

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2019

CORAM

THE HONOURABLE **Mr.JUSTICE N. SATHISH KUMAR**

C.R.P.NPD.No.3530 of 2013

S.Mohamed Farook

.. Petitioner

Vs

The Deputy Superintendent of Police,
Economic Offences Wing – II,
Commissioner Office Compound,
Coimbatore – 641 018

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 09.07.2013 passed in I.A.No.78 of 2013 in O.S.No.2 of 2012 on the file of Special Judge of TNPID Act, Coimbatore.

For Petitioner : Mr.A.Prabhakaran

For Respondent : Mr.N.Manikandan
Government Advocate

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ORDER

This revision petition has been filed as against the dismissal of the application filed by the revision petitioner and to set aside the exparte order passed against him.

2. The brief facts of the pleading to file this revision is as follows:

(i). The petitioner is the 10th respondent in the main Original Application on the file of The Special Court under Tamilnadu Protection of Interest of Depositors (In Financial Establishments) Act, 1997, (hereinafter referred to as TNPID Act) Coimbatore . The main Original Application was posted on 02.05.2012 for appearance of the petitioner and on that day, the Court below has passed an exparte order for non appearance of the petitioner. The petitioner has been engaged in electrical business and travelled throughout South India. The petitioner has misplaced the summons issued by the Court below and do not aware of the fact of the summons. Later only, the petitioner came to know about the exparte order passed against him. The petitioner has valid defence in this case and he wants to contest the case. Unless the exparte order passed against the petitioner is set aside, the petitioner will be put to much loss and hardship which can't be adequately compensated. Hence, he filed an Interlocutory Application in I.A.No.78 of 2013.

(ii). The learned Special Judge of TNPID Act had dismissed the Interlocutory Application in respect of overriding of law in force as prescribed under Section 14 of TNPID Act. Challenging the above said order, this civil revision petition is filed.

3. The main contention of the revision petitioner is that he has filed an original application and he has arrayed as tenth respondent and his properties are also sought to be attached against the criminal case under Section 8 of TNPID Act, which reads as under:

**" Section 8: Attachment of Property
of mala fide transferees:**

8. (1) *Where the assets available for attachment of a Financial Establishment or other person referred to in Section 3 are found to be less than the amount or value such Financial Establishment is required to repay to the depositors and where the Special Court is satisfied by affidavit or otherwise that there is reasonable cause for believing that the said financial Establishment has transferred (whether after the commencement of this Act or not) any of the property otherwise than in good faith and for consideration, the Special Court may, by notice, require any transferee of such property (whether or not he received the property directly from the said Financial Establishment) to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is*

equivalent to the proper value of the property transferred should not be attached.

(2) Where the said transferee does not appear and show cause on the specified date, or where after investigation in the manner provided in sub-section (5) of section 7, the Special Court is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration, the Special Court shall order the attachment of so much of the said transferee's property as is in the opinion of the Special Court equivalent to the proper value of the property transferred."

4. Admittedly, final orders has not been passed by the Court under Section 8 of TNPID Act. At that stage, the revision petitioner filed an original application to set aside the exparte order with delay. An application filed to condone the delay was allowed by the Court below and further, dismissed the application which is subject matter of the revision. The Trial Court dismissed the application mainly on the ground that there is no proper reason stated in the application. It is to be noted that before making the attachment, the parties who claims interest in the parties should be heard and opportunity should be given. In technical grounds, such right cannot be shut.

5. The Trial Court has not followed the Section 8 of the Act and should have granted opportunity to the revision petitioner in participating in the enquiry before adjudication. Accordingly, the order passed by the Trial Court is set aside and the Trial Court shall hear the parties and pass orders on merits.

6. Registry is directed to send all records immediately to the Trial Court without any further delay. The Trial Court shall pass such orders on merits within a period of three months from the date of receipt of a copy of this order.

7. Accordingly, this civil revision petition is disposed of. No costs.

22.02.2019

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Index:Yes/No

Internet:Yes/No

Speaking order: Non-speaking order

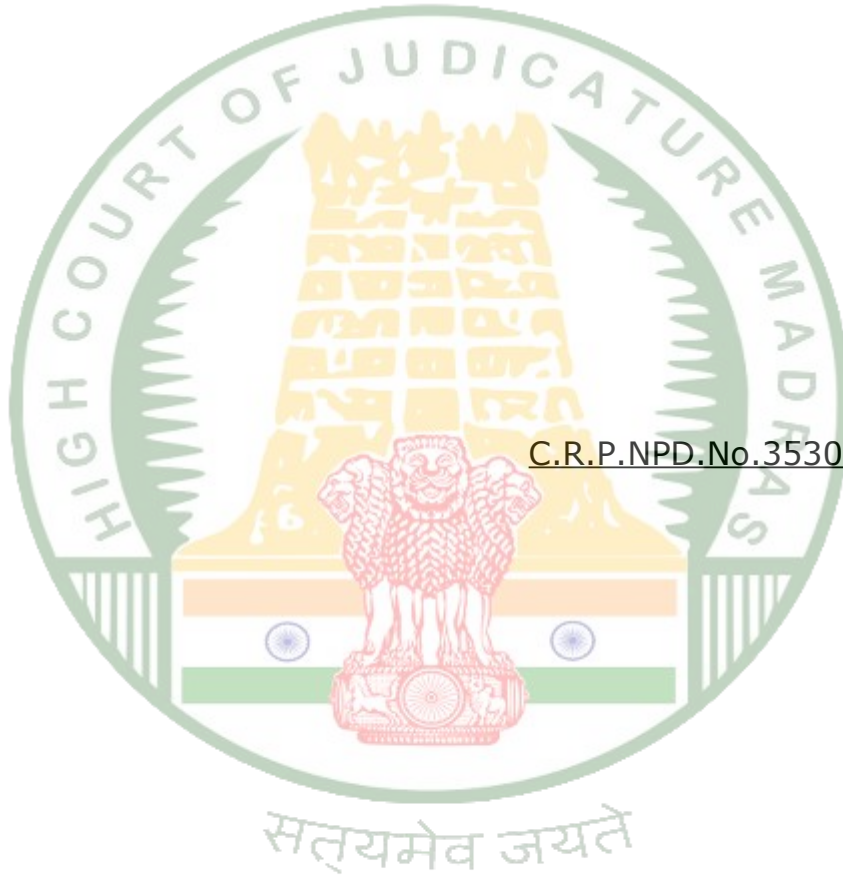
To

1.The learned Special Judge of TNPID Act,
Coimbatore.

2.The Deputy Superintendent of Police,
Economic Offences Wing – II,
Commissioner Office Compound,
Coimbatore – 641 018

N. SATHISH KUMAR,J.

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