IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.01.2023

Pronounced on : 07.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.3237 of 2016 and
CMP.No.16414 of 2016

R.Jambunathan ... petitioner

Vs.

1.The Competent Authority &
District Revenue Officer,
Thiruvallur District
2.Sri Kaali Kambal and Company,
No.12A, TH Road, Ponneri,
Thiruvallur District 601 204
3.Sri Kaalikambal Finance & Investment Corporation,
No.81, TH Road, Ponneri,
Tiruvallur District 601 204
4.Om Sakthi Enterprises,
No.132 TH Road, Ponneri,
Thiruvallur District 601 204
5.S.K.Benefit Fund Ltd.,
Sri Kaali Kambak Complex,
No.164, TH Road, Ponneri,
Tiruvallur District
6.Vakati R.Narasimman
7.K.A.Elumalai
8.R.Sethu Madhavan
9.S.Elumalai
10.Arul
11.P.K.Udayakumar
12.Purushothaman
13.Rani

14.R.Baskar Reddy
15.Balasubramaniam
16.Dinagaran
17.Secretary,
Ponneri Co-operative Housing Society Ltd.,
No.43, Thayumaan Chetty Street,
Ponneri, Tiruvallur District ... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order passed in IA.No.132 of 2013 in OA.SR.No.395 of 2013 dated 12.08.2016 on the file of the Special Judge under Tamil Nadu Protection of Interest of Depositors (Financial Establishment Act), at Chennai 104 and thereby dismiss the petition.

For Petitioner : Mr.P.C.Harikumar
for M/s.P.C.Harikumar & Associates

For Respondents
For R1 : Mr.A.Edwin Prabakar,
Special Government Pleader(CS)
Assisted by
Mr.C.Sathish,
Government Advocate

For R2 to 5,
8 to 12,
14 to17 : Notice served

ORDER

This civil revision petition has been filed to set aside the fair and decretal order passed in IA.No.132 of 2013 in OA.SR.No.395 of 2013 dated

12.08.2016 on the file of the Special Judge under Tamil Nadu Protection of Interest of Depositors (Financial Establishment Act), at Chennai, thereby allowed the application to condone the delay in filing the application to make absolute in respect of GO(Ms).No.27 Home (Police XIX) Department dated 10.01.2013.

2. The petitioner is one of the accused on the file of the Economic Offences Wing-II, Chennai under the Tamilnadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (hereinafter called as 'the TNPID Act'). While pending investigation, the properties belonged to the accused persons were attached and passed Government Order in GO(Ms).No.27 Home (Police XIX) Department dated 10.01.2013. In order to make it absolute, the first respondent filed application along with condone delay application in IA.No.132 of 2013 to condone the delay of 250 days and the same was allowed. Aggrieved by the same, the present civil revision petition has been filed.

3. The learned counsel for the petitioner would submit that the first respondent failed to state any good reason to condone the delay of 250 days in filing the application to make the G.O. absolute. The condone delay applicataion was filed under Section 5 of the Limitation Act. It is not maintainable before the

Special Court constituted under the TNPID Act. It is being a special act, the Limitation Act is not applicable to the Special Court in view of the special provision of Section 29(2) of Limitation Act. According to Section 4(3) of TNPID Act, after interim attachment has been made, it is obligatory and duty of the first respondent to file an application to make the G.O. absolute within a period of 30 days. Nowhere in the Act, it empowered the Special Court under TNPID Act to condone the delay in filing the application under Sections 4(3) and 4(4) of the TNPID Act. In the absence of any specific provision under the Special Act which empowers the Special Court to condone the delay by invoking Section 5 of the Limitation Act, the Special Court ought not to have allowed the application to condone the delay. As per Section 4(3) of the TNPID Act, time limit has been prescribed to make the original application to convert the interim attachment into absolute. If the competent authority failed to approach the court for making the interim attachment into absolute within a period of 30 days, the interim attachment will no longer exists and it becomes lapsed. The first respondent also failed to state sufficient reason for the delay of 250 days. The first respondent simply stated administrative ground and it is highly objectionable in nature and against the very object of the TNPID Act.

3.1 He further submitted that even assuming that the Limitation Act would apply, the first respondent failed to explain each and every day's delay and administrative delay as a ground for condoning the delay cannot be construed as sufficient cause within the meaning of Section 5 of the Limitation Act. He further submitted that as per Section 14 of the TNPID Act which expressly exclude the application of other Acts, even though it is inconsistent Act. General doctrine that Special Act, prevailed over the general Act. Applying the said doctrine, the Special Court does not have any power to entertain any application under Section 5 of the Limitation Act. In support of his contention, he relied upon the following judgments:

(i) ***Mangu Ram Vs. Municipal Corporation of Delhi*** reported in ***(1976) 1 SCC 392***

(ii) ***United India Insurance Co. Ltd., Cuddalore Vs. Minor Ummar and Another*** reported in ***1996-2-LW 687***

(iii) ***Indian Oil Corporation Ltd., Madras Vs.Mrs.Sakuntala Ganapathy Rao, Proprietor, Modern Home Agencies*** reported in ***1998-3-LW 780***

(iv) ***Fair Growth Investment Limited Vs. Custodian*** reported in ***2004(11) SCC 472*** (v)***Commissioner of Customs & Central Excise Vs. Hongo India Private Limited*** reported in ***2009(5) SCC 791***

(vi)***Chhattisgarh State Electricity Board Vs. Central Electricity Regulation Commission and others*** reported in ***2010 (5) SCC 23***

(vii)***State, Rep. by Inspector of Police, Annamalai Nagar Police Station, Cuddalore Vs. SR @ S.Rajendran and 11 others*** reported in ***2010(3) MWN (Crl.) 220***

(viii)***Dr.Zubida Begum Vs. Indian Bank*** reported in ***2012(5) CTC 369***

(ix)***State of Haryana Vs. Hindustan Machine Tool Limited and others*** reported in ***CDJ 2014 PHC 475***

(x)***Nandan Steels and Power Limited Vs. State of Chhattisgarh and others*** reported in ***2022 SCC Online Chh 1428***

4. Per contra, the learned Special Government Pleader(CS) appearing for the first respondent filed counter and submitted that on receipt of GO(Ms).No.27 Home (Police XIX) Department dated 10.01.2013, action was taken to conduct enquiry with the investigation officer, Economic Offences Wing-II for collection of various documents and evidences related to the attached

properties and ownership particulars, genuineness of attachments and verify the defraud of the defaulting financial establishment, deposit money collected, etc. Therefore, there was a delay for processing the correspondences and as such the delay is neither wilful nor wanton. It is only on the administrative reasons and as such, attachment was made only in the interest of public. The Government has to protect the interest of the public depositors envisaged in the TNPID Act. He further submitted that as per Section 5 of the Limitation Act, it is an enabling provision to assist the litigants who failed to do an act within the prescribed time period as originally fixed under various enactments. After the expiry of the prescribed time period provided, it has to be shown sufficient cause for non filing of the application within the time period. Even though as per the provision under Section 4(3) of the TNPID Act, the competent authority shall apply within the period of 30 days to make the interim attachment into absolute, due to enquiry for collection of various documents and evidences, it could not be filed within a period of thirty days.

4.1 He further submitted that the prescribed period of 30 days is only directory in nature rather than mandatory, keeping in view that the TNPID Act is a social piece of legislation aimed at protecting the interest of the poor depositors. Therefore, provision under Section 5 of the Limitation Act can be made applicable to the application under Section 4(3) & (4) of the TNPID Act. Further, provision under Section 4 of the TNPID Act stipulating 30 days time does not specifically exclude the application of the Limitation Act or devise the consequence of not filing the application within the time limit stipulated therein. In the absence of such provision which does not disclose the consequence of not filing application within the time stipulated, Section 29 of the Limitation Act comes for rescue, which specifically mentions two circumstances under which the said provision could be utilized. Firstly, there must be a provision for period of limitation under any special law or local law in connection with the suit, appeal or application. Secondly, such prescription of limitation under the special law or local law should be different from the limitation period prescribed under the Limitation Act and thereby expressly excludes the provisions contained under Section 4 to 24 of the Limitation Act. In support of his contention, he relied upon the following judgments:

(i) ***N.Vanjimuthu Vs. The Competent Authority & Commissioner of Land Administration, DRO, Dindigul District and others*** reported in ***2016-1-LW 436***

(ii) ***Ashok Vs. The Competent Authority and District Revenue Officer, Coimbatore*** reported in ***2007-1-LW 499*** (iii)***Antony Vs. Competent Authority and Additional Commissioner (Cinema & Irrigation), Chennai*** in Crl.A.No.504 of 2005 of this Court

(iv)***K.Veerasamy Vs. The Secretary to Government, Home (Police-XIX) Department, Chennai*** reported in ***2012(1) CTC 138***

(v)***Dalchand Vs. Municipal Corporation, Bhopal and another*** reported in ***AIR 1983 SC 303***

5 Heard, Mr.P.C.Harikumar, the learned counsel for the petitioner and Mr.A.Edwin Prabakar, Special Government Pleader(CS) appearing for the first respondent.

6. The petitioner is one of the accused under the TNPID Act. In order to settling the amounts to the victims, the interim attachment was made in GO(Ms).No.27 Home (Police XIX) Department dated 10.01.2013 in respect of the properties belong to the accused persons. On receipt of the same, competent authority i.e. the first respondent herein has to conduct enquiry with the investigation officer for collection of various documents and evidences related to the attachment of the properties and ownership particulars, genuineness of attachments and verify the defraud of the defaulting financial establishment, deposit money collected, etc. Therefore the first respondent could not able to file

an application to make the Government Order into absolute within the time prescribed under Section 4(3) & (4) of the TNPID Act. There was a delay of 250 days in filing the application to make the GO into absolute. The court below allowed the application filed under Section 5 of the Limitation Act. Therefore the following points that arise for determination in this civil revision petition:

(i) Whether Section 5 of the Limitation Act can be invoked to condone the delay in filing the application under Section 4 of the TNPID Act?

(ii) Whether the delay has been properly explained by the first respondent in filing the application under Section 4 of the TNPID Act?

7. The learned counsel for the petitioner vehemently contended that though there is no express bar under Section 4(3) of TNPID Act, there is an implied bar to exclude the ambit of Section 5 of Limitation Act. Provision under Section 4(3) of the TNPID Act mandatorily employed the word 'shall' and as such the competent authority has to file an application within the time fixed therein. It is relevant to extract the provision under Section 4(3) of the TNPID Act hereunder:

4(3) Upon receipt of the orders of the Government under Section 3, the Competent authority shall apply within thirty *days to the Special Court constituted under this Act for making the ad interim order of attachment absolute and for a direction to sell the property so attached by public auction, and realise the sale proceeds.*

8. In the case on hand, GO(Ms).No.27 Home (Police XIX) Department was issued making ad interim order of attachment on 10.01.2013. As per Section 4(3) of the TNPID Act, application should have been made within thirty days. However, there was delay of 250 days in invoking provision under Section 4(3) of the TNPID Act by the first respondent. The purpose on scope of the provision which carries the word 'shall' will have to be decided in the light of object and intentment of the Special Act. There had been measurement growth of financial establishment in the State of Tamilnadu which has started functioning radically without any control of Reserve Bank of India with a view to usurp the hard earned money of the innocent victims. Therefore, the TNPID Act is a beneficial legislation to take care of the interest of such innocent depositors.

9. In this regard, the learned Special Government Pleader(CS) appearing for the first respondent relied upon the judgment of this Court in the case of ***Ashok Vs. The Competent Authority and District Revenue Officer, Coimbatore*** reported in ***2007-1-LW 499***, wherein it is held that the provisions of

Section 5 of the Limitation Act are applicable to any special or local law unless they are excluded in express and specific terms. Therefore to sum up, the word "shall" in all occasions does not mean a mandatory direction. Likewise, the word "may" does not imply a directory direction alone. It may mean a mandatory direction also. If an extended period of limitation is found in the Special Act, or by implication the provision of section 5 of the Limitation Act is excluded, the said provision cannot be applied to the Special Act. To arrive at a conclusion whether the provision under section 5 of the Limitation Act is applicable to the Special Act, the entire object and scheme of the Special Act will have to be looked into to find whether non-applicability of section 5 of the Limitation Act would cause great hardship and injustice to the party concerned. In this case, considering the beneficial special statute and the injustice that may be occasioned to the innocent depositors, who lost their hard earned money, the time frame prescribed under section 4(3) of the Act will have to be construed only as directory in nature and not mandatory. Therefore, it is held that section 5 of the Limitation Act would apply to the provision under section 4(3) of the TNPID Act.

10. The learned counsel for the petitioner contended that provision under Section 14 of the TNPID Act which expressly exclude the application of other Acts, even though it is inconsistent Act. General doctrine that Special Act, prevailed over the general Act. Therefore, the Special Court does not have any power to entertain any application under Section 5 of the Limitation Act. It is relevant to extract the provision under Section 14 of the TNPID Act.

> *14. Act to override other laws – Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.*

11. Provision under Section 29(2) of the Limitation Act, 1963 provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law. It emerges two conditions which must be satisfied for applicability of

the section which have been clearly exhibited by the Hon'ble Supreme Court of India in the case of ***Mukri Gopalan Vs. Chappilat Puthanpurayil Aboobacker*** reported in ***AIR 1995 SC 2272***: (i) There must be a provision for period of limitation under any special or legal law in connection with any suit, appeal or application; (ii) The said prescription of period of limitation under such special or local law should be different from the period prescribed by the Schedule to the Limitation Act. If the two requirements are satisfied, the consequence contemplated by Section 29(2) automatically follows. In the case on hand, for filing an application under Section 4(3) of the TNPID Act, the prescribed period of limitation is 30 days which is apparently different from the period of limitation of 3 years provided under Article 137 of Limitation Act for filing any other application for which no period of limitation is provided in the schedule. Therefore, the twin conditions are satisfied in the case on hand.

12. This Court, in the case of ***N.Vanjimuthu Vs. The Competent Authority & Commissioner of Land Administration, DRO, Dindigul District and others*** reported in ***2016-1-LW 436,*** had taken a view that the provisions of Sections 4 to 24 of the Limitation Act are applicable to Sections 4(3) and 4(4) of the TNPID Act. Whereas the learned counsel for the petitioner relied upon the

judgment in the case of ***Fair Growth Investment Limited Vs. Custodian*** reported in ***2004(11) SCC 472***, wherein it is held that Section 4(2) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 prescribing a time limit for filing objection is mandatory and not extendable by Special Court in any inherent jurisdiction of the Special Court. Further held that since power to condone the delay is already provided under Section 10(3) of the said Act, the legislature has consciously excluded the provisions of the Limitation Act. Whereas under the TNPID Act, there is no provision unlike Section 10(3) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. However, there is no provision for empowering the special court to condone the delay in the TNPID Act. When the statute is silent, the presumption is not drawn automatically about the exclusion of Section 29(2) or Section 5 of the Limitation Act. Therefore, Section 5 of the Limitation Act would be applicable for filing application under Section 4(3) of the TNPID Act.

13. The learned counsel for the petitioner further contended that the first respondent failed to state any sufficient reason and simply stated as 'administrative delay'. In this regard, he relied upon the judgment in the case of ***United India Insurance Co. Ltd., Cuddalore Vs. Minor Ummar and Another***

reported in ***1996-2-LW 687***, wherein this Court, relying upon a judgment of the Hon'ble Supreme Court of India, held that mere words 'administrative delay' cannot be said to be sufficient cause. Further held that the expression "sufficient cause" should, therefore, be considered with pragmatism injustice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which arc peculiar to and characteristic of the functioning of the Government conditions would be cognizant to and requires adoption of pragmatic approach in justice oriented process. The Court should decide the matters on merit unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State viz-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the Courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal, the needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is in impersonal machinery working through its officers or servants.

14. He also relied upon the judgment in the case of ***Indian Oil Corporation Ltd., Madras Vs.Mrs.Sakuntala Ganapathy Rao, Proprietor, Modern Home Agencies*** reported in ***1998-3-LW 780,*** in which it is held that in the absence of proper explanation with details regarding delay, mere stating 'administrative delay' does not constitute sufficient cause and such an explanation is liable to be rejected. Whereas on perusal of the affidavit filed in support of the condone delay application, revealed that on receipt of GO(Ms).No.27 Home (Police XIX) Department dated 10.01.2013, action was taken to conduct enquiry with the investigation officer, Economic Offences Wing-II for collection of various documents and evidences related to the attachment of the properties and ownership particulars, genuineness of attachments and verify the defraud of the defaulting financial establishment, deposit money collected, etc. Therefore, due to administrative reasons and processing of the said correspondence, there was delay of 250 days. Hence the first respondent explained the delay with sufficient

cause and it cannot be said as "mere administrative reasons". Therefore, the above judgments are not helpful to the case on hand.

15. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India in the case of ***Dalchand Vs. Municipal Corporation, Bhopal and another*** reported in ***AIR 1983 SC 303,*** wherein it is held that there are no ready tests or invariable formulae to determine whether a provision is mandatory or directory. The broad purpose of the statute is important. The object of the particular provision must be considered. The link between the two is most important. The weighing of the consequence of holding a provision to be mandatory or directory is vital and, more often that not, determinative of the very question whether the provision is mandatory or directory. Where the design of the statute is the avoidance or prevention of public mischief, but the enforcement of a particular provision literally to its letter will tend to defeat that design, the provision must be held to be directory, so that proof of prejudice in addition to non-compliance of the provision is necessary to invalidate the act complained of.

16. Thus, the TNPID Act is a beneficial legislation to take care of the interest of such innocent depositors. Originally, there was no provision in the said

Act for attaching the properties of the persons, who borrowed money from the financial institutions and sale of the attached property in public auction and for the equitable distribution of the sale proceeds to the depositors. In order to overcome the above short comings, Tamil Nadu Act 30/2003 was introduced to amend the TNPID Act. Under section 3 of the Act, where the Government have reason to believe that any financial establishment is going in a calculated manner with an intention to defraud the depositors and they are satisfied that such financial establishment is unlikely to return the deposits or to make payment of interest, the Government has been given the discretion, with a view to protect the interest of depositors of such financial establishments, to pass an ad interim order of attachment of the money and other property alleged to have been procured either in the name of the financial establishment or in the name of any other person from and out of the deposits collected by the financial establishment. Thereafter, the competent authority appointed under the Act has been directed to make it absolute within a period of thirty days. It would show that the Act is a beneficial legislation. If assigned any imperative meaning to the provision under Section 4(3) of the TNPID Act and prevented the competent authority to approach the special court with satisfactory reasons for the delay, then the purpose of the Act would be the casualty. Therefore, the judgments relied upon by the learned counsel for the petitioner are not helpful to the case on hand and the court below rightly applied the provision under Section 5 of the Limitation Act. As such, this Court finds no infirmity or illegality in the order passed by the court below.

17. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

07.02.2023

Speaking/non-speaking
Index : Yes/No
Internet : Yes
lok

G.K.ILANTHIRAIYAN, J.

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To

1.The Special Judge under Tamil Nadu Protection
of Interest of Depositors (Financial Establishment Act),
at Chennai 104
2.The Competent Authority &
District Revenue Officer,
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3. Secretary,
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