IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29-03-2021
CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2820 of 2017
And
C.M.P.No.16121 of 2017

A.Balasubramaniam .. Appellant

Vs.

1. The Inspector of Police,
   EOW-II,
   Erode.

2. M/s.Nandhu Copra Poultry and Cattle Farms,
   9-A, Ingur Main Road,
   Chennimalai,
   Perundurai Taluk,
   Erode (Represented by Mr.C.Nandhakumar-2nd Respondent)

3. C.Nandhakumar .. Respondents

Civil Miscellaneous Appeal is filed under Section 11 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 against the fair and decretal order made in O.A.No.32 of 2013 dated 21.07.2017 on the file of the Court of the Special Judge, Special Court under TNPID Act Cases, Coimbatore.

For Appellant : Mr.C.Senthil Nathan Swamy

For Respondent-1 : Mr.Y.T.Aravind Gosh,
Additional Government Pleader (CS)

For Respondents-2&3 : Not Ready in Notice

JUDGMENT

The fair and decretal order dated 21.07.2017 passed by the learned Special Judge, Special Court under TNPID Act Cases, Coimbatore in O.S.No.32 of 2013, is under challenge in the present Civil Miscellaneous Appeal.

2. Learned counsel for the appellant made a submission that the appellant is the innocent purchaser of the property and he is no way connected with the finance company nor accused in the criminal case. Therefore, purchase of property by the appellant is to be protected. When the appellant is the bona fide innocent purchaser, the sale cannot be interfered with as he is unconnected with the affairs of the Financial Company.

3. Learned counsel for the appellant reiterated that the Special Court has committed an error in granting permission for attachment without considering the fact that the appellant is a third party purchaser and the property was purchased without knowing the fact about the criminal case and the collection of deposit amount from the depositors.

4. The Special Court failed to appreciate the fact that the guideline value cannot be taken into account and render a finding with regard to the transactions inter se parties and the same is to be decided only on the basis of the market value of the supporting material. The appellant questioned the findings of the Trial Court with regard to the undervaluation of the instrument presented by the appellant before the Sub Registrar.

5. At the outset, it is contended that the findings in an entirety made in this regard by the Special Court is perverse and not in consonance with the principles of law.

6. Learned Additional Government Pleader, appearing on behalf of the respondent, disputed the said contentions by stating that the appellant is not a bona fide third party purchaser and the property was sold by presenting a document, which was undervalued and the same itself was executed with a mala fide intention to defeat the interest of the depositors and thus the Special Court has rightly granted permission under Section 8 of The Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 (hereinafter referred to as 'TNPID Act' in short) to the Competent Authority to attach the property and further proceed with the sale.

7. It is contended that 1,164 innocent depositors deposited their hard earned money in the Financial Company to the tune of Rs.16,20,36,625/-. Criminal cases were registered in Crime Nos.7 and 18 of 2012 and the subject sale transactions were done in the same year when the crime was registered.

8. It is further contended that just before the registration of crime, the alleged sale was executed in faovur of the appellant by the accused persons in the criminal case, who were running a Finance Company. Thus, the sale was done in a calculated manner with an intention to defeat the interest of

the depositors and thus, the Competent Authority filed the application under Section 8 of the TNPID Act, seeking for attachment of the property.

9. In view of the fact that the Special Court, in clear terms, held that the sale was executed in order to defeat the interest of the depositors and not in good faith, there is no reason to interfere with the findings of the Special Court and the Civil Miscellaneous Appeal is to be dismissed.

10. Section 3 (ii) of the TNPID Act, enumerates that "where the Government have reason to believe that any financial establishment is acting in a calculated manner with an intention to defraud the depositors, then the Government is empowered to attach the property".

11. In the present case, the Government has not issued any order attaching the property soon after the registration of criminal complaint. However, after investigation, the Competent Authority found that certain mala fide transfers were done by the Finance Company proprietors, who all are accused and after collecting the materials to establish the mala fide transfers, the Competent Authority filed application under Section 8 of the TNPID Act, before the Special Court, seeking attachment of the property.

12. Section 8 of the TNPID Act, enumerates that "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".

13. The Trial Court made a categorical finding that the sale was executed so as to believe that there was a mala fide intention on the part of the Proprietor of the Finance Company to defeat the interest of the depositors. The document was undervalued and further the sale considerations were not deposited and nor disbursed to the depositors, so as to discharge the matured deposits to establish his bona fides.

14. If at all the sale was executed with good

intention, the Finance Company ought to have settled the depositors in respect of matured deposits and such documents ought to have been filed before the Special Court. In the absence of any such proof, the Special Court formed an opinion that the transfer of property was on mala fide intention and the sale consideration was not utilised for the purpose of settlement of the debts towards the depositors. Therefore, attachment is to be made under Section 8 of the TNPID Act.

15. The Special Court also considered provisions of Section 8 (1) of TNPID Act and made the following observations:-

> "Hence, on perusal of aforesaid provision would show that if the properties are available for attachment of a financial establishment or other persons and if the Special Court is satisfied that the financial establishment or other persons has transferred the properties otherwise than in good faith by giving notice to the transferee and after hearing the transferee, if the amount is satisfied and the transfer is not made in good faith, it can order the attachment of the said transfer of the properties. While-so, in view of the aforesaid circumstances, when the properties, which have been purchased by the second respondent, has been transferred to the third respondent under Ex.P-6 without assigning any valid reason either in the Sale Deed or through oral evidence and in the absence of any evidence to show that the second respondent is having money and properties to purchase the properties covered under Ex.P-3 to Ex.P-5 and further in view of the circumstances discussed earlier would suffice to show that the transfers made in the name of the third respondent under Ex.P-6 cannot be said to be done in good faith."

16. While making such a finding, the Special Court, in clear terms, held that the second respondent-Financier had executed the sale Deed in favour of the appellant, which was not in good faith and therefore the Special Court issued the order of attachment to protect the interest of the depositors as enunciated under the provisions of the TNPID Act.

17. Learned counsel for the appellant reiterated that the appellant is willing to provide security in view of attachment, if at all, the appellant has chosen to provide such

security, it is left open to him to approach the Special Court by filing an appropriate application under Section 9 of the TNPID Act and only in the event of producing adequate security in lieu of attachment, the Courts have to consider the issue on merits with reference to Section 9 of the TNPID Act. However, this Court cannot express any opinion with reference to the submissions made in this regard by the appellant and it is for the appellant to take a decision and produce sufficient security in order to protect the interest of the depositors.

18. This Court record its displeasure in the manner in which the criminal investigations are conducted, as the case is pending for the past 8 years without much harness. The Competent Authorities/ Investigating Agencies are bound to expedite the investigation and file a Final Report, enabling the Special Court to proceed with the trial in the manner known to law.

19. Going on filing Interlocutory Applications and prolonging the main case, is certainly not appreciable and the Competent Authorities/Investigating Agencies are responsible and accountable for long delay in disposal of such cases, wherein the interest of the innocent depositors are prejudiced. The very purpose and the object of the Act is to be looked into and in the event of long delay, the spirit of the provisions are not only defeated, but the depositors will lose confidence in respect of the trial to be conducted in the manner known to law. In such cases where large number of innocent depositors are involved, then the Competent Authorities/Investigating Agencies are expected to show sensitiveness and ensure that such investigations are completed in a time bound manner and the case is disposed of, so as to reach its finality.

20. Contrarily, going on prolonging and protracting the investigations and not settling the deposit amount to the innocent depositors, the people will lose confidence in the system and further the very purpose and object of the Act, is also to be defeated.

21. This being the factum established, the Competent Authorities/Investigating Agencies are required to expedite the investigation, enabling the Special Court to dispose of the case as expeditiously as possible. The Special Court is also expected to conduct the trial in a speedy manner in the interest of the public at large and ensure that the cases are disposed of as quickly as possible to develop confidence in the minds of the public at large, more specifically, in the matters of cheating the public by way of collecting huge money from the depositors.

22. In view of the facts and circumstances, the fair

and decretal order made in O.A.No.32 of 2013 dated 21.07.2017 on the file of the Court of the Special Judge, Special Court under TNPID Act Cases, Coimbatore stands confirmed and consequently, CMA No.2820 of 2017 is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Special Judge,
   Special Court under TNPID Act Cases,
   Coimbatore.

2. The Inspector of Police,
   EOW-II,
   Erode.

+1cc to the Government Pleader, S.R.No.20790.

CMA No.2820 of 2017

JPL(CO)
CSR 30.04.2021