the outstanding loan. Thereafter, further notices allegedly specifically invoking the guarantees were issued on 20.02.1998, 03.03.1998 and 07.04.1998, pursuant to which, the appellant filed Miscellaneous Applications No.766/1998 and 42/2000 before the Special Court under Section 31(1)(aa) of the SFC Act. Respondents No.1 to 4 failed to appear before the Special Court and were placed *ex parte*, while respondents No.5(a) and 5(b) contested the matter by filing objections. An application was filed by respondent No.5 (a) under Section 32 of the SFC Act read with Section 3 of the Limitation Act, 1963 seeking dismissal of the petition as barred by limitation, which was rejected with liberty to raise the point during trial. After hearing the matter, the Special Court relying on Article 137 of the Limitation Act, dismissed the Application as one barred by limitation by Order dated 13.06.2017 passed by the Special Court in Misc.No.42/2000 and Misc.No.766/2000. Being aggrieved by the Orders of the Special Court, the appellant has preferred the present Miscellaneous First Appeals.

5. The learned counsel appearing for the appellant would contend that the loan sanctioned on 13.03.1989 was supported by the personal guarantee of Shri. H.S. Ramaswamy Iyengar, respondents No.3 and 4 and Late Shri. Sadashiv Rao. The contesting respondents herein are the legal heirs of Late Shri. Sadashiv Rao. For an additional term loan of Rs.4.20 lakhs sanctioned on 19.07.1989, Deeds of Personal Guarantee were executed by the earlier sureties on 29.07.1989. Further, loan of Rs.1.40 lakhs was sanctioned on 14.03.1991, which was also similarly secured and supported by personal guarantee.

6. When the loan repayment was defaulted, Notice under Section 29 of the SFC Act was issued on 24.02.1993 and the entire loan was recalled by Notice dated 14.09.1993. This notice was sent to all guarantors as well. Thereafter, notices invoking personal guarantee were issued

on 03.03.1998 and 07.04.1998. The Misc. Application No.766/1998 was filed on 17.09.1998 and the Misc. Application No.42/2000 was filed on 10.01.2000.

7. The learned counsel appearing for the appellant contended that Exhibit 'P14' was only a notice to the borrower and it is only when the personal guarantee stood specifically invoked by Notices sent to the guarantors on 03.03.1998 and 07.04.1998 and that the time for filing the petition has to be calculated from that date. The learned counsel for the appellant contended that paragraph 11 of Ex.P14 cannot be treated as invocation of the personal guarantee. The invocation of the guarantee occurred only through Ex.P15 dated 03.03.1998. The question that arises for consideration here is whether a communication amounts to invocation of a guarantee.

8. The learned counsel for the appellant contended that the appellant's right to sue the guarantors is independent of any proceedings against the principal debtor. Limitation must be computed from the demand on the guarantors because deeds of guarantee provide that the

guarantee shall be enforceable notwithstanding the fact that no action having been taken against the borrower company, and that the Corporation shall be entitled to act as if the guarantors were the principal debtors.

9. In support of the said contention, the following decisions were relied on:-

- ***Deepak Bhandari v. Himachal Pradesh State Industrial Development Corporation Ltd.,*** *reported in* ***AIR 2014 SC 961;***
- ***Gulhati and Another v. Karnataka State Financial Corporation and Others,*** *reported in* ***ILR 2007 KAR 44;*** and
- ***Karnataka State Financial Corporation v. M/s. Awanthi Hotels and Others,*** *by order* ***dated 08.12.2020*** *passed in* ***MFA No.2499/2013 (SFC).***

10. The learned counsel appearing for respondents No.5(a) and (b), on the other hand, contends that the loan repayments were in default and the notice under Section 29 of the SFC Act was issued on 24.02.1993. Thereafter, the loan was recalled and notice under Section 30 of the SFC Act was issued to the borrowers as well as the sureties on

14.09.1993. It is contended that this notice clearly amounted to a demand to the guarantors and the guarantee stood invoked. The petition under Section 31(1)(aa) of the SFC Act ought to have been filed within 3 years from 14.09.1993, failing which, the remedy stood barred by limitation.

11. In support of the said contention, the following decisions were relied on:-

- ***Maharashtra State Financial Corpn. v. Ashok K. Agarwal and Others,*** *reported in* ***(2006) 9 SCC 617;***

- ***Syndicate Bank v. Channaveerappa Beleri and Others,*** *reported in* ***(2006) 11 SCC 506;*** and

- ***Karnataka State Industrial Investment and Development Corporation v. Madhu Paper Mills (P) Ltd. and Others,*** *by order* **dated 27.02.2025** *passed in* **MFA No.8628/2012 *(SFC).***

12. We have considered the contentions advanced. As stated earlier, the question which requires a consideration is as stated in paragraph No.3 of this judgment, Section 128 of the Indian Contract Act, 1872, specifically provides that the

liability of the surety is co-extensive with that of the principal debtor and is immediate upon the principal debtor's default. In ***Bank of Bihar Ltd. v. Damodar Prasad*** reported in ***AIR 1969 SC 297***, the Apex Court has clearly held that in the nature of the co-existing liability of the surety, the creditor is not bound to proceed against the principal debtor and exhaust the remedies against such principal debtor before proceeding against the creditor. The deeds of guarantee create an independent and co-extensive liability against the guarantors, upon the principal debtor’s default and do not require the corporation to first exhaust its remedies against the borrower.

In ***Hindustan Construction Co. Ltd. v. State of Bihar*** reported in ***(1999) 8 SCC 436***, the Apex Court held that invocation must conform to the terms of the guarantee and must be judged by what is stated in the Deed. In the instant case, clause one of the Deeds of Guarantee deals with the invocation of the deeds stating that the Guarantors "on demand" shall pay to the Corporation, the whole of such principal sum, interest, commitment charges and/or other moneys. The phrase "on demand" has been interpreted by the Apex Court in ***Syndicate Bank v. Channaveerappa Beleri*** reported in ***(2006) 11 SCC 506***. Wherein the Apex Court held that guarantee is payable on demand and no period is stipulated within which payment is to be made, the breach occurs and the right to sue accrues when the demand is served on the guarantor. The relevant paragraphs on this point are extracted below:-

> ***9.*** *A guarantor's liability depends upon the terms of his contract. A "continuing guarantee" is different from an ordinary guarantee. There is also a difference between a guarantee which stipulates that the guarantor is liable to pay only on a demand by the creditor, and a guarantee which does not contain such a condition. Further, depending on the terms of guarantee, the liability of a guarantor may be limited to a particular sum, instead of the liability being to the same extent as that of the principal debtor. The liability to pay may arise, on the principal debtor and guarantor, at the same time or at different points of time. A claim may even be time-barred against the principal debtor, but still enforceable against the guarantor. The parties may agree that the liability of a guarantor shall arise at a later point of time than that of the principal debtor. We have referred to these aspects only to underline the fact that the extent of liability under a guarantee as also the*

question as to when the liability of a guarantor will arise, would depend purely on the terms of the contract.

11. *But in the case on hand, the guarantee deeds specifically state that the guarantors agree to pay and satisfy the Bank on demand and interest will be payable by the guarantors only from the date of demand. <u>In a case where the guarantee is payable on demand, as held in Bradford [(1918) 2 KB 833] and Hartland [(1863) 1 H&C 667] , the limitation begins to run when the demand is made and the guarantor commits breach by not complying with the demand.</u>*

13. Section 29 of the SFC Act reads as follows:-

"29. Rights of Financial Corporation in case of default.—(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 [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 [right to take over the management or possession or both of the industrial concerns], as well as the [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.

[(4) [Where any action has been taken against an industrial concern] under the provisions of sub-section (1), all costs, [charges and expenses which in the opinion of the Financial Corporation have been properly incurred] by it [as incidental thereto] shall be recoverable from the industrial concern and the money which is received by it 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) [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 [the concern]."

14. Section 30 of the SFC Act reads as follows:-

"30. Power to call for repayment before agreed period.—Notwithstanding anything in any agreement to the contrary, the Financial Corporation may, by notice in writing, require any industrial concern to which it has

granted any loan or advance to discharge forthwith in full its liabilities to the Financial Corporation,—

(a) if it appears to the Board that false or misleading information in any material particular was given by the industrial concern in its application for the loan or advance; or

(b) if the industrial concern has failed to comply with the terms of its contract with the Financial Corporation in the matter of the loan or advance; or

(c) if there is a reasonable apprehension that the industrial concern is unable to pay its debts or that proceedings for liquidation may be commenced in respect thereof; or

(d) if the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance is not insured and kept insured by the industrial concern to the satisfaction of the Financial Corporation or depreciates in value to such an extent that, in the opinion of the Board, further security to the satisfaction of the Board should be given and such security is not given; or

(e) if, without the permission of the Board, any machinery, plant or other equipment, whether forming part of the security or otherwise, is removed from the premises of the industrial concern without being replaced; or

(f) if for any reason it is necessary to protect the interests of the Financial Corporation."

15. Section 31(1)(aa) of the SFC Act reads as follows:-

> ***"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) x x x x x*
>
> *(aa) for enforcing the liability of any surety."*

16. The relevant portion of Exhibit 'P14' Letter issued under Section 30 of the SFC Act reads as follows:-

> *"10. This is to further inform you that in the event of your failure to comply with be aforesaid demand the Corporation would proceed to take steps for the sale of your assets in exercise of its power U/s.29 of the Act and any written cause shown by you in this behalf would be*

considered if such cause is shown within ten days from the date of the receipt of this notice.

11. A copy of this notice is being endorsed to the guarantors for their information and to give them an opportunity to safeguard their own personal interest by taking steps to cause the repayment to be made by you without any further delay. The sureties are hereby informed that the matter of invoking their personal guarantee given to by them under the aforesaid deeds of guarantee would be considered by the Corporation in the event of your failing to honour your commitments under the contract and in the event of you failing to pay the amounts as demanded above."

17. Thereafter, on 03.03.1998, a further Notice is issued, the relevant portion of which reads as under:-

"4. You are further aware that under the said deeds of guarantee, you undertook to pay my client the whole of the principle sum, interest, commitment charges and other moneys due from the company in the event of company committing default at any time. This is to bring to your notice that despite of the notice aforesaid, and repeated demands made by my client, the company failed to pay the due amounts in respect of the aforesaid loans. My client, therefore, was constrained to take over possession of the Unit exercising it's power under Section 29 of S.F.C's Act on 24.2.1993. <u>Efforts are being made to dispose of the assets to the highest bidder.</u>

(emphasis supplied)

> *5. Having regard to the defaults committed by the company, my client has decided to invoke the personal guarantee given by you under the deeds of guarantee referred to earlier and in pursuation to the said decision, the Corporation hereby invokes the personal guarantee given by you in terms of the deeds of guarantee dated 13.3.89, 29.7.89 and 21.3.1990."*

18. It is clear that between Exhibits 'P14' and 'P15', nothing further has transpired. The assets of the borrower were sold only in the year 2001. No further transaction or renewal or rescheduling of the loan has also taken place between 14.09.1993 and 03.03.1998.

19. In ***Deepak Bhandari***'s case (supra), the Apex Court had considered a case where Deeds of guarantee were executed in the year 1985 and 1986 and recall notices were issued on 21.05.1990. However, the mortgaged/hypothecated properties of the Company was taken over under Section 29 of the SFC Act and the Sale of the assets fructified on 21.03.1994. Thereafter, a Notice was sent to the defaulters as well as the guarantors on 21.05.1994 invoking the guarantee. The suit for recovery of the balance amount was filed on 26.12.1994. It was in

the said circumstances, the Apex Court held that the question of recovery of the balance amount from the guarantors would arise only after the balance amount is ascertained after the sale of the hypothecated property fructifies. In the circumstances, it was held that the limitation period for recovery of the balance amount would start only after adjusting the proceeds from the sale of the Industrial Concern.

20. In ***Gulhati***'s case (supra), the Division Bench of this Court had also considered a similar fact situation and had held that a surety is not discharged until the entire amount under the loan including interest is repaid. At paragraph No.20 thereof, the Bench had held as follows:-

> ***"20.*** *As regards the periods of limitation, though it is baldly stated in the counter that the petition is barred by limitation and the date of the first notice be taken as the starting point of limitation, there is no clear details given as to how such a contention would stand. It needs to be mentioned that under the first notice, the first respondent-Corporation had only recalled the entire loan payable by the principal borrower and at the same time, had alerted the guarantors to see that something is done to save the company. Under the first notice admittedly, the first respondent - Corporation did not*

> *invoke the liability of the surety under the guarantee bond. It is only in the second notice, the first respondent - Corporation invoked the liability of the surety and if the period of limitation is to be computed from the date of the second notice, the petition filed by the first respondent - Corporation under Section 31(1)(aa) for enforcing the liability of surety, it is well within time even if it is to be assumed that the residuary Article 137 is applicable to such petitions."*

21. In ***MFA No.2499/2013*** as well, Section 30 Notice was issued on 22.11.2001 and personal guarantee was invoked on 27.05.2004. The petition under Section 31(1)(aa) and Section 32 of the SFC Act filed on 05.08.2004 was held to be within limitation. However, in ***Ashok K. Agarwal***'s case (supra), the Apex Court had clearly held that the period of limitation for filing an application under Section 31(1)(aa) of the SFC Act falls under Article 137 of the Limitation Act, 1963 and the time provided is three years. It was held that it is only on the basis of a legal fiction that the proceedings under Section 31 of the SFC Act are treated as akin to execution proceedings and that Article 136 of the Limitation Act has no application.

22. In the instant case as well, a reading of the Deeds of Guarantee would clearly show that it is stipulated that the deeds provided for repayment of the amounts by the borrower and surety on demand. The relevant clause reads as under:-

> "*The Corporation will be at liberty to (but it will not be obligatory on its part) pay the same and the Borrower and Surety shall repay the same to the Corporation on demand with interest thereon at the gross lending rate of the Corporation prevailing from time to time with a minimum 16.5 per cent per annum with half yearly rests and said amount paid by the Corporation shall be treated a charge on the schedule properties.*"

23. In the instant case, recalling of the loan under Section 30 of the SFC Act, with notice to the guarantors occurs on 14.09.1993. The relevant portion of the notice which is extracted herein before would amount to a demand as provided in the Deed of Guarantee. It is clear that the sureties have been informed of the fact of the default and that they are required to meet the liability which is co-existent with that of the principal borrower. The sale of assets of the Company which was taken over had occurred only much later, in the year 2001.

24. In the above view of the matter, we are of the opinion that the finding of the Special Court to the effect that the loan stood recalled and the guarantee invoked by Exhibit 'P14' - Letter dated 14.09.1993 is the correct proposition. Since there is no change in the liability after 14.09.1993, except the enhancement of the amount by adding interest, we are of the opinion that the Letters dated 03.03.1998 and 07.04.1998 are only made as an attempt to extend the period of limitation which is not permissible. We therefore find no grounds to interfere with the order of the Special Court. The appeals therefore fail and the same are accordingly ***dismissed.***

All pending interlocutory applications shall stand *disposed of.*

Sd/-
(ANU SIVARAMAN)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

cp*