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Limitation Period in Foreclosure Actions.

The case of SIVADEVI A/P SIVALINGAM v CIMB BANK BERHAD

Court of Appeal [2018]



after the chargee has been deprived the right to receive the money accruing under the charge.

Pursuant to the decisions in the Court of Appeal cases of *Peh Lai Huat v MBF Finance Bhd* [2011] 3 MLJ 470 and *Jigarlal K Doshi @ Jigarlal a/l Kantilal v Resolution Alliance Sdn Bhd & Another* [2013] 3 MLJ 6, the accepted legal position was that in a foreclosure action, the cause of action arises upon the expiry of the Form 16D. The 12 year limitation period would run from the date the chargor fails to remedy the default specified in the Form 16D.

This has now changed. The Court of Appeal in *Sivadevi a/p Sivalingam v CIMB* in a judgment delivered by Mary Lim JCA, departed from that position. The position now is:

- A. The right to enforce a charge must be taken within 12 years calculated not from when the right to seek an order for sale accrued, but from when the right to receive the money accrued, as are the clear terms of section 21 (1).
- B. Right to receive money is taken to be a month after the breach or

The judgment also deals with the difference between a ‘mortgage’ and a ‘charge’ as well as the position in relation of an action in personam for the shortfall after the sale of the charged property.

The mood of the court can be inferred from this quote,

“..if the time period of 12 years does not run from when the breach of the agreement took place ..., a chargee may well decide not to do anything for the next 100 years, and still be in time to enforce the ad rem right of order of sale. The laws on limitation are intended to protect the rights of all parties concerned”.

Bankers will have to be aware of this especially when dealing with old legacy loans and protracted recovery proceedings.

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