IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.03.2021

CORAM:

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

C.M.A.No.2974 of 2014
and
M.P.No.1 of 2014

P.Shyamala .. Appellant

Vs.

1. The Inspector of Police,
Economic Offences Wing-II,
Vellore-9,
Vellore EOW-II, Cr.No.1 of 2008,
Under Section 5 of TNPID Act, 1997 and
Section 420 IPC.

2.J.Baskar

3.J.Prabhakar

4.J.Divakar

5.The Association for the Protection of Interest
of the Depositors/Investors in High Yield and
J.B.Associates, registered No.460/2010,
Represented by its Secretary R.K.Bharathavasalu,
Old Door No.15, New No.7,
1st Street, (I Floor), Venkatrathnam Nagar Extension,
Adayar, Chennai-600 020. .. Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 11 of the Tamil Nadu Protection of Interests of Depositors Act, prayed to set aside the order and decreetal order in O.A.No.58 of 2008 on the file of the learned Special Judge under Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act 1997, Chennai, dated 12.09.2014.

For Appellant : Mr.V.Raghavachari

For Respondents
For R1&R2 : Mr.Y.T.Aravind Gosh
Additional Government Pleader (CS)
For R3 to R5 : No appearance

# J U D G M E N T

The appellant herein is the petitioner in O.A.No.10 of 2010 filed by her under Section 9 of TNPID Act and Section 151 of the CPC, praying to accept the market value of the Scheduled mentioned property of Rs.21,26,160/- as cash security from the petitioner in lieu of the attachment and to refrain from passing order of attachment of the schedule mentioned property.

2. The said application was contested by the investigation agency / 1st respondent with other respondents. Respondents 2 to 4 / accused endorsed no objection and the 6th respondent contested the case.

3. After full enquiry, the learned Special Judge, TNPID Court allowed the application. Aggrieved by the order the appellant has preferred this appeal.

4. The questions of law that arises for consideration are as follows:

i) Whether the learned Special Judge / trial Court erroneously passed an order holding that the value of the house property is only Rs.21,26,160/-, when the actual value of the property is more than several crores of rupees?

(ii) Whether the trial Court failed to observe that one Kumaresan filed IA.No.38 of 2010 in O.A.No.10 of 2010 that he is ready and willing to purchase the property to the tune of Rs.75 lakhs and erroneously allowed the application ? and

(iii) Whether the trial Court failed to appreciate the fact that 3rd respondent / accused Prabakar purchased the property and executed the gift deed in favour of the appellant, in order to defraud the depositors?”

5. The facts reveal that the appellant is the 4th respondent in O.A.No.58 of 2008 filed by the 1st respondent under Section 8 of TNPID Act, r/w Section 151 of CPC, seeking order of attachment of the property including the landed property belonging to the appellant. She submits that the property was purchased by her husband / 3rd respondent / J.Prabhakar out of own funds and also from the funds given by parents. Thereafter, 3rd respondent executed registered settlement deed in her favour. The funds collected from the J.B.Associates / defaulted firm has not been utilized to purchase the property nor the firm existed at that time. The guide line value of the land along with building is Rs.7,15,83/- and the market value of the building is Rs.14,10,330/-, thus the total market value of the land and building is Rs.21,26,160/- as per the report received by the 1st

respondent from the Joint Register as well as the Executive Engineer, PWD. At present the value of the said property goes beyond Rs.21,26,160/- and the appellant is willing to deposit the amount and prayed the Special Court under TNPID Act, to allow the application in O.A.No.10 of 2010.

6. Per contra, the said application was contested by the investigating agency by stating that the husband of the appellant namely J.Prabakar and his family members jointly run a finance company in the name of Hi-Yield Investments in the year 1995 and the same was dissolved in the year 2000. Thereafter, the husband of the appellant along with his brother started another financial institution namely J.B.Associates and collected huge deposits by giving false hope and committed defraud in repayment. An FIR was lodged against them and the property was sought to be attached in order to secure the interest of the depositors.

7. The learned counsel for the 1st respondent submitted that the landed property stands in the name of the appellant was originally purchased by her husband, by utilising the deposit amount collected through the earlier firm in the year 2003. In the year 2007 gift deed was executed in favour of the appellant just prior to the lodging of the FIR against the defaulted firm. All the facts were appreciated by the learned Special Judge and passed the order. Hence, he seeks to dismiss the appeal having as no merits.

8. On considering the facts and circumstances, it reveals that the appellant is the wife of the 3rd respondent/ J.Prabakar who is the one of the partners in the defaulted firm J.B.Associates. It is also admitted fact that earlier they had run a financial firm in the name of Hi-Yield Investments, in which her husband and his brothers were partners and the same was closed in the year 2003. At that time the property was purchased by her husband. There is no independent evidence to establish that the property was purchased by her husband out of his own earnings. According to the appellant the money was given by her by getting amount from her parents and utilising her jewels. But to support her claim there is no tangible material evidence to prove this aspect.

9. However, mere oral statement is not sufficient to conclude that she gave money to purchase the property in the name of her husband. But, as per the recitals of the sale deed, her husband has paid the entire sale consideration and the said admission is the best evidence and the parties are not entitled to go beyond the written recitals of the documents as per Section 91 of Indian Evidence Act, 1872.

10. Section 91 of Indian Evidence Act speaks as follows:

> "91.Evidence of terms of contracts, grants and other dispositions of property reduced to form of document. - When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions herein before contained."

So, the appellant's contention is that her own amount was utilised to purchase the property is false one and the same was rightly appreciated by the learned Special Judge, TNPID Court which require no interference by this Court.

11. Accordingly, this Civil Miscellaneous Appeal is dismissed and the order passed by the learned Special Judge, the Tamil Nadu Protection of Interest of Depositors (In Financial Establishments) Act 1997 in O.A.No.58 of 2008 is confirmed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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1.The Special Judge,
TNPID Court,
Chennai - 104.

2.The Inspector of Police,
Economic Offences Wing-II,
Vellore-9,
Vellore EOW-II, Cr.No.1 of 2008,
Under Section 5 of TNPID Act, 1997 and
Section 420 IPC.

Copy to:

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate Sr No.20857
+1cc to the Government Pleader Sr No.21279

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and
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JPL (CO)
PR (06/10/2021)