IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

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THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 442 of 2018
&
C.M.P. No. 3831 of 2018

1. Gowtham Jain
2. Kamal Chand Jain
3. Rakkidevi
4. Manojkumar Dugar
5. Astha Dugar
6. S. Senthilkumar
7. Sethan Sanklekcha ..Appellants/Respondents 3 to 9

Vs.

1. The District Superintendent of Police,
Economic Offences Wing II,
Coimbatore. ..1st Respondent/Petitioner

2. Pro India Trading Pvt. Ltd.,
51, Park Tow, Trichy Road,
Coimbatore, rep. by N. Murugavel

3. N. Murugavel ..Respondents 2 & 3/ Respondents 1 & 2

Prayer: Civil Miscellaneous Appeal filed under section 11 of TNPID Act, as against the fair and final order dated 18.06.2015 made in O.A. No. 11 of 2012 on the file of Special Judge, Special Court under TNPID Act [Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) 1997] Cases, Coimbatore.

For Appellants :: Mr.A.E. Ravichandran

For Respondents :: Mr.A. Dev Narendran, Govt. Advocate for R1

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the alleged bona fide 3rd party purchasers as against the order of attachment of properties, which they had purchased from the 3rd respondent herein.

2. The facts of the case are as follows:

The 2nd respondent and the 3rd respondent, who is the proprietor of the 2nd respondent concern collected money from public and failed to repay the amount. Therefore, FIR was registered against them as well as other respondents in Crime No. 71 of 2009 by Coimbatore City Crime Branch, suo motu. Thereafter, the case was transferred to Economic Offences Wing II, Coimbatore and the 1st respondent was appointed as the Investigating Officer. As many as 63 complaints were received stating that the complainants had invested money in the 2nd respondent concern with an assurance of return with huge profit. The amount defaulted to be paid was Rs.12,40,000/-. The 3rd respondent, the proprietor of the 2nd respondent concern, had sold the properties to the appellants for a meagre sum in order to avoid attachment. Though the properties were purchased in 2005, the properties were sold by the 3rd respondent, who is the proprietor of the 2nd respondent, on 26.03.2012. Therefore, an application was filed before the Special Court under TNPID Act cases, Coimbatore, seeking an order of attachment of the said properties, which are alleged to have been purchased by the appellants. The said application was allowed against which only, the present appeal has been filed.

3. Heard the learned counsel for the appellants, who would submit that the properties were purchased by the appellants as bona fide purchasers without knowing the pendency of criminal case against the 3rd respondent. The learned counsel would also rely upon the judgment of this Court rendered in R. Karuppusamy Vs. Competent Authority/District Revenue Officer, Erode & Others (CDJ 2012 MHC 2099) to contend that on receipt of the application under sub-section (3) of Section 4 of Tamil Nadu Protection of interests of Depositors (in Financial Establishments) Act, 1997, the Special Court is expected to make an investigation under Section 7(5) of the Act and an order should be passed within a period of 180 days from the date of receipt of the application under Section 4(3) of the said Act and since the order of attachment under challenge has been passed beyond the period of 180 days, the same is liable to be set aside.

4. Heard the learned Government Advocate for the 1st respondent, who would justify the order under challenge.

5. It is seen from the records that the 2nd and 3rd respondents collected money from third parties and failed to repay the same leading to registration of FIR on 22.09.2009. Pending investigation, properties were purchased by the appellants on 16.03.2012. As prudent persons, the appellants should have verified not only the status of the properties, but also the antecedents of the vendor. It is unimaginable that the properties were purchased in a bona fide manner by the

appellants. The pendency of the criminal case should have been known to the appellants. Moreover, the purchase was made on 16.03.2012 and the TNPID Act was made applicable on 26.03.2012. Therefore, the transaction transferring the title of the properties to the appellants cannot be said to be bona fide and it is undoubtedly with mala fide intention. Eventhough the respondents took part in the enquiry/trial, nothing was produced in evidence to substantiate their claim. Moreover, the TNPID Court found that in 2009, a criminal case was registered against the 3rd respondent under Sections 4 and 5 of Prize, Chit and Money Circulating Scheme Banning Act, 1978 and Sections 420 and 511 IPC and then, after the case was transferred to EOW, Section 5 of TNPID Act was included.

6. Eventhough certain reasons have been given with regard to the handing over of the properties, this Court is not taking into consideration those reasons as material factors inasmuch as the purchase of the properties were made in 2012 after registration of FIR in 2009, which would prove the mala fide transaction between the appellants and the 3rd respondent. Therefore, the order of attachment made by the Special Court for TNPID Cases is sustained.

7. The judgment relied on by the learned counsel for the appellants is too wide a proposition and passing of orders, is not mechanical and could be delayed due to various reasons, like, the Presiding Officer would not have been posted or a stay would have been obtained or parties would not have been ready to proceed with the case and so on. All these factors will have to be taken into account. If at all, it is only a procedural irregularity and that would not vitiate the entire proceedings . Therefore, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Connected C.M.P. is closed.

8. Pursuant to the orders passed by this Court on 08.03.2018, the Sub-Registrar, Thalavadi is present before this Court and he has produced documents Exs-P5 to P11 to show that as per the guidelines value, which was in force, at the relevant point of time, he had registered the documents. This Court, on perusing the documents produced by the said official, is convinced that the documents have been correctly registered. The assistance rendered by the said official is appreciated and his further appearance is dispensed with.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To
The District Superintendent of Police,
Economic Offences Wing II,
Coimbatore.

+2ccs to Mr.A.E.Ravichandran, Advocate, sr.19380
+1cc to The Special Government Pleader, sr.19356

C.M.A. No. 442 of 2018

MR(CO)
RMP(22/03/2018)