IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

CMA.No.1146 of 2022
and
CMP.No.8346 of 2022

S.Babu

....Appellant

vs

1.State Rep. by Inspector of Police
Economic Offences Wing-II,
Coimbatore.

2.Kubera Auto Finance,
No.7/79, Elakkumanayakanpatti Main Road,
Kangeyam Taluk,
Tiruppur District.

3.S.T.Saminathan
4.S.P.Muthuvel
5.K.Manivel
6.S.P.Rajendrakumar
7.S.Loganayagi
8.M.Selvi
(These respondents 2 to 8 were already set exparte before the Trial Court)

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 11 of TNPID Act, 1997, to call for the records pertaining to the order and decretal order dated 01.04.2022 made in O.A. No.4 of 2019 on the file of the Special Judge, Special Court under TNPID Act, Coimbatore, in ordering attachment and sale of appellant's property and set aside the same as illegal, arbitrary contrary of law and evidence and settled principles of law.

For appellant : Mr.R.Veeramani

For Respondent-1: Mr.C.Jayaprakash
Government Advocate.

JUDGMENT

The 8th respondent in O.A.No.4 of 2019 has filed the appeal challenging the order of attachment and sale of the properties scheduled to the O.A.

2. The appellant purchased the schedule mentioned properties from the 5th resopndent vide sale Deed dated 15.09.2014 registered in Document No.4012 of 2014. The 5th resopndent was one of the partners in the 2nd respondent financial establishment. The 2nd respondent, financial establishment on promise of fanciful interest rates allured depositors to deposit money with it. One Muthusamy who had deposited amounts to the tune of Rs.75,000/- lodged a complaint on

10.02.2015 against the 2nd respondent and the respondents 3 to 8 for defrauding him in not returning the deposit amount and also for not paying interest on the deposit from August 2014. A criminal case in Cr.No.1 of 2015 was initiated under Sections 406 and 420 of IPC and Section 5 of TNPID Act, 1997. The complaint was investigated and the case was charged on 29.10.2015, which was taken on file as C.C.No.1 of 2016 before the Special Court under TNPID Act, Coimbatore.

3. During the investigation the 1st respondent found that the 5th respondent had sold the properties purchased by him under Document No's.1045 and 1233 of 2009 to the appellant with malafide intention. The 1st respondent therefore filed O.A.No.4 of 2016 before the Special Court under TNPID Act, Coimbatore under Section 8 and 7(6) of the TNPID Act for attachment and sale of the properties purchased by the appellant.

4. Before the Special Court, the 1st respondent marked Ex.P.1 to Ex.P.10 and examined the Inspector of Police, EOW-II, Coimbatore as P.W.1 and respondents 2 to 8 remained ex-parte. The 8th respondent

examined himself as R.W.1 and marked Ex.R.1, computerized patta.

5. The learned Special Judge on an appraisal of the entire evidence on record, found that the sale in favour of the appellant by the 5th respondent was not in good faith, that the respondents 3 to 8 who were in management of the financial establishment were bound to settle the dues of the depositors and that if the properties of appellant were not attached, the appellant would dispose of the properties, which would be against the interest of the depositors. Therefore the learned Special Judge held that in the interest of justice, the schedule properties were to be attached and sold.

6. Aggrieved by the order of attachment and sale, the appellant has filed the above appeal.

7. The learned counsel for the appellant submitted that the Special Court erred in directing the attachment and sale of the properties, over looking that the properties were purchased by the appellant long before the registration of the crime in Cr.No.1 of 2015 dated 10.02.2015.

According to the counsel, as he had purchased the schedule properties even before the complaint was registered, the sale could not be considered as malafide. The counsel further submitted that the Government had not attached the subject property at any time after the registration of the FIR and so he had no opportunity to know about the fraud committed by the 5th respondent. The learned counsel lastly submitted that, the total dues of the depositors (principal) was Rs.12,66,334/- and the attachment order in O.A.No.4 of 2019 was passed to satisfy the said sum. The learned counsel further submitted that the total sum payable to the depositors at 6% interest as on 30.04.2023 would be Rs.19,05,330/-, that a sum of Rs.10,33,334/- was collected in criminal appeal for suspension of sentence from the accused and further sum of Rs.2,33,000/- was deposited by the appellant vide the undertaking given by the appellant in C.M.P.No.8346 of 2022 and hence the amount of Rs.12,66,334/- for which the attachment order was passed was available before the Court for disbursement to the depositors. The learned counsel further submitted that in order to buy peace, he was prepared to deposit an amount of Rs.6,38,996/-, which would cover interest at 6% for a period of 8 years and 5 months (i.e) from 03.11.2014 (date of FIR) to 30.04.2023. The counsel therefore submitted that the appeal may be allowed and the order of attachment and sale may be set aside.

8. The learned Government Advocate on the other hand referring to the status report, admitted the receipt of Rs.12,66,334/- from the accused as well as from the appellant. The learned Government Advocate further submitted that 5 out of 20 depositors, who appeared before the investigating officer represented that the repayment of the aforesaid amount should be made along with 18% interest and the petitions given by the said depositors were also filed. The learned Government Advocate therefore submitted that the interest component at 18% to the 20 depositors was Rs.22,78,800/- and therefore the total amount including the principal would be Rs.35,44,800/- and if Rs.12,66,334/- is credited, the balance payable would be Rs.22,78,466/-. The learned Government Advocate submitted that the depositors had the right to get interest on the deposits. Hence, the appeal had no merits and same deserved to be dismissed.

9. I have heard both the learned counsel and have perused the entire materials placed on record.

10. Admittedly the respondents had not identified any other property of 2nd respondent, even the respondents 3 to 8 did not disclose any other properties belonging to them or to the 2nd respondent. The 5th respondent transferred the property purchased by him to the appellant vide sale deed dated 15.09.2014 for a valuable consideration of Rs.24,00,000/-. The said sale deed was executed much prior to the criminal proceedings initiated against the respondents 2 to 8. The sale was executed on 15.09.2014 and the complaint was lodged by one of the depositors M.Muthusamy on 10.02.2015, which was almost 5 months after the sale was executed in favour of the appellant. It is no doubt true that under Section 8 of the TNPID Act, the property transferred with malafide intention could be attached. The learned Special Judge has found that the transfer was malafide, for the reason that the 5th respondent had not utilised the consideration for settling the depositors dues.

11. As already discussed, the appellant purchased the property even before the complaint was lodged by one of the aggrieved depositors and no other property was identified for attachment by the 1st respondent. When the appellant purchased the property from the 5th respondent no criminal proceedings were pending against the 5th respondent, even the complaint against the respondents 2 to 8 was filed long after the sale in favour of the appellant and there was no interim attachment order passed by the 1st respondent. Therefore the petitioner had no opportunity to know the fraud committed by the 5th respondent. The amount of Rs.12,66,000/- which is the amount payable to the depositor's has already been recovered from the respondents 2 to 8 and the appellant and the same has also been admitted by the 1st respondent in its status report. The said amount of Rs.12,66,000/- is the principal amount due to the 20 depositors. It is further relevant to note that even according to the learned Judge, the amount to be settled is Rs.12,66,000/- to 20 depositors. Therefore as the said amount has now been realised, the order of attachment and sale cannot be sustained.

12. The learned counsel for the appellant submits that to buy peace, he is prepared to deposit a sum of Rs.6,38,996/- towards interest at 6% and hence prayed that the impugned order passed by the learned Special Judge may be set aside.

13. It is pertinent to note here that, even though in the status report, it is stated that the total available amount in the account of TNPID Court and CA/DRO, Coimbatore is Rs.12,66,334/-, the same was not disbursed to the depositors as on 20.04.2023. It was submitted on the basis of status report that 5 depositors had appeared before the investigating officer, and represented for repayment of their deposit amount with 18% interest. Be that as it may, it is seen that even though the principal amount was available with the respondent, till date not a single pie was settled to the depositors. Under the circumstances the submission of the appellant is fair, just and reasonable. Considering that the depositors have not seen the colour of the coin till date, it will also be in their interest to permit the appellant to deposit the interest at 6% so that the depositors can be paid their dues immediately. Just because the appellant has come forward to pay the interest at 6% on the principal

amount, in my view it would not be fair to mulct the exhorbitant interest at 18% on the appellant. As far as the balance interest of 12% is concerned, the 1st respondent is at liberty to collect the excess interest, if any, demanded by the depositors from the respondents 2 to 8.

14. Therefore the appellant is directed to deposit the amount of Rs.6,38,996/- within a period of six (6) weeks from the date of receipt of a copy of this Judgment and thereafter the 1st respondent shall take immediate steps to settle the dues to the depositors along with 6% interest.

In the light of the above discussions, the order passed by the learned Special Judge in O.A.No.4 of 2019 on the file of Special Court under TNPID Act, Coimbatore is set aside. Accordingly, this Civil Miscellaneous Appeal is allowed. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

13.06.2023

dsn
Index:Yes/No
Speaking Order:Yes/No
Neutral Citation:Yes/No

To
The learned Special Judge,
Special Court under TNPID Act,
Coimbatore.

Copy to
The Section Officer,
V.R.Section,
High Court, Madras.

N.MALA.,J.

dsn

C.M.A.No.1146 of 2022

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