



CMA(MD)No.463 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE N. MALA

CMA(MD).No. 463 of 2022 and
CMP(MD).No.4104 of 2022

Manikandan

Appellant

VS.

1.P. Ravindran Nair
2.The State rep. By
the Competent Authority,
The District Revenue officer,
Kanyakumari District at Nagercoil.

3.Thankachi Banker,
LIC.No.20-09/91,
rep. By 3rd and 4th respondents.

3.M.Sanalkumraran Thambi

4.Renukumari
5.Babu
7.D.Rajan
8. Rajaram
9. The Deputy Superintendent of Police,
Economic Offence Wing,
Nagercoil

Respondents

PRAYER:- This Civil Miscellaneous Appeal is filed under Section 43



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Rule 1 of Civil Procedure Code r/w. Section 11 of TANPID Act, against the order passed in I.A.No.60 of 2021 in O.A.No. 14 of 2019, dated 29.03.2022, passed by the Special Court under the Tamil Nadu Protection of Interest of Depositors (in Financial Establishment) Act, 1997, Madurai.

For Appellant : Mr. A. Balakrishnan

For respondents 2 and 9 : Mr. D.Gandhiraj

For respondents

1 and 3 to 8 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed challenging the order, dated 29.03.2022 made in I.A.No.60 of 2021 in O.A.No. 14 of 2019 passed by the Special Court under the Tamil Nadu Protection of Interest of Depositors (in Financial Establishment) Act, 1997, Madurai.

2. The petitioner / appellant is the 5th respondent in O.A.No. 14 of 2019. The said O.A was filed by the first respondent to direct the DRO to attach the property situated in R.S.Nos.263 /12 and 263 / 12A of Ezhudesam Village to the extent of 3,300 Cents and sell the property and



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distribute the money deposited by the 1st respondent / Ravindran Nair and others in Thankachi bankers to sum of Rs.25,00,000/- along with interest of Rs.19,16,658/- totally Rs.44,16,658/- under Section 8 of TNPID Act r/w. Sec 151 CPC. According to the petitioner, he was originally residing in his family house at Padagasalai Vayakallor, Poonthurai Post, Kanyakumari District as the family house which was owned by the petitioner's father was sold by his father to the third parties in the year 2015 itself, he had to change his residence. Therefore, the petitioner purchased the property in Kalingarajapuram and constructed a house in the year of 2015 and since then was residing in Kalingarajapuram, while so, first respondent gave the address of the petitioner in O.A.No.14 of 2019 as Padagasalai, Poonthurai Post, Kanyakumari District in which he was not residing since 2015. The petitioner's further case was after the construction of the new house in Kalingarajapuram, on account of his business he shifted to Saudi Arabia with his entire family in 2017. Whereas the family returned to India in the year 2018 and lived in a rental house in Nagercoil, the petitioner wound up his business in Saudi Arabia and joined his family during June 2020. Meanwhile, notices were sent to him in O.A.No.14 of 2019 to the address of the family house and also paper publication was taken. As the petitioner



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had shifted his residence and he was abroad during the relevant period the notice sent to him in the OA proceedings was not received by him and hence, he was not able to attend the case in O.A.No.14 of 2019. The petitioner was therefore set ex parte by the Court vide order, dated 27.02.2020. Thereafter, ex parte order was passed attaching the property which was already sold by the petitioner to the respondents 7 and 8. On coming to know of the ex parte order, the petitioner took steps to set aside the said order in I.A.No.60 of 2021. The Court below dismissed the I.A. The above said appeal is filed challenging the dismissal order dated, 29.03.2022 passed in I.A.No.60 of 2021.

3. The main contention of the learned counsel for the petitioner is that the petitioner was sent summons to his family house which was sold by his father even during his life time and hence, no summons were served or received by him in the O.A.No.14 of 2019. As far as the paper publication is concerned the petitioner's case is that the paper publication was effected in local daily and as the petitioner was in Saudi Arabia at the relevant point of time, he had no knowledge of the same.



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4. The learned counsel for the petitioner further submitted that the very same Court had also passed ex parte decree against the respondents 7 and 8 in O.A.No.14 of 2019 and subsequently, in I.A.No.61 of 2021 filed by them to set aside the ex parte decree, the learned Special Judge of the Special Court under the Tamil Nadu Protection of Interest of Depositors Financial Establishment) Act, 1997 allowed the I.A by order dated 29.03.2022 by setting aside the ex parte order. The learned counsel therefore submitted that in all fairness the petitioner should also be given an opportunity to contest the case along with respondents 7 and 8. The counsel prayed that as the suit was in trial stage and as the written statement was already filed by him, he should be permitted to join in the trial. The counsel stated that the petitioner would would fully co-operate in the trial.

5. The 1st respondent appears as a party in person. The respondent did not appear before the Court today. The learned Special Government Pleader appearing for the 2nd respondent submitted that he had no objection to the petitioner being given an opportunity to contest the case on merits as the suit is in trial stage. I have heard the learned



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counsels and perused the materials placed before me.

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6. The impugned order of the learned Special Judge in my view is very cryptic. The learned Judge on assumptions and presumptions dismissed the I.A by holding that the petitioner knew about the proceedings in O.S.No.117 of 2020 and so he would have known about the present proceeding also. Even the reasoning of the learned Judge that the petitioner ought to have communicated the change of his address to the postal authority and that he should have contacted his relatives regarding the notice sent to him, in my view, are untenable. The learned Judge in the absence of any factual finding as regards the service of the summons and the wilful evasion of the same ought not to have rejected the Interlocutory application.

7. The learned counsel for the petitioner states that same Court but, some other Presiding Officer, allowed the application of respondents 7 and 8 in I.A.No.61 of 2020 and set aside the ex parte order. According to the learned counsel the respondents 7 and 8 are his vendees and as they were given an opportunity to contest on merits the petitioner



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may also be given an opportunity. The learned counsel further submits that the OA is in trial stage and that the written statement was already filed by the petitioner. In the light of the said submissions, I am of the view that the petitioner should be given an opportunity to contest the case on merits. The lower Court is therefore directed to permit the petitioner to join trial along with respondents 7 and 8. It is made clear that the petitioner shall not delay the proceedings and derail the trial.

8. I therefore, set aside the impugned order, dated 29.03.2022 passed in I.A.No.60 of 2021 in O.A.No. 14 of 2019, dated 29.03.2022 on the file of the Special Court under the Tamil Nadu Protection of Interest of Depositors (in Financial Establishment) Act, 1997, Madurai.

8. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

27.02.2023

Index : Yes/No
Internet : Yes/No
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To

The Special Court under the Tamil Nadu Protection of Interest of
Depositors (in Financial Establishment) Act, 1997, Madurai.



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N. MALA, J.,

trp

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