

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.A.No.121 of 2015  
and  
Crl.M.P.No.1 of 2015

1.V.Soorya Rao (deceased)

2.V.Saraswathi

3.N.Malathy

4.R.Bharathi

5.V.Rajeshkumar

.... Appellants

[ Appellants 2 to 5, the legal heirs of the deceased V.Soorya Rao, are impleaded as per order in Crl.M.P.No.1634 of 2016 in Crl.A.No.121 of 2015 dated 29.01.2020]

Vs.

1.The Oriental Benefit and Deposit Society Ltd.,  
No.108, Audiappan Naicken Street,  
Chennai - 600 079.

2.G.H.Krishnakumar

3.K.M.Gopakumar

4.Deputy Superintendent of Police,  
EOW II, Anna Nagar,  
Chennai - 600 040.

5.The Competent Authority,  
DRO, Chennai.

... Respondents

Criminal Appeal filed under Section 11 of the Tamil Nadu Protection of Interest of Depositors Act, 1997, against the order dated 23.09.2014 made in Crl.M.P.No.1494 of 2014 on the file of the Special Court under TNPID Act, Chennai.

For Appellants : Mr.P.Chandrasekaran  
For R1 to R3 : Mr.D.Suresh  
For R4 & R5 : Mrs. Kritika Kamal. P.  
Government Advocate (Crl. Side)

## J U D G M E N T

This Criminal Appeal has been filed to set aside the order dated 23.09.2014 made in Crl.M.P.No.1494 of 2014 on the file of the Special Court under TNPID Act, Chennai.

2.For the sake of convenience, the parties will be referred to by their name.

3.The Oriental Benefit and Deposit Society Limited ("the Oriental" for brevity), with its registered office at No.108, Audiappan Naicken Street, Chennai - 600 079, was a Non-Banking Finance Company. It was accepting deposits from the public and was also giving loans. One Soorya Rao obtained a loan of Rs.2,95,000/- on 11.08.1999 from the Oriental, vide Loan Account No.115/32, after mortgaging his property, vide mortgage deed dated 30.07.1999, bearing document No.807 of 1999, on the file of the Sub-Registrar's Office, Sowcarpet. The original title deeds of his property at No.36, Thotha Muthiappan Street, Chennai - 600 001, were deposited with the Oriental. Soorya Rao was making payments from time to time to the Oriental. While that being so, the Oriental failed to repay monies to their depositors and therefore, on the complaint lodged by one C.Janarthanan, the Economic Offences Wing-II ("EOW-II" for brevity), Chennai, registered a case in Crime No.12 of 2005 under Section 5 of the Tamil Nadu Protection of Interest of Depositors Act, 1997 ("TNPID Act" for brevity) on 14.02.2005 against the Oriental and its Directors G.H.Krishnakumar, Kannan, and K.M.Gopakumar.

4.During the course of investigation, the Inspector of Police, EOW-II, collected all the title documents that were available with the Oriental relating to those who had taken mortgage loan, including the title deeds of Soorya Rao, and produced the same before the Special Court under TNPID Act, Chennai, on 02.03.2005. The Special Court received the documents, but returned the same to the Inspector of Police, EOW-II, for safe custody. Accordingly, the Inspector of Police, kept all the documents, including the documents of Soorya Rao, in the safe custody of the office of the EOW-II, at SIDCO, Old Corporate Building, Thiru.Vi.Ka.Industrial Estate, Guindy, Chennai - 600 032.

5.In the first week of December, 2015, Chennai City was affected by huge floods and several places in the city got submerged. It was even declared as a national calamity. In

that deluge, the office of the EOW-II also suffered extensively and they lost several files and documents which included the title deeds of Soorya Rao. In connection with the loss, the EOW-II lodged a complaint with J-3 Guindy Police Station and a case in Crime No.3761 of 2015 entitled "unprecedented flood and natural calamity" was registered.

6. Soorya Rao came forward to pay the amount on the mortgage loan availed by him and it was quantified at Rs.3,24,979.35 by the Directors of the Oriental based on the available records. Whereas, the Investigating Officer quantified it at Rs.4,99,968/-. Soorya Rao filed Crl.M.P.No.1494 of 2014 in Crime No.12 of 2005 before the Special Court under TNPID Act, Chennai, for return of his title deeds and expressed his willingness to deposit Rs.3,24,979.35. On notice, the Investigating Officer took a stand that the amount that is required to be deposited by Soorya Rao is Rs.4,99,968/-.

7. After hearing either side, the Special Court, by order dated 23.09.2014, in Crl.M.P.No.1494 of 2014, directed Soorya Rao to deposit Rs.4,99,968/- with the District Revenue Officer, Chennai, before 07.10.2014 and also ordered that, on such deposit, Soorya Rao would be entitled to have the mortgage deed cancelled.

8. Not satisfied with the order, Soorya Rao filed the present appeal before this Court under Section 11 of the TNPID Act.

9. During the pendency of this appeal, Soorya Rao died on 22.01.2015 and this Court, has permitted his legal heirs to step into his shoes, by order dated 29.01.2020 in Crl.M.P.No.1634 of 2016 in Crl.A.No.121 of 2015.

10. Heard Mr.P.Chandrasekaran, learned counsel for the appellants, Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) and Mr.D.Suresh, learned counsel for the Oriental.

11. Today, Mr.Thangaraj Ganesh, Deputy Superintendent of Police, EOW-II, Guindy, Chennai - 600 032, is present before this Court. He has filed a status report dated 29.01.2020, wherein, he has clearly stated the facts and the relevant portion is extracted hereunder :

"6. It is respectfully submitted that the office of Economic Offences Wing-II is located at SIDCO, Old Corporate Building, Thiru.Vi.Ka. Industrial Estate, Guindy, Chennai - 32, since June 2015. However, on 1<sup>st</sup> December 2015, there was Unprecedented and continuous rain, which lashed Chennai City continuously for 3 days. The entire ground floor and first floor of EOW office was submerged in the flood water and most of the records, documents, C.D. files, computer appliances etc. were washed away in the flood water. On 08.12.2015, the

matter was reported to the nearest J-3, Guindy Police Station, who registered a case in Cr.No.3761/2015 u/s. Unprecedented flood and natural calamity.

7.It is respectfully submitted that by the team's best efforts certain records/documents which were completely drenched in flood water were retrieved and dried up.

8.It is respectfully submitted that many documents were completely damaged and lost. Hence, effective steps are being taken to collect the documents from concerned officials and depositors. Advertisement was given in the news paper on 17.08.2018 for receiving fresh complaints from the Depositors. Fresh complaints have been received and the statements of the depositors are being recorded afresh.

9.It is respectfully submitted that the then I.O. handed over the damaged CD files along with house loan documents numbering 56 to his successor. The case was subsequently investigated by DSP Tr.Karunakaran, INS Tmt.K.Rajalakshmi and is now being investigated by me.

Verification of the documents revealed that the petitioner's husband Mr.Sooriya Rao House loan document is not available in the documents salvaged from the floods.

However verification of the list of documents submitted in the Hon'ble TNPID Court by the erstwhile investigating officer DSP Tr.Rudrasekar reveal that the said house loan document of Mr.Sooriya Rao was seized from the accused office and submitted in the TNPID Court vide form 95 (S.No.4).

The Hon'ble TNPID Court returned all the seized documents to the investigation officer for safe custody. Unfortunately during the floods in 2015/16 most of these documents were washed away in the floods. The house loan documents of Mr.Sooriya Rao was also one of the document lost in the floods, which is an act of God and beyond the control of the counter petitioner herein."

12.With regard to the quantification of the amount, this Court does not find any justification in quantifying the amount payable at Rs.4,99,968/-. The quantification given by the Directors of Oriental, that the amount payable is at Rs.3,24,979.35, appears to be correct.

13.Hence, this Criminal Appeal is allowed and the order of the Special Judge, Special Court under TNPID Act, Chennai, made in CrI.M.P.No.1494 of 2014, dated 23.09.2014, is set aside. Consequently, connected miscellaneous petition is closed.

The legal heirs of Soorya Rao are directed to deposit Rs.3,24,979.35 before the Special Court under TNPID Act, Chennai, in the name of District Revenue Officer, Chennai, on or before 02.03.2020. On such deposit, the Directors of the Oriental shall cancel the mortgage deed and have the same registered in the jurisdictional SRO. In the cancellation deed, the necessary averments relating to the loss of the original title deeds in the Chennai floods while they were in the safe custody of EOW-II should be specifically mentioned.

Sd/-  
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

mkkn

To

- 1.The Special Judge,  
Special Court under TNPID Act,  
Chennai.
- 2.The District Revenue Officer,  
Singaravelar Maligai,  
Rajaji Salai, Chennai Collectorate,  
Chennai - 600 001.
- 3.The Deputy Superintendent of Police,  
EOW-II, Anna Nagar,  
Chennai - 600 040.
- 4.The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.P.Chandrasekaran, Advocate SR.No.7255

+1cc to Mr.P.Chandrasekaran, Advocate SR.No.7255 (12/02/2020)

CrI.A.No.121 of 2015

VG I (CO)  
GMY (11/02/2020)