

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.03.2021
CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1724 of 2020
C.M.P.No.12762 of 2020

1.Chinnammal

2.Chandra

3.Prabakaran

4.Irusappan

5.S.Sangeetha

6.I.Elango

7.M.Periyaperaman

.. Appellant

vs.

1.State rep.by
Deputy Superintendent of Police,
Economic Offences Wing II Unit,
Coimbatore.

2.Queen Emu Farms [India] Private Ltd @
Queen Emu Farms Private Ltd,
Branch Office; Door No.88, 3rd floor,
R.P.Towers, Near Nallappa Theatre,
Coimbatore Road, Pollachi,
Coimbatore.
Head Office: Door No.208,
Tower India Complex,
Erode Main Road, Perundurai,
Erode District.

3.P.Myilsamy

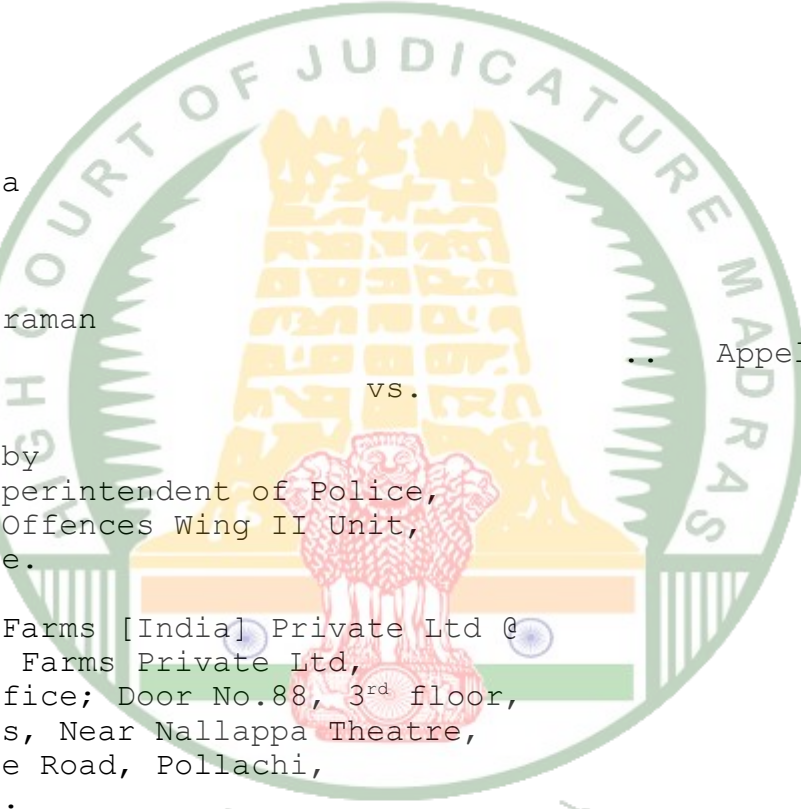
4.P.Karthikeyan

5.R.Anbalagan

6.P.Sakthivel

7.C.Gurusamy

.. Respondents



सत्यमेव जयते

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PRAYER : Civil Miscellaneous Appeal filed under Section 11 of the Tamil Nadu Protection of Interests of Depositors Act, 1997, against the order and decreetal order dated 02.09.2020 passed in O.A.No.2 of 2016 on the file of the Special Court under TNPID Act, Coimbatore.

For Appellants : Mr.S.Prabhakaran
Senior Counsel for
M/s.S.Conscious Ilango

For Respondents : Mr.Y.T.Aravind Gosh
Additional Government Pleader (CS)
for R1
No-appearance for RR3, 6 & 7
RR2, 4 & 5-Not ready in notice

O R D E R

The fair and decreetal order dated 02.09.2020 passed in O.A.No.2 of 2016 is under challenge in the present civil miscellaneous appeal.

2. The appellants are the bona fide purchasers in respect of the subject property. Therefore, the attachment made is improper and not in consonance with the provisions of the TNPID Act. The learned counsel appearing on behalf of the appellants mainly contended that even the properties already attached are sufficient to meet out the requirements of the depositors. Further attachment of the property which was sold in favour of the appellants is not required to be attached. For all these reasons, the attachment is bad-in-law. It is contended that the appellants are the bona fide purchasers and they are no way connected with the financial company or regarding the collection of deposits from the public. Even the vendor of the appellants is no way connected with the financial company. Thus, the order passed by the Special Court is liable to be set aside and the attachment is to be raised.

3. The learned Additional Government Pleader objected the said contention by stating that all these factors are to be further adjudicated in order to cull out the truth behind the nature of the transactions and other dealings. The property was attached based on certain prima facie materials available and if at all the appellants are aggrieved, they would have approached the Special Court itself under Section 9 of the TNPID Act to

raise the attachment by providing security. Contrarily, the appellants have chosen to file the present appeal on the ground that they are the bona fide purchasers. However, the nature of the transactions as observed by the Special Court is not in favour of the appellants and more specifically, in Paragraph No.17 reveals that in the event of non-attaching the subject property, there is a possibility of disposing the same and in such an event, the interest of the depositors would be defeated.

4. This Court is of the considered opinion that even in such doubtful cases, the Special Court is empowered to attach the property in public interest and in order to safeguard the interest of the depositors. However, such attachment is subject to further adjudication. If at all the appellants claim that they are the bona fide purchasers, they are at liberty to approach the Special Court under Section 9 of the TNPID Act in order to raise the attachment by providing security in lieu of attachment to the satisfaction of the Special Court. Contrarily, this Court cannot now raise the attachment, in view of the fact that the transfer was made in a manner, which creates a doubt and under Section 8 of the TNPID Act, the attachment is made, considering the fact that the transfer was malafide.

5. The learned Additional Government Pleader made a submission that the parties are the close relatives and those facts were also considered by the Special Court. However, the learned counsel appearing for the appellant opposed the same.

6. Regarding the conduct of the sixth respondent/Mr.Gurusamy, who is the vendor of the appellant, the Special Court made a specific finding in paragraph No.16 which reads as under:

Admittedly, the property attached and made absolute in O.A.No.13 of 2014 is not sufficient to settle the dues, namely Rs.5,47,81,840/- of 295 depositors and the properties in the present application were owned by R6 and sold by him to R7 to R13. Thus, in interest of justice and since, the said properties already attached and made absolute are very meager, this Court feels that it is just and necessary to attach the properties in this application also, which were fraudulently sold by R6. Already, 8 years have been completed in the process of attaching the properties and the criminal case is pending in view of recalling of about 300 witnesses for cross-examination. In spite of opportunities given, the counsel for R6 did not submit his oral or written arguments. The following docket orders would establish the attitude of the 6th respondent in dragging on the proceedings:-
Docket order dated 04.08.2020:

It has been posted for Arguments from 03.04.2020 onwards. Due to COVID-19, it has been adjourned to various dates. Even though, the Courts were resumed to work as physical hearing was restricted, it was adjourned to 10.06.2020 for arguments and both counsels were directed to submit their arguments through video conferencing on 12.06.2020, 17.06.2020, 23.06.2020, 26.06.2020, 02.07.2020. Since, the counsels did not appear through video conferencing, it was adjourned to 07.07.2020 and both counsels were directed to submit their written arguments through e-mail or in person or through video conferencing. Apart from updating the online date entry, on every date of hearing, a letter has also been forwarding to the Bar Association through e-mail, thereby intimating the date of hearing for arguments. But there was no progress on 13.07.2020, 17.07.2020, 23.07.2020, and 29.07.2020. Today also, the respondent counsels absent. The Public Prosecutor present and represented that he has been regularly attending his office inside the Court campus and ready to argue the case, but for want of the defence counsel, he could not submit his arguments. However, this court feels that there is no point in simply adjourning the case without any progress. Hence, as a last chance, both counsels are hereby directed to submit their written arguments through e-mail or in the box placed at the main gate of the District Court Campus on or before 07.08.2020 or appear in person before this Court and submit their oral arguments on 12.08.2020 without fail, failing which, the court will peruse the records and pronounce the orders on the subsequent hearing. No further adjournment will be given. For appearance of accused by 12.08.2020.

Docket order dated 12.08.2020:

Inspite of direction given by this Court on 04.08.2020, the respondents and their counsel are absent. No written argument has been filed so far in the box placed at the main gate of the District Court Campus or forwarded through e-mail. No attempt was made to submit the arguments through video conferencing till today. Heard, the public prosecutor. Hence, this Court has no other option except to pronounce the order based on the available records. Again, this Court is giving an opportunity to the respondents' counsel to submit his written arguments on or before 18.08.2020, failing which, orders will be pronounced on 19.08.2018 by perusing the records. The respondents are hereby directed to appear before this Court for orders on 19.08.2020.

Docket order dated 19.08.2020:-

Respondents absent. No representation for respondents. Counsel for the respondents absent. Public Prosecutor present. Order is made ready. However, this Court finds that since, the respondents are residing out side the Coimbatore District; no transport facility is available; and getting 'E' pass is very difficult, suo motu adjourned to 24.08.2020 for orders.

Docket order dated 24.08.2020

Respondents absent. Heard, the counsel for R7 to R13. No representation for 6th respondent. Counsel for the 6th respondent absent. Public Prosecutor present. Order is made ready. However, this Court finds that since, the respondents are residing out side the Coimbatore District; no transport facility is available; and getting 'E' pass is very difficult, suo motu adjourned to 02.09.2020 for orders.

The said facts would prove that this Court has granted all opportunities to the 6th respondent to argue with the application, but he did not utilize it. Thus, this Court has no other option except to pronounce an order based on the available materials on record.

7. The Special Court specifically made an observation that the property was fraudulently sold by the said Mr. Gurusamy and further, made an observation that eight years had been completed. In spite of that, the said Gurusamy did not submit his oral or written arguments. In this context, the docket order was passed that was also considered by the Special Court. In view of the facts and circumstances, this Court is of the considered opinion that if at all the appellants want to raise the attachment, they are at liberty to approach the Special Court under Section 9 of the TNPID Act by filing appropriate application and by providing security to the satisfaction of the Special Court. As far as the order impugned in the present appeal is concerned, the reasons furnished by the Special Court are certainly candid and there is no infirmity as such. Accordingly, the Fair and Decretal order dated 02.09.2020 passed in O.A.No.2 of 2016 stands confirmed and consequently, Civil Miscellaneous Appeal stands dismissed. No costs. Connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssb
To

The Special Judge,
Special Court under TNPID Act, Coimbatore.

+1 cc to Spl Government Pleader CS Sr.No. 12951
C.M.A.No.1724 of 2020
A.SK(30.03.2021)



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