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.2385 OF 2017
AND C.M.P.NO.12826 OF 2017

Hemamalini
.. Appellant/2nd Respondent

Vs.

1. The Competent Authority,
District Revenue Officer,
Cuddalore, Cuddalore District.
.. 1st Respondent/Petitioner

2. Sri.Balaji Finance and Investment,
No.41, South Street,
Chidambaram Town,
Cuddalore District.
.. 2nd Respondent/Financial Establishment/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 11 of the Tamil Nadu Protection of Interests of Depositors Act, prayed to set aside the judgment and decree dated 09.10.2015 passed in O.A.No.11 of 2014 on the file of the learned Judge Special under Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act 1997, Chennai.

For Appellant : Mr.E.Kannadasan

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

For R2 : No appearance

J U D G M E N T

The appellant herein is the accused/second respondent in O.A.No.11 of 2014 filed by the first respondent who filed the application under Section 7(6) of the TNPID Act, in order to make the ad-interim attachment order as absolute. The accused also contested the said petition. On hearing both sides, the

TNPID Court allowed the application. Aggrieved by that the second accused/respondent preferred this appeal.

2. Points for consideration:

(i) Whether the trial Judge erroneously passed the order without appreciating the fact that the first respondent approached the Court only after nine years from the date of G.O passed by the Government?

(ii) Whether the trial Court failed to appreciate that the properties purchased by the appellant prior to the existence of the financial establishment?

3. The facts reveal that the second respondent herein is the financial establishment which was started as a partnership firm in the name and style of Sri Balaji Finance and Investment in the year 1994 but, was not registered either before the Registrar of Firms nor before the Registrar of Societies, Cuddalore. On complaints being received from the depositors that the managing partners of the financial establishment committed default in return of deposit money after the maturity to the depositors, FIR was lodged in Crime Nos.2/1999 and 1/2000 and the charge sheet was filed on 23.06.2004 and the same was taken on file as C.C.No.124 of 2004. The Government also passed G.O.Ms.No.663, Home (Court IIA) Department, dated 05.08.2005 and to make an order of ad-interim attachment over the schedule mentioned properties which belongs to the accused.

4. There are 688 depositors and the default amount comes around Rs.51,10,400/-. Thereafter, in O.A.No.26 of 2005 filed by the authorities, the oral and ad-interim attachment order was effected. With regard to the immovable properties, the petition was dismissed as not pressed. With regard to the other movable properties, it was sold and the sale amount of Rs.32,12,253/- was released. But the amount was not sufficient to satisfy the deposit amount. Therefore, the competent authority seeking absolute attachment over the scheduled mentioned property i.e., Plot No.45 with an extent of 2500 sq.ft filed an application under Section 4(4) of TNPID Act in order to satisfy the claim of the depositors. The Special Judge, TNPID Court allowed the same. Aggrieved by that order, the second accused/appellant preferred this appeal.

5. At the time of the arguments, the learned counsel for the appellant submits that the property was purchased by the appellant prior to the financial establishment in the year 1994. He submits that the scheduled mentioned property originally belongs to the Chidambaram Co-operative Society and the same was sold to one Ravi/husband of the appellant and he paid advance for a sum of Rs.5,000/- on 08.04.1993 and paid the balance

amount thereafter. Subsequently, the sale deed was executed on 05.08.1994 in favour of the second respondent. She submits that the property was purchased out of the income derived by her husband in his goldsmith profession and this appellant has also not actively participated in the financial establishment. But without appreciating this fact, the trial Judge erroneously ordered absolute attachment over the property.

6. Per contra, the learned counsel for the first respondent submits that the applicant is also a partner who actively participated in the financial establishment activities and the property was purchased after formation of the financial firm by utilising the depositors amount. So, the investigating authorities brought this property for attachment and sale.

7. On considering both sides submissions it is admitted fact that the disputed house property originally belongs to the Co-operative society and the initial amount of Rs.5,000/- was paid by the husband of the appellant on 08.04.1993, but the sale deed was executed on 05.08.1994 after starting of the financial establishment. Though the appellant submits that the amount was earned by her husband through his Goldsmith profession, she has not produced any material evidence to support her contention before the trial Judge. In the year 1994, they started collecting amount from the depositors and the entire amount was paid by her husband on 05.08.1994 and the sale deed was executed in her favour. So the documents and facts itself clearly establish only after confirmation of the financial establishment, the property was purchased in the name of the appellant by her husband and both were partners in the defaulted firm.

8. This fact was rightly apprciated by the trial Judge as the amount was not sufficient to be disbursed to the depositors, the competent authority, during the pendency of the proceedings, filed an application to bring the property for auction and the same was allowed by the TNPID Court on 05.08.2005. Therefore, the lapse of nine years is not a point for consideration, for the reason that, the special act is formulated only to protect the interest of the depositors and also to take action against the default firms which utilised the deposited amount for the personal gains with an intention to defraud in returning the deposit amount to depositors after the maturity period. Further in cases like this nature, too technical aspects should not be appreciated., since the welfare of the hard earned money of the depositors are of paramount consideration. Therefore, the objection raised by the appellant is not unsustainable in law. Accordingly, the question of law is answered. The trial Judge rightly appreciated of the facts and passed which calls no interference.

9. The order passed by the learned Special Judge, under the Tamil Nadu Protection of Interest of Depositors (In Financial Establishments) Act 1997 in O.A.No.11 of 2014 is confirmed. Accordingly, this Civil Miscellaneous Appeal is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

// True Copy//

Sub Assistant Registrar

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To

The Special Judge,
Tamil Nadu Protection of Interests of Depositors
(In Financial Establishments) Act 1997,
Chennai.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to the Government Pleader, SR.No.21276

C.M.A.No.2385 of 2017
and
C.M.P.No.12826 of 2017

NR(CO)
RLP(02/08/2021)