

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

Rev.Application No.61 of 2020

in

W.M.P.No.2638/2019 in W.P.No.8084 of 2017

and

W.M.P.Nos.16151 & 16153 of 2020

V.Janarthanan

...Petitioner

Vs

1.K.Ramamurthy

2.V.Nagammal

3.A.Rosemary

4.R.Shanthi

5.S.Padhma

6.R.Saraswathi

7.H.Sujatha

8.D.Selvi

9.V.Anitha

10.M.Alamelu

11.M.Parasuraman

12.P.N.Devaraj

13.B.Murugan

14.I.Tamilarasi

15.R.Panjavarnam

16.Sasikala.S

17.R.Sathya

18.V.Thilagavathy

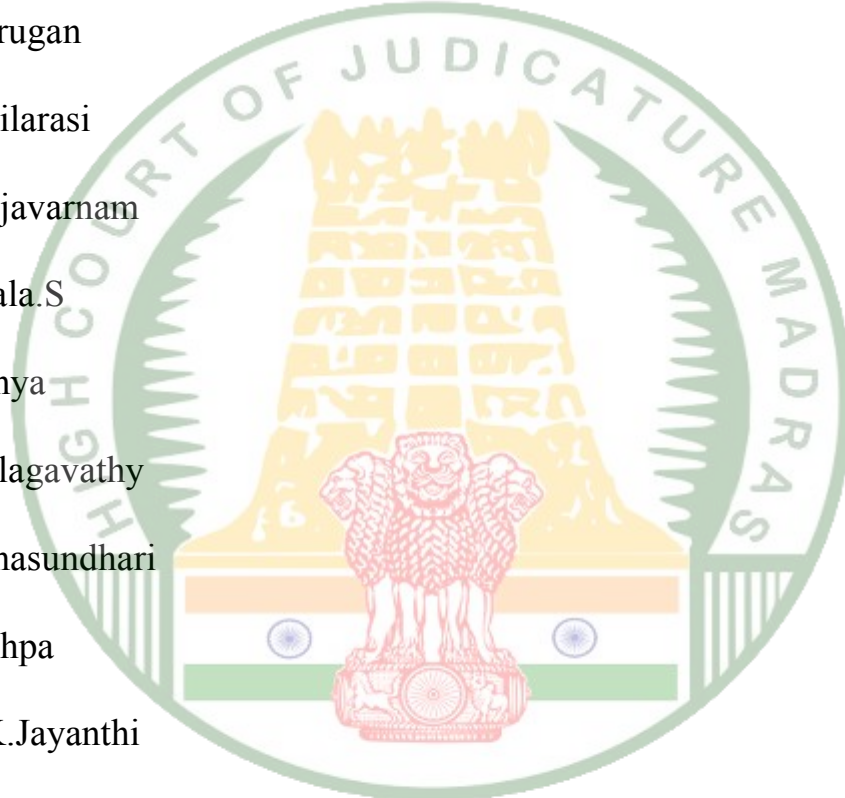
19.K.Gunasundhari

20.K.Pushpa

21.Mrs.K.Jayanthi

22.The Securities Exchange Board of India,
Southern Regional Office at Overseas Towers,
7th Floor, No.756-L, Anna salai,
Chennai 600 002.

23.The Inspector General of Registration,
No.100, Santhome High Road,
Pattinapakkam, Chennai 600 028.



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24.The Inspector of Police,
E.O.W-II, Viswanathapuram,
Madurai 625 104.

25.M/s.M.V.T.Anthonisami
The Secretary, Disc Asset lead India Ltd.,
Investors Welfare Association,
No.1-64-1, Main Road,
Vishwanathapuram, Shengottai,
Thirunelveli District.

26.V.Janardhanan

27.M/s.N.Arun

28.M/s.C.Srinivasan

29.M/s.M.N.Umashanker

30.M/s.S.Jeevalatha

31.M/s.T.Shyam Chander

32.M/s.Handiman Services Limited,
having its Branch Office at
F-4, SG, Vaibogam Apartments,
No.33/77, South Sivan Koil Street,
Vadapalani, Chennai 600 026.
rep.by its Authorised Signatory,
Mr.T.D.Vivekanandan.

...Respondents

PRAYER :-Review Petition filed under Order XXXXVII read with Section 114 C.P.C and Article 226 of the Constitution of India against the order dated 15.04.20200 made in W.P.M.P.No.2638/2019 in W.P.No.8084 of 2017 passed by this Court.

For Petitioner : Mr.P.Bagyalakshmi

ORDER

[Order of the Court was delivered by M.SATHYANARAYANAN, J.,]

Heard the submission of Ms.P.Bhagyalakshmi, learned counsel appearing for the petitioner and also perused the grounds of review.

2. The Hon'ble First Bench of this Court, vide order dated 11.10.2017 made in W.P.No.8084 of 2017 and 18371 of 2017, has taken note of the events that took place and passed a detailed order, constituting a Committee, headed by Hon'ble Mr.Justice N.Paul Vasanthakumar, retired Chief Justice of the Jammu and Kashmir High Court and further ordered that the Committee shall consist of two senior members, namely Mr.B.Kumar and Mr.M.S.Krishnan, who have been assisting this Court as *Amicus Curiae* and also Mr.C.Manishankar, learned Senior Advocate as learned Additional Advocate General and also named the other member of the said Committee. A perusal of the order would disclose among other things that the provisions of the Tamil nadu Protection of Interest of Depositor (in Financial Establishments) Act, 1997 ('TNPID Act') have also been taken into

consideration and in paragraph no.21, it was observed that *Section 7(8) of TNPID Act also empowers the Special Court to issue directions for equitable distribution of monies attached of realised out of the sale of the properties among the investors / depositors. Such order is to be passed on an application made by the competent authority.*

3. Thereafter, the petitioner filed WMP.No.2638 of 2019 in W.P.No.8084 of 2017, to modify the said order. In paragraph no.8 of the order, this Court had taken note of the facts that the order dated 11.10.2017 in W.P.No.8084 and 18371 of 2017, was the subject matter of challenge in S.L.P.(Civil)Diary No.44219 of 2018 and thereafter various orders came to be passed and further taken note of the auction sale notification, observed that after the order, for which modification has been sought for, very many orders came to be passed and since much water has flown under the bridge, expressed it's disinclination to modify the order dated 11.10.2017 and it was devoid of merits and substances and accordingly, dismissed the miscellaneous petition.

4. M/s.Disc Assets Lead India Limited has preferred SLP.(C).Nos.9692 of 2019, challenging the said order and one more Special Leave petition in S.L.P.(C).No.30575 of 2019 came to be filed. Both Special Leave Petitions were taken up together and were disposed of and it is relevant to extract the said order:

"SLP(Civil) No.9692/2019

We see no reason to interfere with the impugned order of the High Court of Judicature at Madras. The Special Leave Petition is, accordingly, dismissed.

Pending Application(S), if any, shall stand disposed of.

SLP(C).No.30575/2019

Learned counsel appearing on behalf of the petitioner(s) seeks permission to withdraw this Special Leave Petition with liberty to approach the High Court by filing a Review Petition.

The Special Leave Petition is, accordingly, dismissed as withdrawn.

Permission is granted to the petitioner(s) to approach this Court if he is aggrieved by the order passed in the Review."

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The petitioner in pursuant to the remedy granted, has filed the Review application.

5. The primordial ground taken by the petitioner is that since the Economic Offences Court constituted under the TANPID Act was vested with the jurisdiction to deal with case in accordance with the various provisions of the statutory enactment, the same cannot be by-passed or overruled by this Court for no valid reasons in the public interest litigation in W.P.No.8084 of 2017 and also raised other grounds which have not formed part of the original ground sought for modification of the order.

6. A perusal of the subsequent order dated 24.01.2018, passed by the Hon'ble Bench in W.M.P.No.37897 of 2017, 601 and 1920 of 2018 in W.P.No.8084 of 2017, filed by Mr.N.M.Umashankar, one of the Directors of M/s.Disc Assets, in which Mr.M.Janardhanan, has been arrayed as 27th respondent, once again, the very same arguments have been put forth and it is relevant to extract paragraph no.23 to 28 of the said order:

"23.To avoid prolixity, the submissions made by the three different counsel are not recorded separately. The arguments in a nutshell are (i) the existence of TNPID Act, which provides its own procedure; (ii) charge sheet should be issued under TNPID Act; and (iii) as per the submission made by Mrs.Hema

Sampath, learned Senior Counsel for the 10th respondent/Jeevalatha, in view of the provisions of TNPID Act, this Court has no jurisdiction. Significantly, Mr.AR.L.Sundaresan, learned Senior Counsel, submitted in all fairness that the bar under Section 14 of the TNPID Act would not apply to the constitutional writ jurisdiction of this Court under Article 226 of the Constitution of India. It is very interesting that the Company or it's erstwhile Directors should have submitted that charge sheet be issued under the TNPID Act, but oppose the settlement of dues of depositors, who had admittedly paid money as noted hereinabove.

24.The orders passed by this Court and in particular, the order dated 11.10.2017 contains enough safeguards to ensure that only the claims of bona fide investors and/or depositors are entertained and that bogus claims, if any, are weeded out. The Company and/or it's erstwhile Directors have the liberty to make submissions before the Committee and assist the Committee to settle the dues of bona fide investors and/or depositors by sale of the properties of the Company at the best available price. The properties may be sold in such a manner as might be deemed appropriate. It may be sold in lots or in one lot. However, payments would necessarily have to be made on pro-rata basis as earlier directed by this Court.

25. The suggestion made on behalf of the erstwhile Directors that properties should be sold one-by-one in small lots and the depositors paid one-by-one could result in a situation where some depositors would be paid nothing. For the ends of justice, keeping in view the interest of all the depositors and/or investors, we direct that the properties should be sold and in case, the proceeds thereof are not sufficient to meet the claims of all the depositors, the depositors should be paid on pro rata basis. Our orders, thus, do not call for any modification. Significantly, the authorities under TNPID Act have not questioned the order.

26. An objection has also been taken by Mrs. Hema Sampath hearing the writ petition, on the ground that most of the investors and/or depositors are from Kanyakumari and other southern districts. The fact that such a submission should be made, not by any depositors from Kanyakumari, but from those persons who have accepted deposits, to say the least, smacks of oblique intent to delay and/or defeat implementation of the orders passed by this Court.

27. With the above observations, the applications being W.M.P.Nos.601 and 1920 of 2018 seeking stay of operation and/or modification of the order of this Court dated

11.10.2017, as also the application being W.M.P.No.37897 of 2017 moved in the Vacation against the letter dated 21.12.2017 issued by the Committee, shall stand dismissed. The respondents shall immediately provide the Committee with the documents called for by the aforesaid letter. The 6th respondent in the writ petition, the erstwhile Managing Director, Mr.V.Janardhanan, shall also pay Rs.10,00,000/- to the Committee towards initial expenses, as earlier directed.

28. There can be no dispute with the proposition that special law will prevail over the general provisions in case of any conflict. We do not find any conflict between our order and the TNPID Act. As observed above, our order has been passed with a view to expedite settlement of the dues of investors and/or depositors who have invested huge amounts of money. The FIR has been kept alive. The TNPID authorities have not been restrained even from proceeding under the TNPID Act. However, in view of the submissions made by Ms.Lesi Saravanan and Mrs.Hema Sampath, who are appearing on behalf of the erstwhile Directors, that proceedings under TNPID Act should go on, charge sheet be filed, we expressly clarify that the TNPID authorities may arrest the Directors, if they deem it appropriate to do so and the criminal proceedings may take its own course against the Company and its erstwhile Directors, notwithstanding the orders of this Court. "

7. This Court in exercise of its power under Article 226 of the Constitution of India vested with all powers to deal with the particular facts and circumstances of the case and having found that the magnitude of the amount involved said to have been cheated is to the tune of Rs.1000 Crores and odd and with the interest of lacks and lacks of depositors, who have also been put to difficulties and hardship, thought fit to appoint the Committee, headed by the retired Chief Justice and based upon the various reports, this Court has passed series of orders and the Tamil Nadu Protection of Interest of Depositor (in Financial Establishments) Act, 1997 ('TNPID Act') does not exclude the applicability of the Act.

8. This Court has already stated that order sought to be modified, was challenged by filing Special Leave Petitions and it came to be disposed of and by taking advantage of the liberty granted, the petitioner came forward to file this Review Application. A faint attempt has been made to argue the modification application afresh and in the light of the well settled legal position, the same is impermissible in law. Review is not an appeal in disguise and there is no error apparent on the face of the record in the

impugned order dated 23.01.2020 passed in W.P.M.P.No.2638/2018 and this Court is not inclined to exercise it's review jurisdiction.

9. In the considered opinion of this Court, the present attempt made by the petitioner to avail the Review Application is nothing but an abuse of process of law. There is absolutely no merit or substance in this Review Application. Therefore, the Review Application is dismissed. No costs. Consequently connected miscellaneous petitions are closed.

[M.S.N.,J]

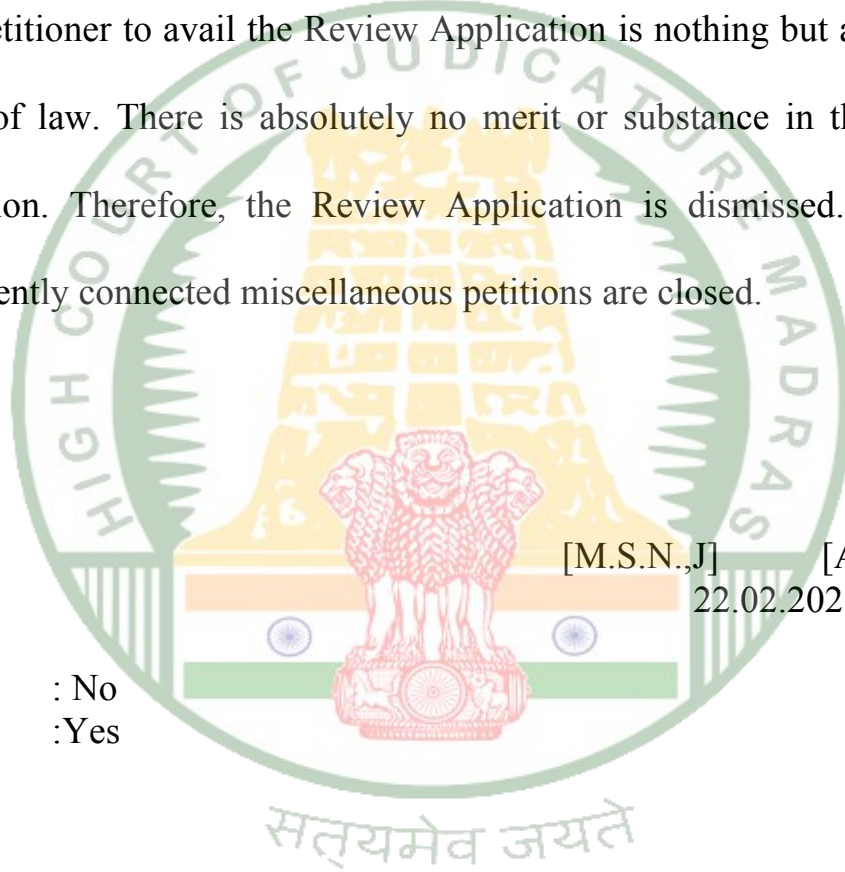
[A.A.N., J]

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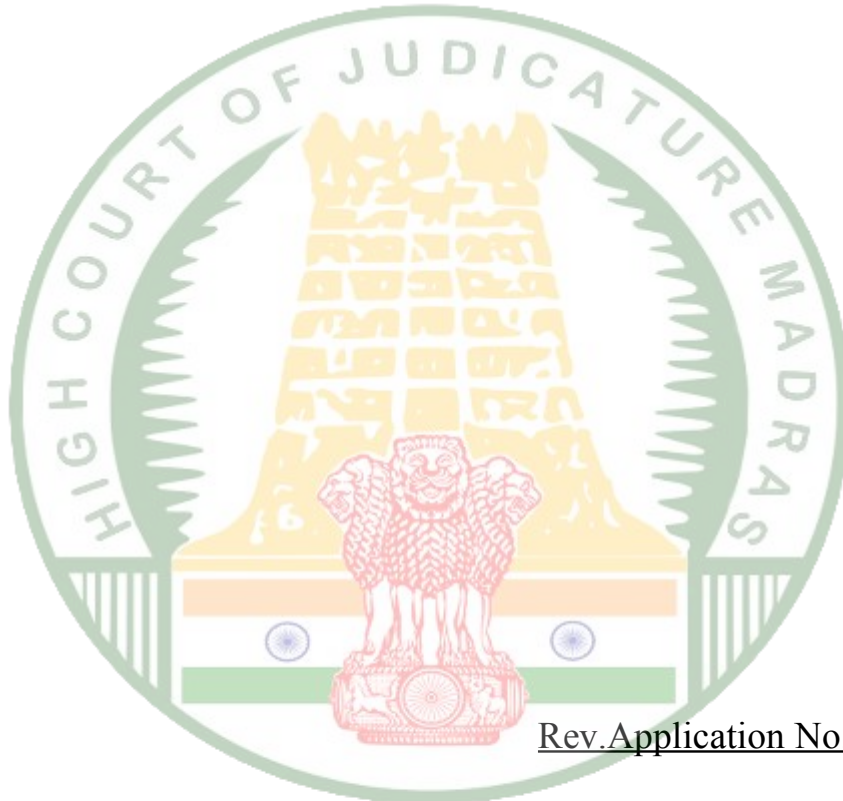
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M.SATHYANARAYANAN.,J.
and
A.A.NAKKIRAN.,J.

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