A.Nos.8583 & 8584 of 2019 in
E.P.No.177 of 2005

Reserved on	***22.03.2022***
Pronounced on	**17.08.2022**

P.VELMURUGAN, J.

The applicants herein who are the fourth and fifth respondents in E.P.No.177 of 2005 have filed the application in A.No.8583 of 2019 application in A.No.8583 of 2019 challenging the order of the learned Master dated 03.10.2019 passed in A.No.1777 of 2019.

2. The case of the applicants is that the immovable property bearing door Nos.83 & 84, Royapettah High Road, Mylapore, Chennai - 600 004 originally belongs to the respondents 3 and 4 herein who are the directors in the second respondent and one more company by name PNL Nidhi Limited. The said PNL Nidhi Limited is a financial establishment which after accepting the deposits from its depositors, had defaulted payment and around 6268 claims totalling an amount of Rs.58,03,21,940/- were received from the affected depositors including jewels pledged in the said company. The said company cheated the depositors and therefore, a case was

registered in Cr.No.31/04 under sections 409, 420, 468, 471, 477A, 120 B of Indian Penal Code, Section 138 & 142 of Negotiable Instruments Act and Section 3 of the Puducherry Protection of Interests of Depositors in Financial Establishment Act, 2004 (hereinafter referred to as PPIDFE Act, 2004). After investigation, charge sheet has also been filed and the case is pending trial under Special C.C.No.1 of 2011 before the Special Court cum Principal District and Sessions Judge, Pondicherry. As on date, dues to the depositors is Rs.200 crores.

3. It is also the case of the applicants that the third and fourth respondents are being the accused in the above case by order dated 18.02.2005, the property of the respondents 3 & 4 was attached by the learned Chief Judicial Magistrate, Puducherry and the said order of attachment was duly served on 22.02.2005 to the Sub-Registrar, Mylapore and the District Registrar, Chennai. The Government of Puducherry has thereafter issued a Government Order in G.O.Ms.No.12 dated 18.02.2006 under the PPIDFE Act, 2004. The said order of attachment is still in force. As required under the said Act, an application was filed on 25.08.2006 in O.A.No.l of 2006 before the Special Court, Puducherry which is also

pending. The respondents 3 & 4 and one third party purchaser under the SARFAESI Act, challenged the aforesaid Government Order and the matter was carried upto the Hon'ble Supreme Court and the challenges were rejected and the Government Order was upheld by the Hon'ble Supreme Court by its Judgment dated 27.09.2012 in C.A.Nos.6673-6674 of 2009. As per the decision of the Supreme Court, the PPIDFE Act, 2004 is a beneficial piece of Legislation and being in the nature of Special Act with the assent of the President of India will prevail.

4. Further it is the case of the applicants that while so, the first respondent got an award dated 29.03.2005 for a sum of Rs.1,71,83,520.79/- with interest thereon at 18% per annum from 01.01.2005 till realisation and thereafter, he filed the execution petition on 07.11.2005. Thereafter, the above property was attached and pursuant to the order of sale dated 19.02.2018, the said property was sold by this Court on 06.04.2018 for a sum of Rs.8,55,00,000/-. Thereafter an application in A.No.4724 of 2018 was filed on 31.05.2018 for payment out a sum of Rs.5,88,92,772/-. The learned Master of this Court entertained a doubt regarding the attachable nature of the immovable property and notice was issued to the learned

Government Pleader, Pondicherry and only thereafter an application was filed in Appln.No.5329 of 2018 for impleading the applicants herein in the execution proceedings and the said application was allowed.

5. Further even prior to the order of attachment in the above execution petition, the property which was sold in the Execution proceedings was attached by an order passed under the PPIDFE Act, 2004 and the Special Court is the custodian of the property having jurisdiction to deal with the same. However, the property was brought to sale in the above execution petition without reference to the Special Court and without considering the said vesting of the property on the competent authority being brought to the notice of this Court. Under these circumstances, the said sale pursuant to the order of attachment under the said execution proceedings has to be set aside and ultimately the property has to be once again sold by the first respondent/competent authority with due permission from the Special Court, Puducherry under the statutory provisions. However, since the property is sold that too under the appropriate supervision of this Court in the extraordinary situation arising out of this case, instead of setting aside the sale and bringing the property for sale by the Special Court once again,

the petitioners had filed a Civil Revision Petition under Article 227 of the Constitution of India, before this Court with the extraordinary prayer for a direction to transfer of the sale proceeds, being the sum of Rs.8,55,00,000/- to the credit of the Special C.C.No.1 of 2011 on the file of Special Court, Puducherry, so that the amount can be disbursed to the poor depositors who are dying without the money.

6. However, the Registry of this court raised an objection as to the maintainability of the said C.R.P.Sr.13461 of 2019 and this court has also upheld the objection of the Registry. Therefore, the petitioner has approached the original side of this Court. Since the money is involved in this case which belongs to the depositors, the Special Court already attached the property prior to the attachment order passed by the Execution Court. The first respondent is not a secured creditor. He obtained only an arbitral award in the execution subsequent to the attachment made by the learned Chief Judicial Magistrate, Special Court. The learned Master failed to consider the same and allowed the application on 03.10.2019 filed by the first respondent against which the applicants who are the respondents 4 & 5 in the execution petition have filed this application in A.No.8583 of 2019.

7. The learned Public Prosecutor, Puducherry would submit that a criminal case was registered against the respondents 3 & 4 under sections 409, 420, 468, 471, 477A, 120 B of Indian Penal Code, section 138 & 142 of Negotiable Instruments Act and Section 3 of the PPIDFE Act, 2004 and the subject property was also attached on 18.02.2005 itself by the Chief Judicial Magistrate, Puducherry and the same was also duly communicated to the SRO, Mylapore and the District Registrar, Chennai and also Government of Puducherry issued a Government Order in G.O.Ms.No.12 dated 18.02.2006. The first respondent approached this court much later ie., only on 07.11.2005 to execute the arbitral award and subsequently the property was brought for sale. However, the sale proceeds were deposited before the Registry of this Court. The PPIDFE Act, 2004 is a special enactment which will prevail over all other Acts including Central Act. Further the first respondent is not a secured creditor. The attachment is only a latter arrangement. The learned Chief Judicial Magistrate, Puducherry attached the said property under this Special Act even in the year 2005, however, the same property was attached by the execution court only at later point of time i.e., on 14.06.2006.

8. Learned counsel for the first respondent would submit that the first respondent obtained the arbitral award and filed the execution petition and in the execution petition, the subject property was brought on sale. Now the sale proceeds is with the Registry of this Court. The learned Master has observed that the first respondent/decree holder is directed to prepare bank guarantee for the amount to be paid to the decree holder and the first respondent is willing to produce the same. Since the money is ideally kept in the bank deposit without utilise, the first respondent may be allowed to withdraw and use the same for his business and further in case, the applicants herein succeeded the first respondent/decree holder, the first respondent is preferred to repay the amount and also given undertaken for bank guarantee for the amount. Therefore, there is no perversity in the order passed by the learned Master and this application is liable to be dismissed.

9. Heard the learned counsel and perused the materials available on records.

10. Admittedly, the subject property belongs to the third and fourth

respondents herein who are the directors of the second respondent company and also one PNL Nidhi Limited. The said PNL Nidhi Limited is a financial establishment which accepted deposits from the various depositors and failed to repay and therefore, a case was registered in Cr.No.31 of 2004 under sections 409, 420, 468, 471, 477A, 120B of IPC, Sections 138 & 142 of Negotiable Instrument Act and Section 3 of PPIDFE Act, 2004. After investigation, the case was taken in Special C.C.No.1 of 2011 before the Special Court cum Principal District and Sessions Judge, Puducherry and the same is pending wherein the property belongs to the third and fourth respondents herein is attached even on 18.02.2005 itself. Subsequently the same order of attachment was also duly served on 21.05.2005 to the SRO, Mylapore and the District Registrar, Chennai. The Government of Puducherry also issued a Government Order in G.O.Ms.No.12 dated 18.02.2006. The said Government Order was challenged by the third and fourth respondents and also one third party purchaser under the SARFAESI Act. The same was taken upto the Hon'ble Supreme Court and the Hon'ble Supreme Court has also upheld the said Government Order.

11. It is pertinent to note that while pending criminal proceedings, the first respondent who is also one of the financier of the second respondent

company, got an arbitral award for a sum of Rs. 1,71,83,520.79/- with interest at the rate of 18% per annum and thereafter, filed the execution petition and in the execution petition, they got attachment on 14.06.2006. Pursuant to the attachment, the said property was brought to sale and sold for a sum of Rs.8,55,00,000/- and thereafter the first respondent made an application in A.No.4724 of 2018 for payment out of a sum of Rs.5,88,92,772/- in satisfaction of this award dated 29.03.2005 and also made an application in A.No.1777 of 2019 for payment of Rs.6,09,94,340/- to the credit of execution petition with a further direction to the first respondent to provide bank guarantee to the extent of Rs.6,09,94,340/- in lieu of payment out and the Government of Puducherry also raised an objection. The learned Master rejected the objections made by the Government of Puducherry and allowed the applications in A.No.1777 of 2019 and the first respondent is permitted to withdraw the said amount. Challenging the same, the fourth and fifth respondents in Execution Proceedings are before this Court by way of this application.

12. It is not in dispute that the case was registered against the third and fourth respondents herein and the case is also pending in Special Court

cum Principal District and Sessions Judge, Puducherry in Special C.C.No.1 of 2011 and the subject property was also attached on 18.02.2005 by the Chief Judicial Magistrate and the same was also communicated to the concerned Registrar and the Government Order also issued.

13. The first respondent though got the award on 29.03.2005 and subsequently execution proceedings was filed in the very same year i.e., 2005 and the property was attached only on 04.02.2006 i.e, much later than the attachment made by the Chief Judicial Magistrate, Puducherry. In the execution proceedings, the subject property was sold and the sale proceeds are with the Registry and this Court has also deposited the said amount in the interest bearing deposit. Therefore, as per the said enactment i.e., PPIDFE Act, 2004, the depositors are the beneficiaries and the proceedings is also initiated and the property is also attached.

14. The first respondent is not a secured creditor. Though the first respondent obtained an award and made the attachment of the property in the execution proceedings, the same was done only on later point of time to the attachment made by the Chief Judicial Magistrate, Puducherry. The first

respondent is not allowed to withdraw the money lying in the interest bearing deposit at this stage. Certainly, it will affect the depositors' interest and the depositors have also made applications which are also pending. Pending the criminal case, it is nothing to do with the return of amount to the depositors.

15. Therefore the applicants are directed to verify the genuineness of the claims of the depositors and return to the depositors proportionately and expedite the sale of other properties and repay the depositors. If anything is remain, after finalising the claim amount and selling of the properties and if the first respondent is otherwise eligible, he can get the money proportionately. Therefore, the order of the Master is liable to be set aside and the application in A.No.8583 of 2019 is allowed. In view of the disposal of application in A.No.8583of 2019 on merits, the application in A.No.8584 of 2019 is also closed.

17.08.2022

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