



C.M.A. Nos.2709-2865/2012

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
09.11.2023	27.11.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A. NOS.2709 & 2865 OF 2014

AND

M.P. NOS. 1 & 2 OF 2014 (2 NOS.)

1. M/s. Future Forex India Pvt. Ltd.
Perambalur, No.335, Muthu Nagar West
2nd Cross Road, Perambalur
Perambalur District, rep. By A-3 & 4

2. M/s.Future India City Developers
And Builders Pvt. Ltd.
No.335, Muthu Nagar West
2nd Cross Road, Perambalur
Perambalur District, rep. By A-3 & 4

3. K.Sivakumar

4. K.Valeeswaran
appeals

.. Appellants in both

- Vs -

1. The Competent Authority &
District Revenue Officer
Collector's Office
Perambalur 621 212.

.. R-1 in both appeals



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2. Tmt. Hemavathy
3. S.Kandasamy
4. Tmt. Valambika .. RR-2 to 4 in CMA
2709/14
1. S.Kandasamy
2. Karthickeyan .. RR-2 & 3 in CMA
2865/14

C.M.A. No.2709 of 2014 filed under Section 11 of Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, against the decree and judgment dated 14.08.2014 made in O.A. No.26/2012 on the file of the Special Court under Tamil Nadu Protection of Interests of Depositors Act, 1997, at Chennai.

C.M.A. No.2865 of 2014 filed under Section 11 of Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, against the decree and judgment dated 14.08.2014 made in O.A. No.4/2012 on the file of the Special Court under Tamil Nadu Protection of Interests of Depositors Act, 1997, at Chennai.

For Appellants : Mr. M.Selvam

For Respondents : Mr. P.Harish, GA , for R-1 in
Both appeals
RR-2 to 4 – Not Ready in notice



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JUDGMENT

Assailing the judgment and decree of the Special Court in and by which the Government Order in G.O. Ms. No.805, Home (Police – 19) Department, dated 17.10.2012 issued to seize in entirety and sell the properties belonging to the appellants, has been held to be justified is put in issue by filing the present appeals.

2. The short facts leading to the filing of the present appeals are as under:-

The 3rd appellant is the Director of the 1st and 2nd appellant. It is the allegation of the 1st respondent that under the guise of deposits yielding higher interests, the appellants have mobilised more than Rs.3.88 Crores from various depositors and though they paid interest for two to three months, however, thereafter, failed to pay interest and on demand, they failed to pay the principal even and the 1st and 2nd appellant companies were closed thereafter, which led the depositors to file a complaint before the law enforcing agency under the Tamil Nadu Protection of Interests of Depositors Act (for short 'the Act') leading to the registration of cases on the complaints made by the respective depositors. Based on the complaints, the aforesaid Government Order came to be issued for



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the seizure and sale of the properties of the appellants. Therefore, the 1st respondent filed O.A. Nos.4 and 26 of 2012 seeking permission to sell the properties, which were seized pursuant to the aforesaid Government Order.

3. The Special Court, upon notice to the respondents therein/appellants herein and inspite of grant of opportunity, the respondents having not appeared before the Special Court, set them ex parte and heard the matter and after taking into consideration the counter of the respondents and in the absence of any materials to prove the stand of the respondents, allowed the original application filed by the 1st respondent herein aggrieved by which the present appeals have been filed.

4. Learned counsel appearing for the appellants submitted that the trial court has not appreciated the fact that respondents 3 to 7 therein are in no way connected with the affairs of the appellants, but they have been roped in only for the purpose of seizing the properties standing in their name. It is the further submission of the learned counsel that no opportunity was granted to the



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appellants to establish their case, which is a clear violation of principles of natural justice and on that ground the impugned order deserves to be set aside.

5. It is the further submission of the learned counsel that there is no iota of evidence to show that the appellants have lured the persons to invest their money by offering them higher interest, as the appellants trade in stocks and shares, which attract only dividend and not interest and, therefore, the persons, who had invested in stocks and shares through the appellants cannot be brought within the ambit of depositors to attract the provisions of the Act. It is the further submission of the learned counsel that there is no nexus between the 1st and 2nd appellant companies as they are distinct entities and both the companies have been roped in under the Act only for the purpose of seizing the properties. It is the further submission of the learned counsel that in fact, the 2nd appellant is a real estate company and is in no way associated with the trading activities of the 1st appellant and, therefore, the 2nd appellant would not fall within the ambit of the Act.



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6. It is the further submission of the learned counsel that the dealing of the appellants is with mutual fund in stock market, which is subject to risk, which is known to the investor. It is the further submission of the learned counsel that the jewels, which are shown in the schedule do not belong to the appellant and, therefore, the said properties are not liable for seizure and subsequent sale. Further, the private property of the individuals are being sought to be attached for which there is no reason assigned by the 1st respondent and further the properties, which are sought to be seized and sold are not purchased from out of the funds, which is alleged to have been received as deposit, which fact has not been properly appreciated by the trial court and, therefore, the orders impugned herein require interference at the hands of this Court.

7. Per contra, learned Government Advocate appearing for the 1st respondent submitted that the court below had taken into consideration all the materials before passing the impugned order. Further, the court below had also taken into consideration the conduct of the appellants in remaining ex parte and in the absence of the appellants producing any documentary evidence to show that the properties, which have been seized upon issuance of the Government



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Order were not purchased out of the proceeds of the deposits received from the depositors, the stand of the appellants that the said properties cannot be seized and sold is wholly incorrect. Therefore, the said orders passed by the court below is perfectly in order and does not require any interference.

8. This Court paid its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

9. The whole gist of the case of the appellant revolves around the fact that the properties, which are the issue in the present Government Order, which has been passed to seize the said properties and the subsequent order of the court below for selling the said properties are not the proceeds on account of the alleged deposits claimed to have been made by the depositors and that the said properties were purchased from out of the own funds of the appellants and, therefore, the application of the Act is wholly erroneous.



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10. Though the said submissions, on the face of it looks attractive, however, the same does not merit acceptance for the simple reason that the appellants have not chosen to appear before the trial court during the hearing of the case and place materials evidencing the purchase of properties from their own funds. Mere filing of counter statement without any substantive documents to substantiate the same statements would have no value for being considered as materials, which would absolve the appellants from the rigours of the Act. The conduct of the appellants in not appearing before the court below, and the court below setting them as ex parte, the present attempt on the part of the appellants is nothing but an attempt to stall the sale of the properties to enable the law enforcing agencies to distribute the proceeds amongst the distraught depositors, who have been duped under the guise of higher interest.

11. Though it is the claim of the appellants that the 2nd appellant is a real estate concern and it is in no way connected with the trading activities of the 1st appellant, but the fact remains, as stated above, that there is no material to show that the proceeds from the 1st appellant was not used in enriching the business activities of the 2nd appellant. Without the appellants establishing the



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factum before the trial court, the appellants are estopped from canvassing the said plea before this Court.

12. Likewise, the contention of the appellants that the jewels are not that of the appellants is also not acceptable for the reason that no material evidencing the purchase prior in point of time to the collection of deposits has been filed by the appellants. In the absence of the said material, the mere averment that the jewels do not belong to the appellants is wholly unacceptable.

13. Further, the trial in the criminal case would not in any manner derail the sale ordered by the trial court in the present case, as the criminal case is for the purposes of penal consequences, however, the present case is to offset the loss suffered by the depositors. Therefore, the trial court, based on the materials before it had come to the right conclusion, which does not require any interference at the hands of this Court.



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14. For the reasons aforesaid, both the appeals fail and, accordingly, the same are dismissed. Consequently connected miscellaneous petitions are also dismissed. There shall be no order as to costs.

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Index : Yes / No

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To

The Special Court for
TNPID Act, Chennai.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY JUDGMENT IN
C.M.A. NOS. 2709 & 2865 OF 2014**

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