

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2017

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CrI.R.C.No.82 of 2016
and CrI.MP.No.627 of 2016

1. A. Balasubramaniam
2. V.K. Subramaniam ...Petitioners/Petitioners/
3rd parties

Vs

1. The District Revenue Officer, Erode
2. C. Nandhakumar ...Respondents

Prayer : Criminal Revision case filed under sections 397 r/w 401 of Criminal Procedure Code to set aside the order dated 14.10.2015 made in I.A.No.19 of 2015 in O.A.No.27 of 2015 on the file of the Special Judge for TNPID Act, Coimbatore and permit the petitioner to get petition mentioned documents therein, by allowing this criminal revision petition.

For Petitioner : Mr.D.R.Arun kumar
For 1st Respondent : Mr. R.Ravichandran
(Gov. Advocate, Criminal side)
For 2nd Respondent : No appearance.

O R D E R

Challenging the order, dismissing the petitioner's application to implead him as a party in an attachment proceeding in Tamil Nadu Protection of Interests of Depositors (In Financial and Establishments) Act, 1997 (TNPID Act) the present Revision Case has been filed.

2. The second respondent herein is an accused in a proceeding initiated by the first respondent herein, under the TNPID Act, for attachment of the properties. The above proceedings has been initiated on the ground that the financial establishment run by the second respondent herein committed default in returning the deposits, after maturity and an interim attachment was already made, and an application to effect attachment is pending before the competent court. The petitioners herein claim to have entered into a sale agreement

with second respondent in respect of a property, which is the subject matter of attachment proceedings initiated by the first respondent. Now, the petitioners seeking to implead themselves as party-respondents in the attachment proceedings enable them to claim right over the attached property and it was dismissed by the court below. Challenging the same, present Revision Case has been filed.

3. The learned counsel Mr.D.R.Arun kumar, appearing for the petitioner submitted that the petitioners have entered into a sale agreement with the second respondent on 27.07.2012, long prior to the attachment. As the second respondent failed to execute the sale deed, they filed a suit in O.S.No.105/2012 on the file of the Additional District Court, Dharapuram, and the above suit was also decreed exparte on 19.03.2013. Now, the petitioners filed a petition in E.P.No.51 of 2013 for execution of sale deed and the same is pending. All these happened prior to the order of interim attachment made under Sections 3 & 4 of TNPID Act. The petitioners had no knowledge about the proceedings. In the above circumstances, behind the back of the of the petitioners, the property of the second respondent has been attached by the first respondent. Hence, the petitioners filed the impleadment petition. But, the court committed error by dismissing the impleadment petition, holding that the agreement of sale will not confer any right on them.

4. Per contra, the learned counsel Mr.R. Ravichandran, Government Advocate, (Criminal side), filing the counter affidavit of the respondent, contended that the petitioners have, in collusion with the second respondent, fraudulently got executed the sale agreement, in order to avoid attachment and it was only a sale agreement and the same does not create any right or title and based on such sale agreement, the petitioners cannot claim any right over the property and they are not at all proper parties to the attachment proceedings.

5. I have considered the rival submissions made by both the counsels and the materials available on record.

6. Admittedly the petitioners are agreement holders, and the sale and the agreement has been executed, long prior to the attachment proceedings. Pursuant to the sale agreement, the petitioners also filed a suit in O.S.No.105 of 2012 and the said suit was decreed exparte. Now, an execution petition in E.P.No.51 of 2013 is also pending. All these happened prior to the interim attachment made under Section 3 of the TNPID Act and Section 7 (2) of the TNPID Act contemplates that a notice shall be issued to all other persons represented to it as having or being likely to claim any interest or title in the property of the financial establishment.

Section 7(2) of the TNPID Act reads as follows:-

" The Special Court shall also issue such notice, to all other persons represented to it as having or being likely to claim, any title in the property of the Financial Establishment or the person to whom the notice is issued calling upon such person to appear on the same date as that specified in the notice and make objection if he so desires to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof ".

7. In the instant case, even though the petitioners are only the agreement holders, subsequently, they filed a suit in O.S.No.105 of 2012 and obtained a decree against the second respondent and also levied an execution proceedings in E.P.No.51 of 2013 and the same is also pending. Whether the decree was obtained by the petitioners in collusion with the second respondent or not, cannot be gone into at this stage. Since the petitioners have a legal right to enforce the contract for sale, certainly, they are also proper and necessary parties to the attachment proceedings. Apart from that merely because the petitioners are impleaded as party in the attachment proceeding, it will not automatically confer any rights on them to claim any right over the property. Ultimately, it is for the Special Court to decide the issue on its merits and by impleading the petitioners as party respondents, no prejudice will be caused to the depositors.

8. In the above circumstances, this Criminal Revision Case is allowed and the impugned order dated 14.10.2015 made in I.A.No.19 of 2015 in O.A.No.27 of 2015 by the learned Special Judge for TNPID Act, Coimbatore, is set aside. The court below is directed to implead the petitioners as respondents in the attachment proceedings. Consequently, connected miscellaneous petition is closed.

mst

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Special Judge for TNPID Act,
Coimbatore .

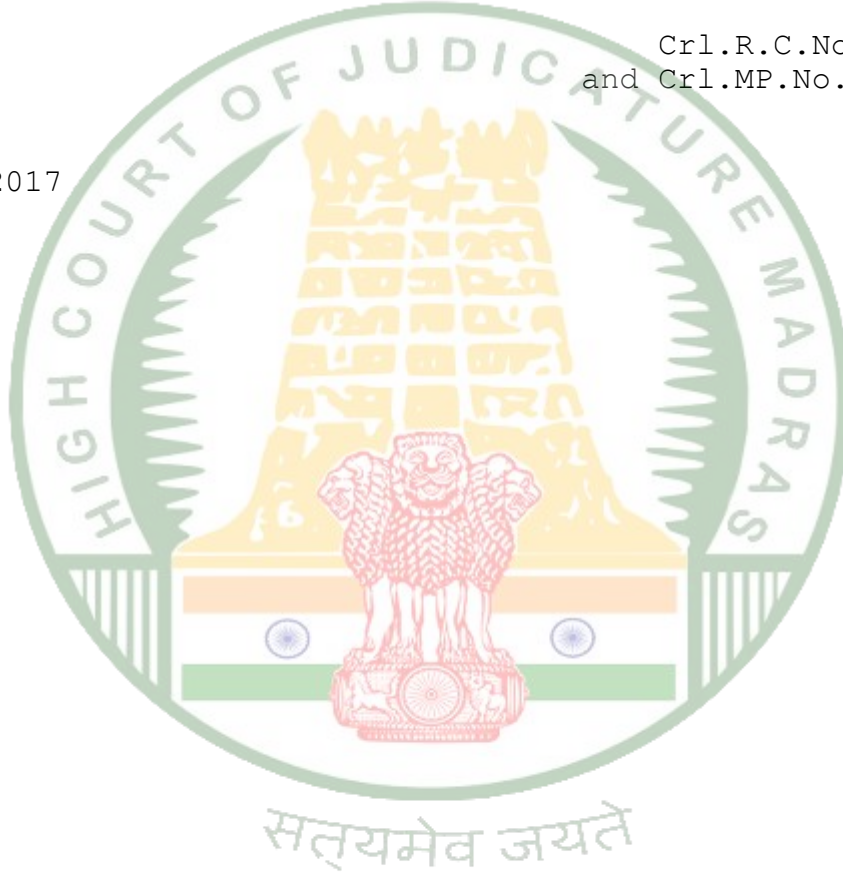
2. The Public Prosecutor,
High Court, Madras.

3. The District Revenue Officer, Erode

+lcc to Mr.D.R.Arunkumar, Advocate SR.No.42804/17

Crl.R.C.No.82 of 2016
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NRJK (CO)
sm:22.11.2017



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