

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

MISCELLANEOUS FIRST APPEAL NO.2959 OF 2023 (KPIDFA)

BETWEEN:

SRI. N. SHIVAPRASAD
S/O SRI. NANJAPPA,
AGED ABOUT 59 YEARS,
R/AT NO.415,
6TH A MAIN, HRBR LAYOUT,
BANASWADI, BENGALURU-560 043.

...APPELLANT

(BY SRI.M.T.NANAIAH, SR. ADV. FOR
SRI. SHIVAKUMAR V., ADV.)

AND:

- 1 . THE COMPETENT AUTHORITY
FOR M/S. SHREE SHAKTHI CREDIT SOUHARDHA
CO-OPERATIVE LTD.,
REPRESENTED BY ITS COMPETENT AUTHORITY,
JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES,
3RD FLOOR, 'A' BLOCK,
TTMC BUILDING, SHANTINAGAR,
BENGALURU-560 027.
- 2 . M/S. SHREE SHAKTHI CREDIT SOUHARDHA
CO-OPERATIVE LTD.,
NO.171/1, 6TH CROSS,

8TH MAIN ROAD,
 MALLESHWARAM,
 BENGALURU-560 003.
 REPRESENTED BY ITS OFFICIAL LIQUIDATOR,
 SOUHARDHA SAHAKARI SOUDHA,
 NO.68, 1ST FLOOR,
 BETWEEN 17TH AND 18TH CROSS,
 MARGOSA ROAD,
 MALLESHWARAM,
 BENGALURU-560 055.

...RESPONDENTS

(BY SRI.VEERESH R. BUDIHAL, ADV. FOR R1;
 SRI. A. DEVARAJA, ADV. FOR R2)

THIS MFA IS FILED UNDER SECTION 16 OF THE KARNATAKA PROTECTION OF INTEREST OF DEPOSITORS IN FINANCIAL ESTABLISHMENTS ACT, 2004, AGAINST THE ORDER DATED 05.04.2023 PASSED IN MISC.NO. 1596/2022 ON THE FILE OF THE XCI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE FOR KPIDFE CASES, BENGALURU, (CCH-92), ALLOWING THE PETITION FILED UNDER SECTION 5(2) OF THE KPIDFE ACT-2004.

THIS MFA HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 21.02.2026 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 VIJAYKUMAR A. PATIL

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

The appeal is filed against the Order dated 05.04.2023 passed by the XCI Additional City Civil and Sessions Judge, Bengaluru (CCH-92) ('Special Court' for short) passed in Misc.No.1596/2022. The appellant herein was respondent No.2 in the Miscellaneous Petition filed under Section 5(2) of the Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004 ('KPIDFE Act' for short).

2. We have heard Shri. M.T. Nanaiah, learned senior counsel appearing for Shri. Shivakumar. V, learned advocate appearing for the appellant as well as Shri. Veeresh R Budiha, learned counsel appearing for respondent No.1 - Competent Authority appointed in respect of M/s. Shree Shakthi Credit Souhardha Co-Operative Society Limited.

3. The brief facts are as follows:-

Respondent No.1 is M/s. Shree Shakthi Credit Souhardha Co-operative Limited ('Co-operative Limited' for short) and the appellant herein was its President. It was

alleged that the Co-operative Limited had defrauded its creditors and investors by siphoning off its funds for purchasing properties and by transferring funds to the names of firms owned by the appellant and his family members. In view of the inability of the Co-operative Limited to return the amounts to the depositors, Notification under Section 3(2) of the KPIDFE Act was published on 07.02.2019 and published in the Official Gazette on 28.02.2019, in two daily newspapers and was also affixed on a conspicuous part of the schedule property for public notice. The previous Competent Authority had filed a petition under Section 5(2) of the KPIDFE Act within the prescribed period seeking confirmation of the interim order of attachment, which was registered as Misc.No.616/2019. During the proceedings, an application was filed seeking withdrawal of the petition with liberty to file afresh on the same cause of action after curing the defects. By order dated 16.07.2022, the application was allowed, granting liberty to file a fresh petition within 30 days. Thereafter, the petition was filed afresh by the Competent Authority on 09.12.2022.

4. The appellant herein purchased the petition schedule property under a Registered Sale Deed dated 27.09.2013 for a consideration of Rs.1,87,50,000/- along with Shri. A.N. Kumar. The Sale Deed would show that an amount of Rs.1,72,50,000/- was paid by the appellant. On 11.02.2017 the joint owner Shri. A.N. Kumar executed a Relinquishment Deed in favour of the appellant. The said property was also notified for attachment under Section 3(2) of the KPIDFE Act vide Notification dated 07.02.2019. Thereafter, the Competent Authority filed an application under Section 5(2) of the KPIDFE Act, seeking to make the order of attachment, absolute.

5. The learned senior counsel appearing for the appellant contended that though the appellant had appeared and contested the matter, the Special Court proceeded to speedily pass orders on the application of the Competent Authority, without giving a reasonable opportunity to the appellant to contest the matter by adducing evidence. It is contended that without any evidence being adduced by the petitioner, the contentions of the petitioner were

mechanically accepted and an order was passed making the attachment absolute. It is contended that the order is vitiated inasmuch as it proceeded on assumptions and conjectures as if the sale consideration paid by the appellant was the amount of respondent No.1-Co-operative Limited. It is contended that the Sale Deed shows that 90% of the sale consideration had been paid by the appellant through a Cheque of the Grain Merchant Co-Operative Bank and not of respondent No.1 - Co-operative Limited. It is submitted that the appellant had gone to China on business and returned only on 29.03.2023 and that he was not able to proceed with the evidence and he was not given a proper opportunity to produce materials in support of his contentions. On these grounds, the order of the Special Court is challenged. It is further contended that though permission has been granted by the Special Court by its Order dated 16.07.2022 to file the application under Section 5(2) of the KPIDFE Act within 30 days, the same was not complied with and it was only on 09.12.2022, that is, after a delay of four and a half months that the application was filed, which vitiated the entire

proceedings. It is contended that the application filed beyond the period of 30 days was not maintainable and ought to have been dismissed.

6. The learned counsel appearing for respondent No.1 - Competent Authority, on the other hand, contends that the entire proceedings were carried out as provided under the KPIDFE Act and that all due notice of the attachment of the property had been given as provided in the KPIDFE Act. It is contended that it was for the appellant to have shown cause as to why the orders of attachment should not be made absolute. However, the appellant failed to show cause or to produce any documents in support of his contentions that the property in question was not liable for attachment.

7. The learned senior counsel also contends that the report had been placed on record before the Special Court, under Section 8 of the KPIDFE Act, which showed that respondent No.1 - Co-operative Limited had failed to return deposit amounts to the tune of Rs.21.89 Crores as well as

other amounts collected by the appellant and Shri A.N. Kumar directly from the depositors into other firms owned by the appellant. It is contended that the appellant was admittedly one of the Directors of the Financial Establishment and that his property is also liable for attachment, if the Society does not have sufficient property to the value of the deposits collected by the Financial Establishment. It is contended that the large part of the financial consideration for the purchase of the property in question was paid by the appellant himself even at the time of purchase and he had paid further amounts to Shri. A.N. Kumar for the purpose of release of rights in the property in favour of the appellant. It is contended that though ample opportunity had been provided to the appellant to produce whatever material he wanted to produce before the Special Court, no such material had been produced before the Special Court. It is contended that even before this Court, no material whatsoever is forthcoming to show that the properties in question are not liable for attachment.

8. We have considered the contentions advanced. Section 3(2) of the KPIDFE Act provides for issuance of an order by publishing in the Official Gazette, attaching the money or property believed to have been acquired by the Financial Establishment in its own name, or in the name of any other person from and out of deposits collected by the Financial Establishment. Where such property is not sufficient for repayment of the deposits, such other property of the Financial Establishment or the personal assets of promoters, partners, or other persons related to the establishment can also be attached. It is clear that what is contemplated under Section 3(2) of the KPIDFE Act is only an order of interim attachment of money or property which is "believed to have been acquired" by the Financial Establishment or the personal assets of its Directors etc. The said provisional attachment can be made absolute only after following the procedure under Section 5 of the KPIDFE Act.

9. Further, Section 5 of the KPIDFE Act contemplates an application to be made by the competent authority under the Act before the Special Court to make the

order of attachment, absolute. It also contemplates a consideration of objections by any person having an interest in the property. Section 11 of the KPIDFE Act provides for the powers of the Special Court regarding realisation of assets and payment to depositors. The Special Court under Section 11(2)(f) of the KPIDFE Act has the power to pass any order for realisation of the assets of the Company and repayment to the depositors.

10. Further, Section 12(3) of the KPIDFE Act specifically provides that any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under this Section, make an objection, as aforesaid, to the Special Court at any time before an order is passed under sub-Section (4) or sub-Section (6).

11. Section 19 of the KPIDFE Act provides that, "Save as otherwise provided in the Act, the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in

force or any custom or usage or any instrument having effect by virtue of any such law."

12. It is clear that the KPIDFE Act is an enactment intended to provide for protection of interest of gullible depositors in financial establishments. It is a regulatory and penal statute and has to be construed specifically as such, so that the purpose of the enactment can be given effect to.

13. Section 5(2) of the KPIDFE Act provides a period of 30 days from the date of the order made under Section 3 of the KPIDFE Act for the competent authority to apply to the Special Court for making the order of attachment absolute. A proviso has been added to sub Section 5(2) by the Karnataka Act No.06 of 2021, providing as follows:-

"Provided that, the Secretary to Government, Revenue Department, may on the request of the Competent Authority, extend this period by another fifteen days in cases having valid reasons and based on the merits of the case."

14. It is to be noticed here that there is no provision in the KPIDFE Act excluding the provisions of the Limitation Act for filing applications under the KPIDFE Act. The High

Court of Madras in a series of decisions has held that where the applications are to be filed before a Special Court and where there is no express exclusion of the provisions of the Limitation Act, then, the Limitation Act is applicable. The enactment being considered was the TNPID Act, which was in *pari materia* to the provisions of the KPIDFE Act before its amendment by introduction of the proviso to Section 5(2) of the KPIDFE Act.

15. The Apex Court in ***K.K. Baskaran v. State Represented by its Secretary, Tamil Nadu and others*** reported in **(2011) 3 SCC 793**, upheld the legal validity of the TNPID Act and held that the object of the Act to safeguard the interest of the gullible depositors from fraudulent activities of the financial establishments. It further held at Paragraphs No.28 to 30, which reads as follows:-

"28. *In the case of the Tamil Nadu Act, the attachment of properties is intended to provide an effective and speedy remedy to the aggrieved depositors for the realisation of their dues. The offences dealt with in the impugned Act are unique and have been enacted to deal with the economic and social disorder in society,*

caused by the fraudulent activities of such financial establishments.

29. *Under Sections 3 and 4 of the Tamil Nadu Act, certain properties can be attached, and there is also provision for interim orders for attachment after which a post-decisional hearing is provided for. In our opinion this is valid in view of the prevailing realities.*

30. *The Court should interpret the constitutional provisions against the social setting of the country and not in the abstract. The Court must take into consideration the economic realities and aspirations of the people and must further the social interest which is the purpose of the legislation, as held by Holmes, Brandeis and Frankfurter, JJ. of the US Supreme Court in a series of decisions. Hence the courts cannot function in a vacuum. It is for this reason that courts presume in favour of constitutionality of the statute because there is always a presumption that the legislature understands and correctly appreciates the needs of its own people."*

16. We notice that the proviso to Section 5(2) of the KPIDFE Act gives the Government in the Revenue Department a right to extend the period of 30 days by 15 more days for the Competent Authority to move the Special Court. However, such power given to the Government to extend the time by 15 more days cannot be construed as being a bar on the power of the Special Court under Section

5 of the Limitation Act. We are of the clear opinion that the proviso granting a power to the Government de hors the power of the Special Court to extend the time for making the application before the Special Court cannot, in any way, limit the powers of the Special Court.

17. The Special Court is constituted under Section 10 of the KPIDFE Act. Such Court is clearly a "Court" for the application of the Limitation Act. As such, the Special Court exercises its power under Section 5 of the KPIDFE Act by virtue of its status as a Court. The time period provided under the Act and the power provided to the Government to extend the time for a period of 15 days thereafter cannot therefore, be construed as limiting the powers of the Special Court under Section 5 of the Limitation Act. In the instant case, the delay in filing the application under Section 5(2) of the KPIDFE Act had been condoned by a separate order which is not under challenge before us. In any view of the matter, the contention that a delay cannot be condoned cannot be accepted by this Court.

18. Further, it is clear that an ample opportunity had been given to the appellant to substantiate his case by producing sustainable material before the Special Court. The fact that such opportunity was not made use of cannot stand in the way of the adjudication by the Special Court. It was an admitted case that the appellant herein was a Director and a past President of the Co-operative Limited. It was found that his contention that he was not a Director and that his signature in the proceedings of the Co-operative Limited and its Audit Report were forged cannot be accepted, since he had not raised any such contentions or taken any appropriate legal action at the relevant time. It was an admitted fact that the property was purchased by the appellant and Shri. A.N.Kumar jointly. The purchase was made at a time when the appellant was the Director of the Financial Establishment. In view of the provisions of the KPIDFE Act, the Special Court clearly found that it was for the appellant to have substantiated his contention that the purchase was made out of his independent funds. Therefore, the source of such funds ought to have been established by

the appellant by adducing acceptable evidence. It was found that no evidence whatsoever was forthcoming in support of his contentions that the property was purchased out of his independent fund. The Special Court found from the materials on record including the statements of accounts relating to the Financial Establishment held at AXIS Bank, that substantial amounts had been transferred from the account of the Bank to respondent No.2's personal account during the relevant time. The contention that it was the amounts, which were transferred from the Bank's account that was utilized for the purchase of the property was therefore accepted. No documents could be placed on record by the appellant to show that the purchase of the property was made with his independent income and no source of such income could be substantiated by him before the Special Court. Even before this Court, no material has been placed on record to substantiate the contentions of the appellant.

19. The contention that the Competent Authority should have proved the facts before the Special Court is also completely unsustainable, in view of the special provisions of the KPIDFE Act, where it is for the person who claims ownership or interest in any of the properties attached to show cause as to why such attachment shall not be made absolute.

20. In the above view of the matter, we are of the opinion that there is no substance in the contentions raised. The appeal fails and the same is accordingly ***dismissed***.

All pending interlocutory applications shall stand *disposed of*.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**

cp*