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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2022

CORAM :

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.M.A.No.131 of 2018

U.Bhuvaneshwari

...Appellant / Petitioner

Vs.

1. The Deputy Superintendent of Police,
Economic Offence Wing-II,
Kancheepuram,
Kancheepuram District.
2. The District Revenue Officer / Competent
Authority, Kancheepuram.

... Respondents / Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 11 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 against the fair and decretal order dated 18.08.2017 passed by the Special Judge under TNPID Act, 1977, Chennai in O.P.No.4 of 2015 and prays to set aside the same.

For Appellant : Mr. Gautam S.Raman

For Respondents
1 and 2 : Dr.S.Surya, AGP

J U D G M E N T

Aggrieved by the dismissal of her application filed under Section 7(3) of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 (hereinafter called the "Act") praying to raise the order of attachment passed in G.O.Ms.No.1023, dated 26.10.2006, the appellant is before this Court.

2. The facts in brief are as follows:-

(i) The petitioner's husband Umapathi Sivam and one Gurumoorthy and his wife, Abayambigai had formed a partnership firm in the name of "Sri Devi Finance" and were running a finance business. It appears that in the 1989, the firm was



dissolved. The appellant herein had purchased the petition mentioned property on 14.07.1993, much after the dissolution of the partnership firm. The said property is the subject matter of the Original Application No.4 of 2015.

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(ii) Mean while, it appears that a complaint was received from some depositors against Sri Devi Finance Company, wherein, the depositors have stated that they have been induced to deposit their hard earned money by the said Gurumoorthy and his wife, Abayambigai, who had not returned the same. A charge sheet was registered against the Firm, Sri Devi Finance Company, Gurumoorthy, Abayambigai and Umapathy Sivam in the year 2002. The three of them were charged under Section 5 of the "Act" and the charge against them was that they had cheated 30 depositors out of a sum of Rs.14,91,346/-.

(iii) In the meantime, on 29.01.2002, the appellant had availed a loan of Rs.1,10,000/- with the Co-operative Bank, Chennai and mortgaged the petition mentioned property. This loan was fully discharged on 31.07.2007. It appears that on 26.10.2006, the appellant's property had been attached under Section 3 of the "Act". In the mean while, the case against the accused was split as C.C.No.15 of 2002 against the first accused, the Finance Company and as C.C.No.38 of 2007 against third and fourth accused. The petitioner's husband, Umapathy Sivam was acquitted, by order dated 21.07.2011 holding that no case had been made out against him under Section 5 of the "Act". During the investigation, the depositors have fairly conceded that they have never had any dealings with the appellant's husband, it was only Gurumoorthy and Abayambigai, who had induced them into making the deposit.

(iv) On coming to learn about the attachment of the property, the appellant had filed a Writ Petition No.3111 of 2013 before this Court, seeking a mandamus, directing the respondent(s) therein to return her title documents. This Writ Petition was disposed of, by order dated 18.08.2014 with a direction to approach the competent authority under the "Act".

(v) Pursuant to the said direction, the appellant herein had filed the impugned application in O.A.No.4 of 2015 on the file of the Special Court, TNPID for raising the attachment. This application came to be dismissed by the learned Special Judge, TNPID Court on 18.08.2017, stating that the appellant has not proved the fact that she has purchased the petition mentioned property from out of her own income and therefore, since there is no pleading regarding the source of income, her application has to definitely be rejected. Challenging the same, the appellant is before this Court.



3. Mr.Gautam S.Raman, learned Counsel appearing on behalf of the appellant would contend that the Firm had been dissolved as early as in the year 1989 and thereafter, there is no dealings between the appellant's husband and other two partners of Sri Devi Finance Company. The property that has been attached has also been purchased much later, i.e in the year 1993, when the appellant's husband had no dealings with the Finance Company. He would submit that the order of the learned Special Judge, TNPID Court requires to be re-considered and the attachment raised.

4. Dr.S.Surya, learned Additional Government Pleader appearing for the respondents would submit that the source of income for the purchase of the properties is only the deposits made by the various depositors in the Finance Company, in which, the appellant's husband was a partner. The appellant is not in a position to explain the source of income and therefore, the order does not require to be set aside.

5. Heard both counsels and perused the materials available on record.

6. Admittedly, the partnership firm, Sri Devi Finance Company had been dissolved in the year 1989, as evidenced by Ex.P99 marked in C.C.No.15 of 2002. Therefore, it follows that the partners had settled also their inter se claims. Further, the appellant's husband has also been acquitted from the charge by holding that he has no interest in the said Sri Devi Finance Company. The purchase of the petition mentioned property is in the year 1993, nearly 4 years after the dissolution of the Firm. The application has been dismissed, since the appellant has not been able to prove her source of income for the purchase of the property. This finding cannot be countenanced for the simple reason that her husband had retired from the Firm, Sri Devi Finance Company in the year 1993 itself. The complaint was lodged by the depositors alleging that in the year 1997, deposits had been collected from them by the other two partners, Gurumoorthy and Abayambigai. Therefore, it is clearly evident that the property in question is the individual property of the appellant, which cannot be attached for the dues of a Firm, in which, neither the appellant nor her husband has involved with from the year 1989. It is also seen from the records that the property in question has been acquired under the provisions of the Urban Land Ceiling Act, which has already been challenged by the appellant herein.



7. In view of the above, the order passed in O.A.No.4 of 2015 dated 18.08.2017 is set aside and this Civil Miscellaneous Appeal stands allowed. No costs.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Judge,
TNPID Court, Chennai - 104.
2. The Deputy Superintendent of Police,
Economic Offence Wing-II,
Kancheepuram, Kancheepuram District.
3. The District Revenue Officer / Competent Authority,
Kancheepuram.
4. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to the Special Government Pleader(CS), S.R.No.36351

C.M.A.No.131 of 2018

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NSK/01/07/2022