

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2017

CORAM

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.M..A.No.2572 of 2016

and

C.M.P.No.18435 of 2016

The District Revenue Officer
The Competent Authority at
Kancheepuram
Kancheepuram District.

.. Appellant

vs

1. U.Buvaneswari

2.The Deputy Superintendent of Police
Economic Offences Wing
Kancheepuram
Kancheepuram District.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 11 of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 against the order and decree dated 30.08.2016 passed by the learned Special Judge under TNPID Act, Chennai 600 104 in I.A.No.41 of 2016 in O.A.No.4 of 2015.

For Appellant : Mrs.Jayashree
Government Advocate (CS)

For Respondent 1 : Mr.P.Jagadeesan for
Mr.K.Jothisivam

JUDGMENT

The appellant, aggrieved by the order passed by the learned Special Judge under Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 [in short 'the Act'] in dismissing the application filed under Order XVIII Rule 17 of the Code of Civil Procedure, has filed the present Civil Miscellaneous Appeal.

2. The facts of the case is as follows:

(a) Based on the complaint of one Munusamy, a case was

registered in Crime No.6 of 2001 under Section of 5 of TNPID Act, against two persons, who were running the Financial Establishment by name "Sri Devi Finance" at Chingleput. During investigation, it was found that the first respondent's husband, by name, Umapathi Sivam was also a partner in the said financial establishment and that they have jointly defaulted a sum of Rs.14,91,346/- from 30 depositors in 64 deposits. However, the original accused were absconding from the inception of the case and since their whereabouts were not known, the case was split up against them and the first respondent's husband herein and orders were passed declaring the absconding accused as Proclaimed Offenders. The case is still pending before the Court below. Pending trial, the property of Umapathi Sivam was attached vide G.O.Ms.No.1023, Home (Courts IIA) Department dated 25.10.2006. Whereas in the split up case in C.C.No.15 of 2002 against Umapathi Sivam, the Court below had acquitted him on 21.07.2011 on the ground that the alleged offence was not proved against him beyond reasonable doubt. Hence, the first respondent herein filed an application in O.A.No.4 of 2015 seeking to raise the attachment order passed. Pending the said application, the appellant herein, who is arrayed as R2, had filed an application under Order 18 Rule 17 of the Code of Civil Procedure to recall RW2 and to file additional proof affidavit and to mark certain documents.

(b) The first respondent herein filed a counter stating that the documents sought to be marked are not relevant for deciding the issue in the main application. She had further stated that the evidence on both sides are over and that the matter was posted for further evidence on her side. At that stage, the appellant had filed the above application only for dragging on the issue without valid grounds.

(c) The court below, after hearing both sides, had dismissed the application. Challenging the same, the present appeal is filed.

3. Heard both sides.

4. On a perusal of the impugned order, it is seen that the Court below by simply stating that the appellant has not specifically stated as to how the documents sought to be marked by it are relevant to decide the issue in the main O.A.No.4 of 2015, had dismissed the application, without giving any valid reasons. The Court cannot simply decide that the documents sought to be marked by the appellant are not relevant documents, as the issue involves public interest and that the husband of the second respondent herein, who has filed an application to raise the attachment, has defaulted in paying the innocent depositors their hard earned money.

5. It is now well settled principle that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit, but such power is not to be invoked to fill up the lacunae in the evidence.

6. The Hon'ble Supreme Court in the decision reported in 2011-3-LW-738 [K.K.Velusamy vs. N.Palanisamy] has extensively dealt with the powers of Court under Section 151 of the CPC to reopen the case and the powers of the Court under Order XVIII Rule 17 to recall a witness for any purpose. In para No.16 of the said judgment, it has been held as follows:

"16. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application."

7. In the case on hand, the appellant, who is a Government Authority is seeking permission to mark certain documents through RW2, which are all in the nature of public documents viz., Land Delivery Report, Field Measurement Book, Report of Tahsildar, Sketch of Tahsildar and Adangal copy pertaining to the property attached. Hence, for marking of such documents, there can be no objection. The Court below could have very well permitted the appellant to mark those documents, subject to its proof, admissibility and relevancy and also recording the objections, if any, that could have been raised by the other side, as per the judgment of the Hon'ble Supreme Court in the case of Bipin Shantilal Panchal vs. State of Gujarat reported in AIR 2001 SC 1158.

8. Mere allowing of the said application, does not take away the right of the respondent, excepting the fact that the judgment would get postponed. In view of the same and in the interest of justice, this Court is inclined to allow the said application, however, on terms.

9. Accordingly, the order dated 30.08.2016 passed by the learned Special Judge under TNPID Act, Chennai 600 104 in I.A.No.41 of 2016 in O.A.No.4 of 2015 is set aside, subject to the condition that the appellant shall pay a sum of Rs.2,000/- [Rupees two thousand only] to the first respondent within a period of two weeks from the date of receipt of a copy of this order.

10. In the result, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

- 1.The Special Judge under TNPID Act,
Chennai 600 104
- 2.The Deputy Superintendent of Police,
Economic offences wing,
Kancheepuram, Kancheepuram District.

3.The District Revenue Officer,
The Competant Authorit at Kancheepuram,
Kancheepuram.

C.M.A.No.2572 of 2016

KGK(CO)
VR(05/04/2017)



WEB COPY