

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

CMA.No.1095 of 2016

and

CMP.Nos.8186 of 2016 & 12206 of 2017

- 1.M/s.Deccan Estates Limited,
Represented by its Director A.Nirmal Gadhiya,
New No.24, Old No.46,
B.N.Road, T.Nagar,
Chennai-600 017.
- 2.Nirmal Gadhiya,
Director, M/s.Deccan Estates Limited.,
New No.24, Old No.46,
B.N.Road, T.Nagar,
chennai - 600 017.Appellants/Proposed Applicants/
Third Parties
- vs.
- 1.Competent Authority and
District Revenue Officer,
Collector's Offices,
Chennai - 600 001. 1st Respondent/Respondent/
Petitioner
- 2.M/s.Suprabath Chits &
Investments (Private) Limited,
No.18, 10th Cross Street,
Indira Nagar,
Chennai - 600 020.
Represented by Sl.5,7,9,10,12,16.
- 3.M/s.Balaji Hire Purchase (Pvt) Ltd,
No.C1, Brindavan Apartments,
Mylapore, Chennai - 600 004,
Represented by Sl.No.5,6,7.
- 4.M/s.Krishna Finance, Chennai
No.C1, Brindavan Apartments,
Mylapore, Chennai - 600 004
Represented by Sl.No.5,10,13

5.K.Kannaian alias Babu

6.D.Sulochana

7.G.Devarajan

8.K.Nagarathinam

9.N.Kuppusamy Naidu

10.T.Kanappan Gurukkal

11.Uma Nagarathinam

12.K.Srinivasan
13.K.Chitra Devi
14.Rajkumar
15.T.Prithima
16.P.Sugumar

... Respondents 2 to
16/Respondents 2 to 16/
Accused 1 to 15

17.Association of Depositors of
Subrabath Chits and Investments
Represented by Gowri Shankar
Authorised Representative,
Residing at No.3/411
New No.2/587, Singaravelan Road,
Chinna Neelankarai,
Chennai - 600 041.17th Respondent/17th Respondent

The Civil Miscellaneous Appeal is filed under Section 11 of The Tamil Nadu Protection of Interests of Depositors Act 1997 to set aside the petition and Order dated 23.03.2016 made in I.A.No.55 of 2015 in O.A.No.85 of 2010 on the file of the Special Judge TNPID Act, Chennai - 600 104.

For Appellants : Mr.A.L.Somayajee, Senior Counsel
for C.Prabakaran

For R1 : Mr.M.Venugopal,
Special Government Pleader, (C.S.)

For R7 & 11 : Mr.S.Jaganathan

For R10 : Mr.Ganesh Kumar

For R5,12 & 13 : Mr.K.Kannan

For R17 : Mr.S.Shahul Hameed

For R2 to 4,6,8,9,14 to 16 :Not ready in notice.

J U D G M E N T

This appeal is directed against the order of the Special Court constituted under Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 dismissing an application filed by the third party seeking to implead itself in the proceedings in O.A.No.85 of 2010 which is filed by the Competent Authority under Sub-Section 1 of Section 7 of the Act. The competent authority has filed an application in O.A.No.85 of 2010 seeking to make the attachment absolute under section 7(1). The appellants herein had filed O.A.No.70 of 2010 objecting to the attachment and seeking to raise the attachment Under Sub-Section 3 of Section 7 of the said Act. It is stated that O.A.No.70 of 2010 is pending, while so, the appellants filed an I.A.No.55 of 2015 seeking to implead themselves in O.A.No.85 of 2010. The said impleading petition

was dismissed by the Special Court holding that the petitioners being the third parties are not entitled to seek impleading in the proceedings for making attachment absolute. It is this order which is challenged in this appeal.

2. Heard, Mr.A.L.Somayajee, learned Senior Counsel appearing for the appellants and Mr.Shahul Hameed, learner counsel appearing for the 17th respondent, Mr.M.Venugopal, learned Special Government Pleader, (C.S.) for the first respondent. Notice not been served to the respondents 2 to 4, 6, 8, 9 14 to 16, Mr.S.Jaganathan, learned counsel for the respondents 7 and 11, Mr.Ganesh Kumar, for the respondents 10, Mr.K.Kannan, for the respondents 5,12 and 13. Notice to the respondents 2 to 4, 6, 8, 9 and 14 to 16 is deemed unnecessary in view of the narrow scope of the appeal itself.

3. Mr.A.L.Somayajee, learned Senior Counsel appearing for the appellants would contend that if O.A.No.85 of 2010 is disposed of pending the application in O.A.No.70 of 2010 seeking to raise attachment the appellants will be prejudiced. Though the apprehension appears reasonable, the procedure contemplated under Section 7 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 itself provides safeguard to the appellant.

4. The Section 7(1) provides for the procedure to be adopted by the Special Court while dealing with the applications for attachment, sale realization and distribution. The Sub-Section 1 of section 7 provides that upon receipt of the application under Section 4 the Special Court should issue notice to the financial establishment or any other person whose property is attached by the Government under Section 3 and Sub-Section 2 casts an obligation on the court to issue notice to all persons who are represented to it as having interest or being likely to claim any interest or title in the property of the financial establishment. Sub-Section 3 provides for a claim to be made by any person whose property has been wrongfully attached. Sub-Section 4 provides for making an order of attachment absolute if no objection is received.

5. Sub-Section 5 of Section 7 provides the procedure to be followed when objections have been made. In fact, the Sub-Section 5 enables the Special Court to record the evidence on the rival claims and decide the issue as a Civil Court exercising the powers in hearing a suit under the Code of Civil Procedure. Therefore, the Special Court under the Act acts as a Civil Court in determining the question relating to the right, title interest of the parties before it in the proceedings for attachment or for raising the attachment.

6. Sub-Section 6 enables the trial court to pass an order after investigation under sub section 5.

Senior Counsel that the trial court may proceed with O.A.No.85 of 2010 before determining the rights of the appellants who have filed an application in O.A.No.70 of 2010 invoking Sub-Section 3 of Section 7 seeking to raise attachment cannot survive inasmuch as the appellants have already made a claim and the claim is pending adjudication.

8. Therefore, I do not think, the appellant can seek impleading in the original proceedings in O.A.No.85 of 2010 which has been filed by the competent authority seeking to make the order of attachment absolute. Hence the order of the trial court dismissing the application for impleading is upheld and the appeal is dismissed.

9. However, it is made clear that the Special Court shall dispose of the O.A.No.70 of 2010 filed by the appellant herein under Sub-Section 3 of Section 7 seeking to raise attachment before the proceeding to pass orders in O.A.No.85 of 2010 either making absolute or vacating the order of attachment.

10. Considering the fact that the application is of the year 2010 the TANPID Court is directed to dispose of O.A.No.70 of 2010 as early as possible at any rate not later than six months from the date of receipt of a copy of this order and report such disposal to this court. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Special Judge TNPID Act,
Chennai - 600 104.
2. The District Revenue Officer,
Collector's Offices, Chennai - 600 001.

+1cc to Mr.S.Shahul Hameed, Advocate, S.R.No.65333
+1cc to the Government Pleader, S.R.No. 6550

CMA.No.1095 of 2016
and

CMP.Nos.8186 of 2016 and 12206 of 2017

SS (CO)
GN(10/10/2017)