IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3491 of 2014
and
M.P.No.1 of 2014

Juliet Arputharaj ..Appellant

Vs.

1.Deputy Superintendent of Police,
Economic Offences Wing II
Tiruchirapalli District.

2.Kanagajothi ..Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 11 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments Act), 1997, r/w Order XUR1 of CPC., against the Fair and the Decreetal order dated 20.06.2014 passed in O.A.No.79 of 2010 on the file of the Court of Special Judge under TNPID Act 1997, Chennai – 104.

For Appellant : Mr.T.Sezhian
For Respondents : R1 – Mr.Y.T.Aravind Gosh
Additional Government Pleader(CS)

J U D G M E N T

The Fair and Decreetal order dated 20.06.2014 passed in O.A.No.79 of 2010 is under challenge in the present Civil Miscellaneous Appeal.

2. The Original Application was filed by the Deputy Superintendent of Police, Economic Offences Wing II, Tiruchirappalli, to approve the attachment of properties belongs to the accused by the Government. The allegations against the 2nd respondent are that he was running a Financial institution and collected deposits from more than 1561 persons. However, the Finance company could not able to repay the matured deposits and many of the depositors filed the complaint before the Police. Investigations were conducted and the 1st respondent / Deputy Superintendent of Police, identified the properties and it was found that one of the property was sold by the accused person in favour of the appellant. However, the said property was also attached on the ground that the said sale was done in a calculated manner to defeat the repayment to the depositors.

3. The Special Court adjudicated the issues with reference to the documents and the evidences. The trial Court made a finding that the transaction was made in a calculated manner and it was a *malafide* transfer and accordingly, approved the attachment.

4. The learned counsel for the appellant mainly contended that the appellant is a *bonafide* third party purchaser and he purchased the

property from the 2nd respondent in the year 2006. By borrowing loan from Bank, the appellant paid the sale consideration and therefore, the sale deed was executed in a proper manner and there was no fraudulent activities as alleged. The learned counsel for the appellant reiterated that the first complaint itself was filed before the Police in the year 2007. However, the sale deed in his favour was executed in the year 2006. The sale consideration was also paid. Therefore, such a sale cannot be the subject matter of attachment and the Special Court committed an error in made a finding that the transfer was *malafide*.

5. The learned Additional Government Pleader disputed the said contentions by stating that all possible circumstances, probabilities as well as the manner in which the transaction occurred were considered by the Special Court, based on the investigations conducted by the Economic Offences Wing. The Special Court considered various circumstances, which lead to the sale between the appellant and the 2nd respondent in order to deny the repayment to the depositors, many complaints were registered and in fact, the Deputy Superintendent of Police / P.W.1 deposed before the Special Court that the complaints were being received from the year 2004 onwards. Even during Cross

Examination, it was deposed. Therefore, in spite of the fact that the complaints were being received from the year 2004, the case was received based on the complaint given in the year 2007.

6. The learned counsel for the appellant made a submission that there is no record to establish that the complaint was received in the year 2004.

7. This Court is of the considered opinion that whether the complaint was received in the year 2004 or 2007, the fact remains that the appellant is running a Hotel in Velanganni. The 2nd respondent Finance company is also functioning at Vedaranyam. Both are living in a nearby place and the transfer of property itself was on *mala fide* grounds.

8. The Special Court, during adjudication, categorically made a finding that it is an admitted fact that the Finance Company willingly cheated the depositors and sold the property in favour of the appellant. Thus, it was a *malafide* transfer. The entire sale consideration had been passed on to the 1st respondent and the 2nd respondent had no way connected with the financial institution. Thus, the Special Court arrived

a conclusion that the transfer of property was on *malafide* grounds and therefore, the attachment cannot be raised. The Special Court further found that prior to the sale between the appellant and the 2nd respondent, there was a sale agreement between the 2nd respondent and one Mr.Arogyasamy in April 2005. Thus, the 2nd respondent made an attempt to sell the property even prior to the sale executed in favour of the appellant. When these all are the facts and circumstances brought to the notice of the Special Court, the Special Court in the interest of the public and to protect the depositors, approved the attachment. This apart, the subject properties had been purchased by the 2nd respondent/ Financier from the income accrued from the depositors amount and the amount has been utilized for the purchase of the said property. This being the factum established, the petition filed by the Deputy Superintendent of Police was allowed and the claim of the appellant was rejected.

9. This Court is of the considered opinion that the TNPID Act is enacted to protect the interest of the innocent depositors. When the Special Court found that certain transfer of properties are fraudulent or *malafide*, then the properties are to be attached and only after adjudication, appropriate decision is to be taken. In the present case, the attachment made by the Deputy Superintendent of Police is approved by

the Special Court. If at all the appellant wants to raise the attachment, he has to file an application under Section 9 of the Act by providing Security in lieu of attachment. Contrarily, this Court cannot raise an attachment, in view of the fact that the findings of the Special Court are candid and convincing.

10. This being the factum, there is no perversity as such and the Fair and Decreetal order dated 20.06.2014 passed in O.A.No.79 of 2010 stands confirmed and the Civil Miscellaneous Appeal in C.M.A.No.3491 of 2014 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

02.03.2021

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Index: Yes/No
Internet:Yes/Non-Speaking order

To

The Hon'ble Special Judge under TNPID Act,
Chennai.

S.M.SUBRAMANIAM, J.

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C.M.A.No.3491 of 2014

02.03.2021