



C.M.A(MD)No.26 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.26 of 2017

and

C.M.P(MD)No.264 of 2017

S.Perumal

... Appellant/3rd Respondent

Vs.

1.Aavin General Manager / Madurai,
The Competent Authority (in charge),
Virudhunagar.

... Respondent/Applicant

Rich India Marketing Company,
Sivakasi, Represented through
Subburaj.

... Defaulted Financial Establishment

2. Subburaj

3.K.Madavi

... Respondents/Respondents 1&2

PRAYER: Civil Miscellaneous Appeal is filed under Section 11 of Tamil Nadu Protection of Interest of Depositors (In Financial Establishments) Act 1997, to allow this civil miscellaneous appeal by setting aside the order passed in O.A.No.3 of 2015 on the file of the Special Court under the Tamil Nadu Protection of Interest of Depositors (TNPID) Act, Madurai dated 19.12.2016.



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For Appellant : Mr.T.Selvan
For R1 : Mr.N.G.A.Natraj
For R2 : No Appearance

JUDGEMENT

The present appeal has been filed challenging an order passed by the Special Court under TNPID Act in O.A.No.3 of 2015.

2. The appellant herein is a 3rd party to the criminal proceedings under the TANPID Act and he claims that he is a bona fide purchaser of a property from the wife of the 4th accused in the said case.

3. The finance company was started in the name of Rich India marketing company in August 2009. In January 2010, the property in dispute has been purchased in the name of one Madavi, who is the wife of the 4th accused, namely Kannan. Thereafter, due to default in repayment of the deposit amount, an F.I.R was registered on 27.10.2010. On 30.03.2011, the said Madavi has sold the property in favour of the present appellant. On 24.02.2014, a provisional order of attachment has been passed by the Home Department attaching this property also.



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4. The complainant had approached the TANPID Court for confirmation of the order of attachment as contemplated under Section 4 of the Act. In the said application, Madavi and the present appellant were also made as parties. According to the appellant, without affording any due opportunity to the appellant, the claim petition was dismissed relying upon the averments in the affidavit filed by the complainant. Challenging the same, the present appeal has been filed.

5. According to the learned counsel appearing for the appellant, the TANPID Court had reached an erroneous finding that Madavi is also one of the accused persons and after registration of F.I.R, she has sold it to the present appellant. He had further contended that Madhavi is no way related to the financial transactions, except being the wife of the 4th accused. Hence, he prayed for allowing the appeal.

6. Per contra, the learned Government Advocate appearing for the respondent has pointed out that the financial institution was commenced in August 2009 and the property was purchased in January 2010 and immediately after registration of F.I.R in October 2010, the property was sold in March 2011 by the wife of the 4th accused in favour of the



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appellant. Therefore, the modus operandi will clearly establish that there was a malafide intention on the part of the said Madavi. He further contended that the sale deed in favour of Madavi will disclose that she is a house wife and therefore, the source of income was only from husband, who is arrayed as 4th accused.

7. Though both the counsels have placed their submissions on merits, this Court is of the view that the present appellant has not been given due opportunity to file his counter and place his submissions before the Court. A perusal of Section 7 (3) of the TANPID Act points out that a claim petition could be filed by a 3rd party challenging the order of attachment. Section 7 (5) of the Act empowers the Special Court to conduct a trial in the said proceedings as contemplated under Code of Civil Procedure. When the purchaser has been impleaded as one of the parties to the proceedings for confirmation of order of attachment, his submission should have been heard before passing final orders. However, on the ground that no counter has been filed, the order impugned in the appeal has been passed.



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8. In view of the above said facts, the order passed by the TANPID Court in O.A.No.3 of 2015 on 19.12.2016 is hereby set aside and the matter is remitted back to the file of the Special Court under TANPID Act, Madurai for fresh consideration on merits and in accordance with law. The learned Judge shall consider the issue afresh without being influenced by anyone of the observations made in the present appeal.

9. With the above said observations, this Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

14.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1.The Special Court under (TNPID) Act,
Madurai.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
C.M.A(MD)No.26 of 2017

14.03.2023