IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.03.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.NO.1059 OF 2015
AND
M.P.NO.1 OF 2015

Jayaraman .. Appellant/R4

Vs.

1. Deputy Superintendent of Police,
   Economic Offences Wing II,
   Trichirapalli District. ... 1st Respondent/Petitioner

2. Future Forex India Private Limited,
   Kannan Complex, Periyar Salai,
   Chennai Road, Perambalur-621 212.

3. Future India City Development and Builders Pvt. Ltd.,
   Kannan Complex, Periyar Salai,
   Chennai Road, Perambalur-621 212.

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

PRAYER : Civil Miscellaneous Appeal filed under Section 8 of the Tamilnadu Protection of Interests of Depositors Act, against the order passed by the Special Court for Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act 1997 in O.A.No.6 of 2013 dated 22.08.2014.

For Appellant	: Mr.S.K.Mani
For Respondents	
For R1	: Mr.Y.T.Aravind Gosh Additional Government Pleader
For R2 & R4	: No appearance

J U D G M E N T

The appellant herein is the 4rd respondent in O.A.No.6 of 2013 filed by the 1st respondent/petitioner under Section 8 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act 1997, praying to attach the property as described in the suit schedule and to bring the same for consideration against the 2nd,3rd and 4th respondents herein.

2. The appellant / 4th respondent alone contested the said petition and the respondents 2 to 4 herein remained ex-parte before the trial Court.

3. On perusal of the evidence and the documents, the Special Court for TNPID Act, Chennai allowed the application by attaching the properties as shown in the schedule of the petition. Aggrieved by the order the appellant / 4th respondent has preferred this appeal.

4. The question of law that arises for consideration is as to

> "Whether the trial Judge erroneously passed an order of attachment over including the property of the respondents without including the property of the appellant, without considering that he is also a bona fide purchaser of the property for valid consideration.?".

5. The learned Additional Government Pleader also contested the case.

6. The facts reveal that the 2nd respondent /1st accused was running a financial establishment under the name and style of Future Forex India Private Limited, as a partnership concern, in which four of them are partners, collected the deposit amount from the depositors and failed to repay the deposit amount with interest, as they agreed to the depositors. Nearly 63 complaints were received against the respondents 2 to 4 and the defaulted deposit amount comes to around Rs.3,89,40,822/-. So, the 1st respondent / investigating agency, during investigation found out documents regarding the property belongs to the respondents 2 and 3 and the Government also issued G.O.MS.No.836 of 2011 to attach the property, which comes around Rs.1 crores and also filed another application to attach the movables including Jewels and vehicles belong to the accused persons. In the course of investigation, the 1st respondent found that the 3rd and 4th respondents herein / A2 & A3 transferred their property in the name of the appellant herein with a malafide intention to cheat the depositors.

7. Further he contended that, on 09.02.2011 the 3rd respondent purchased the property by utilising the depositors amount and on the same day itself he sold the property in favour of the appellant for a sum of Rs.2,60,000/-. In fact, on that day, as per the guideline value, the property was worth about Rs.10 lakh but a sham and nominal document was created in favour

of the appellant with a mala fide intention to cheat the depositors. So the investigating agency prayed the Special Court to attach the property under Section 8 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act 1997.

8. Section 8 of the Act speaks as thus:"

> 8.Attachment of property of mala fide transferees.-
>
> (i) 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 which 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.

9. During enquiry, on the side of the Investigating Authority two witnesses were examined as P.W.1 and P.W.2 and Ex.P.1 to Ex.P.13 written documents were marked. On the side of the appellant, he examined himself as R.W.1 and marked two documents were Ex.R.1 and Ex.R.2. marked.

10. After considering all the oral and documentary evidence the TNPID Court allowed the application by concluding that the transaction between the appellant and the respondent 2 to 4 herein are made with a mala fide intention, thereby the properties are liable to be attached. Aggrieved by the order the appellant/4th respondent has preferred this appeal.

11. The learned counsel for the appellant argued that the appellant is a bonafide purchaser and he was not knowing anything about the collection of the deposit amount and the financial establishment run by his vendor / R3 herein. On verifying the guideline value the appellant purchased the property for valid consideration. But the Special Court, without considering all these facts, erroneously observed that he

purchased the property with a mala fide intention. Further he contended that the appellant was not aware of the purchase made by his vendor as an ordinary prudent man he purchased the property from his vendor on accepting the proposal of sale made by him. Based upon all these facts, the learned counsel for the appellant submits that the appellant is a bonafide purchaser and with good intention he purchased property for valid consideration.

12. Per contra, the learned Additional Government Pleader appearing for the 1st respondent submitted that the Special Judge attached the properties based on the evidence and documents marked as Ex.P.1 to P.13. The learned special Judge accepted the Ex.P.5 and Ex.P.5 marked and had rightly held the transfer made in favour of the petitioner is not bonafide and not in good faith for a consideration and hence prayed for dismissal of the appeal.

13. On perusal of the records, it reveals that the vendor of the appellant namely Sivakumar / R3 /3rd accused, purchased the property on 09.11.2011, immediately on the same day itself he transferred the property in the name of the appellant. In fact, based upon the complaint received from the depositors in Crime No.1 of 2010 lodged against the financial establishment run by the vendor/accused and another FIR was also lodged in crime No.35 of 2010 under Section 406, 407,417,420,120(b) I.P.C. r/w 66(A),67,68 of IT Act 2000. After filing all these FIR, the property was purchased by this accused Sivakumar by utilising the depositors amount and transferd the property in the name of the appellant on the same day on 09.02.2011, having came to know about the pendency of the FIR. The alleged vendor namely accused Sivakumar in order to defraud the claim of the depositors he transferred the property in the name of the appellant. The story of the appellant that he was a bona fide purchaser also not accepted one for the reason that the property was purchased by the alleged vendor on 09.02.2011 only and within a short hours it was transferred to the appellant. How could he came to know about the purchase of the property by his vendor, who has no right over the property prior to his purchase on 09.02.2011.

14. Moreover he also belonged to nearby place of his alleged vendor and he would very well know about the pendency of the FIR as well as cheating act of the accused persons. Hence the conduct of the appellant as well as the 3rd respondent herein proves that with a mala fide intention to defraud the claim of the depositors, a sham and nominal document was created by the appellant R3/accused. Hence, the arguments advance by the appellant counsel that the appellant is a bona fide purchaser is unsustainable one. The conduct of the party itself clearly established that the property was transferred with an intention

to default / defraud the claim of the depositors. The order passed by the Special Court, as such is maintainable in law, which cause no interference by this Court.

15. Hence, the order passed by the Special Court, the Tamil Nadu Protection of Interest of Depositors (In Financial Establishments) Act 1997 in O.A.No.6 of 2013 is confirmed. Accordingly, this Civil Miscellaneous Appeal is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Judge,
Special Court for TNPID Act,
Chennai.

Copy To
The Deputy Superintendent of Police,
Economic Offence Wing II,
Trichirapalli District.

+1cc to Special Government Pleader, S.R.No.20789

C.M.A.No.1059 of 2015
and
M.P.No.1 of 2015

JPL(CO)
CS/23/06/2021