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.3158 of 2014
and M.P.No.1 of 2014

J.Vijayalakshmi ...Appellant

Vs.

1.The Inspector of Police,
Economic Offences Wing,
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.R.J.Jayagopal

6. 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, against the order and decree in O.A.No.57 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 : Mr.Y.T.Aravind Gosh
Additional Government Pleader (CS)

For R2 & R5 : No appearance

For R6 : No Appearance

J U D G M E N T

The appellant has filed the present appeal challenging the decreetal order passed in O.A.No.57 of 2008 on the file of the learned Special Judge under the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act 1997, (for short TNPID Act) Chennai, dated 12.09.2014.

2. The question of law that arises for consideration is as to "whether the TNPID Court erred in holding that the schedule mentioned properties was purchased by the 5th respondent before the creation of the financial institution, besides not a shareholder of the J.B.Associates and erroneously ordered for attachment of the property?"

3. The facts reveal that the 1st respondent / investigating agency filed O.A.No.57 of 2008 under Section 8 of TNPID Act read with Section 151 CPC, praying to pass an order of attachment of the properties of the appellant as stated in the schedule. The finance company was under the name and style of Hi-yield Investments, registered on 1995, with the partners, respondents 2 to 5 along with the appellant at Kastamedu Street, Kospaet, Vellore Town and the same was dissolved on 28.05.2003 with an intention to cheat the depositors. After collecting money they have started another financial institution in the name and style of J.B.Associates in the year 2005, in which, the respondents 2 to 4 herein were partners and they have canvassed the depositors to deposit huge amount, by promising to pay the interest at the rate of 12% and by handing over the promissory notes to the depositors. Subsequently, they neither paid the interest nor paid the deposited amount. Therefore, complaints have been received from the depositors and FIR was also registered against them in Crime No.1 of 2008 by the Economic Offence Wing under Section 5 of TNPID Act and Section 420 of IPC. The respondents 2 to 4 are the sons of Jayagopalreddy and the appellant /wife/ J.Vijayalakshmi. In fact, all of them are joint

family members who started financial institution in the name of Hi-Yield Financiers after collecting huge deposit from the depositors, and thereafter closed that firm and the sons alone again started a new financial institution with a dis-honest intention to cheat the depositors. In fact, Jayagopalreddy who is the father of the respondents 2 to 4 herein being head of the joint family is owning the properties as listed in the Schedule mentioned properties in the name of his wife Vijayalakshmi / appellant herein on 12.05.2007 through a sale deed.

4. In order to, defraud the depositors, the defaulted firm respondent made fanciful promise. Received complaint from the depositors, the application has been filed, praying suitable order of attachment of the properties as stated in the schedule. This petition was contested by the respondents 1 to 5. Subsequently, the 6th respondent was included by way of amendment.

5. On hearing both sides, the TNPID Court allowed the said application by passing order of attachment. Aggrieved by the same the appellant / 5th respondent has preferred this appeal.

6. At the time of arguments, the learned counsel for the appellant submitted that the appellant is not a partner of the defaulted firm J.B.Associates, nor she purchased properties out of the deposited money collected in that firm. The learned trial judge, without appreciating this fact, erroneously ordered attachment. Further, he also submitted that the 1st respondent is not a right person to file the application under Section 8 of the Act, and only the competent Authority is entitled to file the said application. So the petition, as such, is not maintainable in law.

7. The learned Additional Government Pleader appearing for the 1st respondent submitted that the appellant herein is the mother of the partners of the J.B.Associates and prior to that, a finance company in the name and style of Hi-Yield investments was registered in the year 1995, in which the appellant and her husband Jayagopalreddy and three sons / respondents 2 to 4 were the partners and they have collected huge amount from the depositors and they committed default and closed that firm in the year 2002. Thereafter, within three years, they have started the defaulted firm in the name of J.B.Associates again to collect deposits from the public by giving false promise to pay the huge interest. But they again committed default in the repayment of the deposited amount. So in the year 2008, complaints started to receive from the depositors. Though the appellant and her husband were not a party, but all are residing as joint family members and the amount which was collected from the previous firm was also utilized with an intention to cheat

all the depositors. The appellant's husband purchased the property and the same was transferred to the appellant in the year 2007 just prior to the lodging of the FIR in the year 2007, then they committed default in repayment and complaints were received against the J.B.Associates.

8. During the investigation, the Investigation officer came to know about the mala fide intention of the appellant and her husband. So they filed a application in O.A.NO.57 of 2008, which is very much sustainable in law and all these facts were rightly appreciated by the TNPID Court and the application was allowed. Hence, they prayed to dismiss the appeal.

9. The foremost objection raised by the learned counsel for the appellant is that Section 8 of TNPID Act can be invoked only by the Competent Authority.

10. Section 8 of TNPID Act speaks as follows:

"8.Attachment of property of mala fide transferees:-

> (1) 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.
>
> (2) Where the said transferee does not appear and show cause on the specified date, or where after investigation in the manner provided in sub-section (5) of Section 7, the Special Court is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration, the Special Court shall order

the attachment of so much of the said transferee's property as in the opinion of the Special Court equivalent to the proper value of the property transferred."

11. Thus, in order to invoke Section 8 of TNPID Act, if the Special court is satisfied by the affidavit or otherwise that there is no reasonable cause for believing that the said financial establishment has transferred any of the properties otherwise those in good faith, the Special Court may proceed accordingly."

12. Coming to the facts of this case, during the investigation the 1st respondent found that, with an intention to cheat the depositors, just prior to lodging of the FIR against the J.B.Associates, the father of the partners, namely Jayagopalreddy transferred his properties in favour of the appellant. In fact, prior to formation of this defaulted firm, a financial institution namely Hi-Yield investments was started by the appellant along with her husband and as joint family members, they collected huge amount, out of which properties were purchased. Moreover, the appellant is house wife and she has not submitted any material evidence to show her financial status to purchase the properties from her husband. Further, there was no reason on the side of the appellant to purchase the properties from her husband, and they started to commit default in repayment to the depositors. Furthermore, 25 items of immovable properties were transferred only for Rs.9 lakhs by under-valuing the properties. All these conducts of the appellant and her husband and their sons/ accused clearly establishes the mala fide intention to defraud the poor depositors. Therefore, all these facts were rightly appreciated by the trial Court and the order of attachment was passed, which is sustainable in law.

13. To invoke Section 8 of the Act, the mala fide intention of the parties are to be taken into consideration, in order to safeguard the interest of the depositors, and such mala fide intention could be revealed only during the course of investigation to be done by the 1st respondent. Competent Authority as the Revenue Authority is not vested with the power of investigation. Therefore, the petition filed by the 1st respondent is sustainable in law. The objection raised by the appellant with regard to maintainability of the action taken by the 1st respondent is unsustainable one.

14. 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.57 of 2008 is confirmed. Accordingly, this Civil Miscellaneous Appeal is

dismissed as no merits.. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

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To
1.The Special Judge(TNPID ACT)
Chennai.

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

+1 cc to Mr.V.Raghavachari,Advocate Sr.No.20859
+1 cc to Government Pleader Sr.No. 21277

C.M.A.No.3158 of 2014
and
M.P.No.1 of 2014

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NSK 30/07/2021
B.VC(13.08.2021)