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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.2388 OF 2017

AND

C.M.P.NO.12884 OF 2017

Ravi ... Appellant/3rd 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.

3. Chandrasekaran

4. Venkatraman

... 2 to 3 Respondents

PRAYER:-

Civil Miscellaneous Appeal (CMA) filed under Section 11 of the Tamil Nadu Protection of Interests of Depositors Act (TNPIDA), prayed to set aside the judgment and decree dated 09.10.2015 passed in O.A.No.16 of 2014 on the file of the learned Special Judge 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 to R4 : No appearance



J U D G M E N T

The appellant herein is the 3rd respondent in O.A.No.16 of 2014 filed by the 1st respondent herein. He has preferred this appeal challenging the judgment passed in O.A.No.16 of 2014 dated 09.10.2015, on the file of the Special Judge TNPID Court, Chennai.

2. The question of law that arises for consideration is as to

"whether the Lower Court failed to consider that the appellant is the gold smith who is no way connected with the financial establishment but the authorities seized gold jewels from his residence and took steps to sell the same, in order to disburse the amount to the depositors of the 1st respondent/firm.

3. The facts reveal that the 1st respondent herein/petitioner namely the competent authority filed petition under Section 7(6) of TNPID Act praying to permit them to sell the scheduled mentioned properties which have been already attached by the Lower Court on 20.10.2009 in O.A.No.26 of 2005 by public action and realise the sale proceed and transfer the cash to the Competent Authority, Cuddalore for disbursing the money to the depositors, in O.A.No.16 of 2014 against the respondents 2 to 4 and the appellant/3rd respondent.

4. The said petition was contested by the respondents 2 to 4 herein.

5. As per the contention of the 2nd respondent herein, the financial establishment was run by the respondents 2 to 4 and they were actively engaged to collect money from the depositors and defaulted to repay the same after its maturity. Based upon the complaints received from the depositors, FIR was registered against the Sri Balaji Financial and investment and other respondents in crime No.2 of 1999. The case was taken on file in C.C.No.124/04 on the ground they committed default in returning maturity amount of nearly 71 lakhs to the depositors. In order to disburse the amount to the depositors the movable and immovable property belongs to the accused as well as the firm, ad interim order of attachment passed in G.O.Ms.No.925 and through the petition in O.A.No.26 of 2005 the ad interim order of attachment of the movable and immovable property were made absolute, with regard to the amount already available was not sufficient to distribute to the depositors the 1st respondent/petitioner sought permission to sell the movable properties mentioned in the petition.



6. The respondents 2 to 4 appeared through their counsel but not defend their case, subsequently, they were set ex-parte. As per the materials available on record, a sum of Rs.72,68,471 is to be disbursed to 688 depositors, but the available amount is not sufficient to disburse. So they sought permission to sell the immovable properties.

7. Considering the facts and circumstances, the TNPID Court allowed the application. Aggrieved by the order, the 3rd respondent has preferred this CMA.

8. At the time of the arguments, the learned counsel for the appellant submitted that the gold jewels shown as Item No. 1 and 2 in schedule 2 of movable property independently belongs to the appellant/3rd respondent who was running a gold smith and possessed jewels in order to conduct the business which is no way connected with the 2nd respondent financial firm. But without considering this aspect the Subordinate Court erroneously attached and ordered to sell the movable properties which is against the provisions of law and prayed to set aside the order passed by the TNPID Court, Chennai.

9. Per contra, the learned Additional Government Pleader submits that the appellant herein/3rd respondent is the son-in-law of the 2nd accused and he actively participated in collecting deposits from the public and also purchased the movable and immovable properties by utilising the deposited amount. So the appellant's movable properties also seized by the authorities. He further submitted that the available amount was not sufficient, hence they seek permission from the Court to sell those movable properties.

10. As rightly pointed out by the learned Additional Government Pleader, there is no material evidence on the side of the appellant, before the Subordinate Court to establish that the gold jewels have been purchased by him as a gold smith. Even at the time of passing an order of attachment in O.A.No.16 of 2014 the respondents 2 to 4 including this appellant failed to defend their case through their counsel or in person. So they were set ex-parte.

11. As the Court found that the amount is not sufficient to disburse the deposit amount, the movable properties were to be sold in order to collect the amount and to re-pay the deposited amount to the depositors.

12. The special Court appreciated all the facts and circumstances and allowed the I.A.No.16 of 2014 which requires no interference by this Court.



13. Accordingly, 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.16 of 2014 is confirmed and time to sell the properties is three months from the date of receipt of copy of this Judgment. Accordingly, this Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Special Judge,
TNPID Act,
Chennai.
2. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to the Special Government Pleader (CS), S.R.No.21275

C.M.A.NO.2388 OF 2017 AND
C.M.P.NO.12884 OF 2017

RLD(CO)
PBS/26/11/2021