



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.09.2019
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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**C.M.A (MD) No.1076 of 2018
and
C.M.P (MD) No.11088 of 2018**

R.C.Akhilesh

... Appellant/3rd Party

Vs.

1. Competent Authority and
District Revenue Officer,
Kanyakumari District.

... 1st Respondent /
Applicant

2. SUS Bankers,
Thuckalay,
Kanyakumari District.

Thirumal (died)

3.Saroja Thirumal

4.Unni Sankar

... Respondents 2 to 4/
Respondents 1 to 3

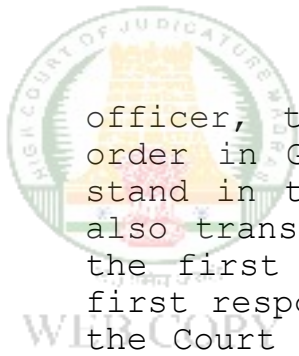
PRAYER: Appeal filed under Section 11 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997, against the order and fair order, dated 21.12.2016, made in O.A.No.6 of 2013, by the learned Special Judge under TNPID Act Cases, Madurai.

For Appellant : Mr.K.Sreekumaran Nair
For Respondents 3 & 4 : Mr.G.V.Vairam Santhosh

JUDGMENT

This appeal has been filed by the appellant/3rd party against the order of attachment, dated 21.12.2016 passed in O.A.No.6 of 2013 by the Court below.

2.The 2nd respondent - financial establishment namely, SUS Bankers, Thuckalay, Kanyakumari District, was conducted by one Thirumal. After his death in the year 2004, his legal heirs, namely, respondents 3 and 4 conducted the same. Since the deposits collected in the name of the financial establishment were not yet settled, as per the proceedings submitted by the investigation



officer, the State of Tamil Nadu passed an ad-interim attachment order in G.O.Ms.No.392, dated 04.06.2012, attaching the properties stand in the name of the legal heirs of the deceased Thirumal and also transferred the control over the said immovable properties to the first respondent. Based on the order dated 04.06.2012, the first respondent has filed an application in O.A.No.6 of 2013 before the Court below under Section 4(3)(4) and 7(8) of TNPID Act, 1997, seeking to issue an order making the ad-interim attachment as absolute and also permit the first respondent to sell the properties. The Court below has allowed the petition, against which, the present civil miscellaneous appeal has been filed by the appellant/3rd party.

3.The learned counsel appearing for the appellant / 3rd party would submit that the appellant has purchased 4 cents and 400 square links in R.S.No.524/3 of Kanyakumari Village, from the legal heirs of late Thirumal for a valid sale consideration of Rs.15,12,000/-, through a registered document No.2893/2011, dated 05.07.2011 and the amount has been disbursed legally through the District Legal Services Forum and Economic Offence Wing II, to ten depositors. The said property has been mentioned as item No.14 in G.O.Ms.No.392, dated 04.06.2012. Without proper verification of records, the property of the appellant has been attached. Hence, he filed I.A.No.2 of 2016 in O.A.No.6 of 2013 seeking to release the attachment of item No.14 in the schedule of properties. But, the Court below, without issuing notice to him, has ordered attachment in respect of the said property also. Thus, he prayed to release item No.14 of the schedule property from the order passed by the Court below and thereby, modify the order passed by the Court below.

4. The learned counsel for the respondents 3 and 4, drawing the attention of this Court to the counter filed on their side, would submit that the appellant is one of the depositors of the SUS Bankers. The husband of the 3rd respondent, late Thirumal, died in the year 2004 and thereafter, the operation of the bank came to a standstill due to the mis-propaganda of the competitors. Various proceedings were initiated against the bank and the properties of her husband, and that the 1st respondent initiated action under TNPID Act and attached some of the properties. Since the depositors sought for return of deposited amount, the 3rd respondent undertook the moral responsibility and sold some of the properties and satisfied some of the depositors even before the proceedings under TNPID Act. The case of the appellant was referred to the Legal Services Authority, wherein he came forward to purchase the property in item No.14 for a valid consideration of Rs.15,12,000/- and accordingly, he paid the same, which was used to settle some of the depositors and the settlement receipts were produced before EOW police. Therefore, the property mentioned in item No.14 was sold to the appellant in 2011 before any attachment. The 1st respondent invoked the provisions of TNPID Act after the settlement and consequential



item No.14 is erroneous. Thus, he prayed to pass necessary orders.

5. Though the first respondent served with notice and the learned Government Pleader appeared for the first respondent in the leave petition, none appeared for the first respondent in the appeal.

6. Heard the learned counsel for the appellant as well as the respondents 3 and 4 and also perused the materials available on record.

7. A perusal of records shows that the appellant has purchased item No.14 of the schedule property from the legal heirs of late Thirumal, vide document No.2893/2011, dated 05.07.2011. The order of attachment has been passed on 04.06.2012, based on which, the first respondent has filed O.A.No.6 of 2013 before the Court below. But, the Court below, without considering the fact that the appellant/3rd party purchased item No.14 of the schedule property on 05.07.2011 and the order of attachment has been passed subsequently, i.e., on 04.06.2012, has erroneously allowed the same permitting the first respondent to sell the properties, including the property purchased by the appellant, which has been shown as item No.14 in the schedule of properties. It is also seen that the appellant has already filed I.A.No.2 of 2016 in O.A.No.6 of 2013 seeking to raise the attachment of the property mentioned in the schedule of properties as item No.14. But, the Court below, without even deciding the said interim application and without providing sufficient opportunity to the appellant herein, has passed the impugned order in respect of all the properties. It is stated that I.A.No.2 of 2016 in O.A.No.6 of 2013 is still pending before the Court below and after passing the impugned order, the Court below has adjourned I.A.No.2 of 2016 for counter of the first respondent to 10.02.2017. When O.A.No.6 of 2013 itself has been disposed of permitting the first respondent herein to sell the properties, as to how I.A.No.2 of 2016 is keeping pending by the Court below. The Court below ought to have decided I.A.No.2 of 2016 firstly and then, to pass order in O.A.No.6 of 2013. But, the Court below has failed to do so. More over, the appellant was also not provided with an opportunity of hearing.

8. In view of the above, the impugned order is set aside only in respect of item No.14 of the schedule of properties and O.A.No.6 of 2013 is remitted to the file of the Court below to decide about the validity of the attachment in respect of the said item No.14. The Court below is directed to decide I.A.No.2 of 2016 in O.A.No.6 of 2013 firstly and then, to pass order in O.A.No.6 of 2013 on merits and in accordance with law, within a period of two months

<https://hccs.cemilms.gov.in/tse/vof5/> receipt of a copy of this order.



9. This Civil Miscellaneous Appeal is accordingly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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// True Copy //

Sub Assistant Registrar(CS)

To

1. The Special Judge under TNPID Act Cases,
Madurai.
2. The Record Keeper,
V.R. Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

C.M.A. (MD) .No.1076 of 2018
03.09.2019

GCG

MK (30.10.2019) 4P 4C