



C.M.A.No.2082 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2082 of 2015

State of Tamil Nadu rep by
The Inspector of Police,
Economic Offences Wing-II,
Villupuram.

... Petitioner/Appellant

Vs

1.Sri Arun Finance,
Rep by A2, A3 & A4
71A, North Street,
Thirukoilur, Villupuram District.

2.N.Sekar
3.N.Sankar
4.N.Ravi
5.Sakthivel
6.Saravanan (Died)
7. S.Rajeswari
8.S.Ishwariya
9.S.Suriya

[R6- died R7 to R9 brought on records as legal heirs of R6
vide order dated 16.10.2023 in C.M.P.No.23756 of 2023
in C.M.A.No.2082 of 2015]

... Respondents/Respondents



C.M.A.No.2082 of 2015

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and Decree dated 19.06.2015 made in O.A.No.89 of 2010 passed by the Special Judge under TNPID Act 1997, Chennai-104.

For Appellants ... Mr.Dr.S.Surya,
Addl.Government Pleader

For Respondents ... Mr.M.Vidya [R5]
... R6-died [Steps taken]
... Notice dispensed with
[R7 to R9 legal heirs of R6]

JUDGMENT

Aggrieved by the impugned order dated 19.06.2015 passed by the Special Judge under TNPID Act 1997, Chennai in Original Application No.89 of 2010, the State has preferred the present Appeal.

2. The brief facts, which are necessary for the disposal of the appeal are :-

It is the allegation of the appellant that on the basis of the complaint given by one Sekar on 2.5.2003 against the respondents 1 to 3 alleging that the deposit made by him in the 1st respondent company, being run by respondents 1 to 3, has not been repaid as promised, inspite of the fact that while canvassing respondents 1 to 3 promised to repay the amount along with higher rate of interest. Therefore, the default in payment of the said amount, the appellant



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registered a case in Crime No.7/2003 u/s 406 and 420 IPC. It is the further case of the appellant that during the course of investigation, many other persons came forward and made complaints with regard to the deposits made by them in the 1st respondent company. The case was taken on file by the Chief Judicial Magistrate, Villupuram in C.C. No.22/04. Pending trial, as the depositors were making frantic demands for repayment of their amount the properties were sought to be alienated by way of sale. Subsequently, the above cases were transferred from the Chief Judicial Magistrate Court, Villupuram to the file of Special Judge under TNPID Act 1997, Chennai and numbered as C.C.Nos.1 & 2 of 2010 respectively.

3. It is the submission of the learned Addl. Government Pleader that inspite of mobilization of deposits which resulted in the purchase of the properties, during investigation, it is elicited that none of the properties stood in the name of the 1st respondent establishment, but the properties were in the names of the accused, which act was only resorted to. Further, in order to avoid attachment of the properties the 2nd respondent sold the petition mentioned properties to the 5th respondent, who, in turn, sold the said property to the 6th respondent. Thus, the appellant herein filed a complaint before the Trial Court under Section 8(1) of the Tamil Nadu Protection of Interests of Depositors (in



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Financial Establishments) Act 1997 alleging that the impugned sale transaction between the respondents was done with a mala fide intention and the said complaint was rejected. As against the said rejection order, the present appeal has been filed.

4. Per Contra, learned counsel appearing for the 5th respondent submits that admittedly he had purchased the petition mentioned property from the 2nd respondent and sold in favour of the 6th respondent for valuable sale consideration of Rs.5,00,000/- vide Document No.54 of 2003. He further submitted that the respondents 5 & 6 are bona fide purchasers of the property, which property was purchased even prior to the registration of First Information report as against the respondents 1 to 4 and the said fact has also been admitted by the P.W.1 who is the then Inspector of Police, Economic Offences, Wing II, during his cross examination. However, the appellant has not placed any evidence through P.W.1 to show that the said property was purchased from the proceeds of the crime, viz., from the deposits realized from the depositors. In the absence of any evidence, the aforesaid claim of the appellant is not sustainable. Accordingly, he prayed for dismissal of the appeal.

5. This Court heard the learned Additional Government Pleader



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appearing on behalf of the Appellant as well as the learned counsel appearing for the 5th respondent and perused the materials available on record. In view of the order, which this Court proposes to pass, notice to the newly impleaded respondents is dispensed with.

6. It is the case of the appellant that the sale transactions between the respondents with regard to the petition mentioned properties were done with a mala fide intention of avoiding attachment of the properties in view of the default in payment of interest and principal to the depositors.

7. It is not the case of the appellant that the 1st respondent is a partnership firm of which respondents 2, 3 and 4 are partners. In fact, it is not even averred by the appellant as to the capacity of respondents 3 and 4 in the 1st respondent. However, it is the case of respondents 3 and 4 that they have no association of any form with the 1st respondent. The whole genesis of the case of the appellant stems from the fact that there is no property in the name of the 1st respondent firm and all the properties are in the name of respondents 2 to 4 and, therefore, the only inference that could be drawn is that the amounts realised by way of deposits were utilised for the purpose of purchasing the properties in the name of the respondents.



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8. However, it is the specific case of the respondents 2 to 4 that the subject property was their ancestral property, which was partitioned by them way back on 4.3.1993 through a registered partition deed entered between the respondents and their parents. The said partition deed has also been marked as Ex.R-1 before the trial court in O.A. No.5/2012.

9. The very same properties were the subject matter of attachment in O.A. No.88/2010, which was attached and in the appeal in CMA Nos.2273 and 2301 of 2015, this Court had held that the properties were not the properties of the 1st respondent firm and that they were the individual properties of the respondents as could be ascertained from the partition deed and the sale had taken place much earlier in point of time.

10. In the above factual background, the trial court had rendered its finding on the basis of the deposition of P.W.1 who had categorically stated that the alleged sale transaction was done even prior to the registration of FIR. When such a deposition had been given by P.W.1, no other material, contra to the same has been placed by the appellant to substantiate their case that the properties were purchased from the proceeds of the deposit. In the absence of



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any contra evidence, the trial court has rightly rejected the complaint of the appellant. Therefore, this Court does not find any perversity in the findings rendered by the trial court and the Civil Miscellaneous Appeal deserves to be dismissed.

11. Accordingly, the Civil Miscellaneous Appeal is dismissed confirming the judgement dated 19.06.2015 passed by the trial court. There shall be no order as to costs.

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Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No

NHS
To

1. The Special Judge under TNPID Act 1997,
Chennai-104.

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



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CMP.Nos.23754, 23755 & 23756



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of 2023
in CMA.No.2082 of 2015

M.DHANDAPANI,J

These petitions are filed by the petitioner/appellant seeking to condone the delay of 2446 days in filing the petition to set aside the abatement caused due to the death of the sixth respondent, to set aside the abatement caused due to the death of the sixth respondent and to bring on record the legal heirs of the deceased sixth respondent and rank them as R7 to R9 in CMA.No.2082 of 2015.

2. Heard the learned counsel for the petitioner.

3. Being satisfied with the reasons stated in the accompanying affidavits, these petitions are ordered as prayed for

16.10.2023

2/2

Office to Note :
carry out necessary amendment
NHS