BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11/12/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

WP(MD)No.25252 of 2023
and
WMP(MD)Nos.21441 and 21443 of 2023

The Area Manager,
Muthoot Fincorp Ltd.,
No.181, First Floor,
Mahesh Complex,
By Pass Road,
Madurai District. : Petitioner

Vs.

1.The Principal Secretary to Government,
Secretariat,
Chennai.

2.The District Revenue Officer/Competent Authority,
Madurai District, Madurai.

3.The Deputy Superintendent of Police,
Economic Offence Wing-II,
Madurai. : Respondents

PRAYER:-Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Declaration declaring that G.O.Ms.No.984, dated 24/12/2012 and any other order passed pursuant to the above captioned G.O under section 4(3) and 4(4) of Tamilnadu Protection of Interest of Depositors Act (for brevity hereafter called as TNPID Act) and the communication made by the competent Authority in Na.Ka.Na.D3/23248/2010, dated 14/06/2023 and subsequent order of attachment in O.A No.05/2017 in C.C No.25/2013 on the file of the Special Court under TANPID Cases, Madurai under sections 4 and 5 of TNPID Act will not bind on the petitioner company in view of the provision contemplated in sections 172, 173, 174, 176 and 178A of the Indian Contract Act and by invoking the doctrine of repugnancy the petitioner company is entitled to pass and retain the jewels pledged by the Pawnor namely Mr.Murali Ganesh until the company receives back the entire arrears of loan accrued in the pawnor's loan account and to pass such further or other orders.

For Petitioner : Mr.S.Ramesh

For Respondents : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)

O R D E R

This writ petition has been filed seeking for declaration that G.O.Ms.No.984, dated 24/12/2012 and any other order passed pursuant to the above captioned G.O under sections 4(3) and 4(4) of TNPID Act and the communication made by the competent authority in Na.Ka.Na.D3/23248/2010, dated 14/06/2023 and subsequent order of attachment in O.A No.05/2017 in C.C No.25/2013 on the file of the Special Court under TNPID Act Cases, Madurai under sections 4 and 5 of TNPID Act will not bind the petitioner company in view of the provision contemplated in sections 172, 173, 174, 176 and 178A of the Indian Contract Act and by invoking the doctrine of repugnancy, the petitioner company is entitled to pass and retain the jewels pledged by the Pawnor namely Mr.Murali Ganesh until the company receives back the entire arrears of loan accrued in the pawnor's loan account.

2.**Facts in brief**:-

The petitioner company is a Non-Banking Financial Institution *bona-fidely* advanced loan to one Murali Ganesh on pledging his 1137.5 grams of gold with them. Subsequently Murali Ganesh was charged for committing the offence under TNPID Act. In response to that offence, the first respondent issued Government Order and subsequent order of absolute attachment of the gold ornaments pledged with the petitioner company. On the strength of the aforesaid G.O, the respondents 2 and 3 have insisted upon the petitioner company to return the jewels pledged by the accused Marimuthu, by series of communications, since 2012. The respondents did not consider the immunity provided to the petitioner company under section-178A of Indian Contract Act. The respondents, without considering the fact that the petitioner company as Pawnee had *bona-fidely* acted upon the provisions contemplated in sections 172, 173 and 176 of Indian Contract Act, issued notice demanding return of pledged jewels. So, with these, the writ petition is filed for the relief stated above.

3.Heard both sides.

5.G.O.Ms.No.984, dated 24/12/2012 reads that scheduled properties mentioned in the GO were attached by virtue of the power conferred upon the Government under TNPID Act.

6.The recommendation made by the Deputy Superintendent of Police (Economic Offences Wing-II), Madurai reads that during the course of the investigation, the first accused was arrested and gave confession statement voluntarily. In pursuance of the above said disclosure statement, it was found that the jewels worth about 1500 grams were pledged with the petitioner finance company.

7.Now this writ petition is filed seeking an order to set aside the attachment order.

8.The learned counsel appearing for the petitioner would rely upon section 172 of the Indian Contract Act. According to them, the petitioner company is a *bona- fide* pledgee, without noticing as to whether it is a profit of crime or not. As pledgee, they are entitled to retain the property till the money is paid by the pledger. According to the them, the right of the petitioner company is protected by the provisions of the Indian Contract Act. So, the articles pledged with the petitioner company is not liable for any attachment.

9.So the question, which arises for consideration is whether such a plea is available to the petitioner company.

10.In normal circumstances, the contractual obligation between the pledger or pledgee or Pawnor or Pawnee will be covered under the relevant provisions of the law. But here, it is seen that when it is either profit of crime or connected with the commission of the criminal offence, naturally, the petitioner must yield to the criminal investigation process to be undertaken to ascertain the ownership of the property.

11.Here, as stated above, in pursuance of the disclosure statement of A1, attachment order has been passed, in pursuance of the recommendation made by the Investigating Officer.

12.*Prima facie* materials have been collected to show that these properties are connected with the commission of the criminal offence or profit of crime. Discharging the ownership of the same, the Government is still well within its power to attach the property. The petitioner is not remediless. In case of proof before the Special Court that these properties are not liable for any attachment, they can maintain a petition.

13.Detailed provisions are set out to safeguard the interest of the persons like the petitioner.

14.Sections 7 and 8 of the TNPID Act reads as follows:-

> "7.***Powers of Special Court regarding attachment, sale, realisation and distribution.***-*(1) Upon receipt of an application under section 4, the Special Court shall issue to the Financial Establishment or to any other person whose property is attached by the Government under section 3, a notice accompanied by the application and affidavits and of the evidence, if any, recorded, calling upon him to show cause on a date to be specified in the notice why the order of attachment should not be made absolute and property so attached be sold in public auction.*

(2)The Special Court shall also issue such notice, to all other, persons represented to it as having or being likely to claim, any interest or title in the property of the Financial Establishment or the person to whom the notices is issued calling upon such person to appear on the same date as that specified in the notice and make objection if he so desires to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.

(3)Any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the Special Court at any time before an order is passed under sub-section (4) or subjection (6).

(4)If no cause is shown and no objections are made on or before the specified date, the Special Court shall forthwith pass an order making the ad-interim order of attachment absolute and direct the Competent authority to sell the property so attached by public auction and realise the sale proceeds.

(5)If cause is shown or any objection is made as aforesaid the Special Court shall proceed to investigate the same, and in so doing, as regards the examinations of the parties and in all other respects, the Special Court shall, subject to the provisions of this Act, follow the procedure and exercise all the powers of a Court in hearing a suit under the Code of Civil Procedure, 1908 and any person making an objection shall be required to adduce evidence to show that at the date of the attachment he had some interest in the property attached.

(6)After investigation under sub-section (5), the Special Court shall pass an order, within a period of one hundred and eighty days from the date of receipt of an application under sub-section 3 of Section 4, either making the ad-interim order of attachment absolute or varying it by releasing a portion of the property from attachment or cancelling the ad-interim order of attachment and then direct the Competent Authority to sell the property so attached by public auction and realise the sale proceeds:

Provided that the Special Court shall not release from attachment any interest which it is satisfied that the

Financial Establishment or the person referred to in sub-section (1) has in the property unless it is also satisfied that there will remain under attachment an amount of property of value not less than the value that is required for re-payment to the depositors of such Financial Establishment.

*(7) *** Omitted.*

(8)The Special Court shall on an application by the Competent authority, pass such order or issue such direction as may be necessary for the equitable distribution among the depositors of the money attached or realised out of the sale.

Provided that the Special Court shall not release from attachment any interest which it is satisfied that the Financial Establishment or the person referred to in sub-section (1) has in the property unless it is also satisfied that there will remain under attachment an amount or property of value not less than the value that is required for re-payment to the depositors of such Financial Establishment.

***8.Attachment of property of mala fide transferees.**- (1)Where the assets available for attachment of a Financial*

Establishment or other person referred to in section 3 are found to be less than the amount or value which such Financial Establishment is required to repay to the depositors and where the Special Court is satisfied by affidavit or otherwise, that there is reasonable cause for believing that the said Financial Establishment has transferred, (whether after the commencement of this Act or not), any of the property otherwise than in good faith and for consideration the Special Court may, by notice, require any transferee of such property (whether or not he received the property directly from the said Financial Establishment) to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.

(2)Where the said transferee does not appear and show cause on the specified date or where after investigation in the manner provided in sub-section (5) of section 7, the Special Court is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration the Special Court shall or order the attachment of so much of the said transferee's property as is in the

> *opinion of the Special Court is equivalent to the proper value of the property transferred."*

15.Reading of the above provisions make the position very clear to the effect the petitioner's company are at liberty to approach the Special Court for appropriate remedy.

16.In view of the above said efficacious remedy available, the petitioner must resort to such proceedings only. It is settled law that writ will not lie, when efficacious remedy is available in the statute. This case does not cover under the special category to invoke Article 226 of the Constitution of India. In ***Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai [(1998)8 SCC 1]***, the exceptions are set out, when no such special category is involved. It is observed that:-

> *"Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not*

normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

17.In view of that, this writ petition is not maintainable.

18.In the result, this writ petition stands **dismissed.** No costs. Consequently connected Miscellaneous Petitions are closed.

11/12/2023

Index:Yes/No
Internet:Yes/No

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To,

1.The Principal Secretary to Government,
Secretariat,
Chennai.

2.The District Revenue Officer/Competent Authority,
Madurai District,
Madurai.

3.The Deputy Superintendent of Police,
Economic Offence Wing-II,
Madurai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN, J

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