In the High Court of Judicature at Madras

Reserved on : 24.7.2024	Delivered on : 29.7.2024

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1172 of 2024
& CMP.No.10586 of 2024

P.Muthukumar ...Appellant

Vs

1.The Inspector of Police,
Economic Offences Wing,
Coimbatore District,
Coimbatore.

2.M/s.D MAX Capitals Private
Ltd., rep.by its Director
K.Senthilkumar

3.K.Senthilkumar ...Respondents

APPEAL under Section 11 of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 against the order dated 24.1.2024 passed in O.A.No.7 of 2023 on the file of the Special Court under the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, Coimbatore.

For Appellant	:	Mr.K.Govi Ganesan
For R1	:	Mr.A.Edwin Prabhakar, State GP assisted by Mr.B.Tamilnidhi, AGP

JUDGMENT

This is an appeal filed by the appellant under Section 11 of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (for short, the Act) against the order dated 24.1.2024 passed in O.A.No.7 of 2023 on the file of the Special Court under the Act, Coimbatore confirming the attachment of the subject properties for bringing them for sale and to utilize the sale proceeds to pay back to the depositors.

2. The case of the appellant is as follows :

(i) The subject properties were purchased by the third respondent through two separate registered sale deeds both dated 14.6.2019. Subsequently, the subject properties were sold to the appellant through two registered sale deeds both dated 12.11.2019. The appellant had nothing to do with the affairs of the defaulting company and he was a bona fide purchaser for value. While so, based on the complaint given by some of the depositors, a first information report was registered in Crime No.5 of 2020 on the file of the Inspector of Police, Economic Offences Wing, Coimbatore against the second respondent - company and its directors.

(ii) Thereafter, the first respondent identified the subject properties and filed O.A.No.7 of 2023 before the Special Court to pass an order of attachment of the subject properties and to direct the Competent Authority to sell the subject properties in order to pay back to the depositors. This application was allowed by the Special Court by the impugned order attaching the subject properties belonging to the appellant and permitting the Competent Authority to sell the same in public auction and realize the sale proceeds. The same has been put to challenge in this appeal.

3. The first respondent filed a counter wherein it has been stated as follows :

(i) The first information report was registered in Crime No.5 of 2020 on his file against the second respondent - company for the offences under Section 120B, 409 and 420 of the Indian Penal Code and Section 5 of the Act. During the course of investigation, it was found that in the year 2018, an entity called M/s.Daily Max Solution Forex Private Limited was started by the third respondent and deposits were collected from the year 2019 onwards. A sum of Rs.19,08,060/- was collected from 02.1.2019 to 17.9.2019. Thereafter, as there was a default in repayment of the deposits, the said M/s.Daily Max Solution Forex Private Limited was closed and a new company namely the second respondent - company was started by the third respondent. Further deposits were collected from 66 depositors to the tune of

Rs.4,45,47,837/- and once again, default was committed.

(ii) It was also found that the third respondent purchased the subject properties by two registered sale deeds both dated 14.6.2019 and immediately, he sold the subject properties in favour of the appellant on 12.11.2019 by two separate sale deeds, which were found to be mala fide transfers. It was under those circumstances the application came to be filed before the Special Court by the first respondent for attachment and sale of the subject properties. The Special Court properly applied its mind and passed the impugned order and the same does not require the interference of this Court. The first respondent ultimately sought for dismissal of this appeal.

4. Heard the learned counsel for the appellant and the State Government Pleader assisted by the learned Additional Government Pleader appearing for the first respondent.

5. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record. This Court has also carefully gone through the impugned order passed by the Special Court.

6. By relying upon the following judgments :

> (i) of a learned Single Judge of this Court (as he then was) in the case of ***M/s.Thiru Muruga Finance Vs. State of Tamil Nadu [reported in 1999 SCC Online Madras 707];***
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> (ii) of a learned Single Judge of this Court in the case of ***C.Sukumaran Vs. Competent Authority-cum-District Revenue Officer [reported in 2013 (1) CTC 326]; and***
>
> (iii) of the same learned Single Judge of this Court in the case of ***S.Akalya Vs. State of Tamil Nadu rep.by the Principal Secretary [reported in 2013 SCC Online Madras 4138],***

the learned counsel for the appellant submitted that a property can be attached under Section 3 of the Act only if the property has been purchased in the name of the company or the firm or the promoter, partner, director, etc., or where it is established that the property has been purchased in the name of any other person from and out of the deposits collected by the financial establishments. According to him, in the instant case, the subject properties were purchased by the third respondent on 14.6.2019 and in turn, the appellant purchased the same on 12.11.2019.

7. It was further submitted by the learned counsel for the appellant that the defaulting company was floated only on 15.7.2020, that the first information report came to be registered on 02.10.2020, that even before the defaulting company was floated, the subject properties had been purchased by the appellant and that there was no scope to bring this case within the purview of Section 3 of the Act.

8. It is seen that the Special Court dealt with this issue on considering the evidence of P.W.1, R.W.1 and R.W.2 as well as the documents in Ex.P.1 to Ex.P.6 and came to the conclusion that the transfer made in favour of the appellant was a mala fide transfer. This finding was rendered on the ground that deposits were collected even as early as 01.1.2019 by the third respondent, that the old company was closed and that a new company was floated, which again committed default. Therefore, it was concluded that the third respondent purchased the subject properties only from and out of the deposits that were collected, that the subject properties were transferred in favour of the appellant by way of sale and that the transfer was a mala fide transfer. Finally, the Special Court brought this case within the scope of Section 8 of the Act and allowed the application filed by the first respondent.

9. During the course of hearing, the learned State Government Pleader appearing on behalf of the first respondent produced the relevant materials to show that the third respondent was collecting deposits as early as 2018 when he was running the said M/s.Daily Max Solution Forex Private Limited. To substantiate the same, bank statements are available. However, the bank statements were not produced before the Special Court. Instead, such a stand was taken for the first time only when the Inspector of Police, EOW, Coimbatore was examined as P.W.1 before the Special Court.

10. Had these materials been available before the Special Court, there would be some justification to hold that the transfer made by the third respondent in favour of the appellant was a mala fide transfer. This is in view of the fact that the third respondent purchased the subject properties by utilizing the funds allegedly earned from the deposits collected from the year 2018 onwards and in turn, he sold the subject properties within a span of five months to the appellant. In the absence of such materials, the Special Court cannot come to a conclusion that the transfer made in favour of the appellant was a mala fide transfer only based on the fact that the subject properties were sold in favour of the appellant within a span of five months from the date of purchase by the third respondent.

11. However, the failure on the part of the first respondent in not placing the relevant materials before the Special Court will not enure to the benefit of the appellant since this Court is dealing with the interests of nearly 66 depositors to the tune of Rs.4.5 Crores. Hence, the matter has to be necessarily remanded to the file of the Special Court so as to enable the first respondent to mark the relevant documents and to grant an opportunity to the appellant to cross examine and make his defence with respect to the additional documents that are to be relied upon. This will sufficiently take care of the interests of both the appellant as well as the depositors.

12. In the light of the above discussions, the order dated 24.1.2024 made in O.A.No.7 of 2023 passed by the Special Court is hereby set aside. The matter is remanded to the file of the Special Court and the first respondent is permitted to file an affidavit to reopen the evidence and to mark the relevant documents. It goes without saying that the appellant will be entitled to cross examine the witnesses and also raise his defence on the materials to be relied by the first respondent. Thereafter, the Special Court shall hear both sides and pass final orders within a period of eight weeks from the date of receipt or production of a copy of this judgment. It is abundantly made clear that the matter is remanded to the Special

Court only for the purpose of enabling the first respondent to bring in the relevant materials and by no stretch, a de novo inquiry/trial is ordered.

13. In the result, the above civil miscellaneous appeal is allowed with the above directions. Consequently, the connected CMP is closed. No costs.

29.7.2024

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes

To
1.The Special Court under the Tamil Nadu
Protection of Interests of Depositors
(in Financial Establishments) Act, 1997,
Coimbatore.

2.The Inspector of Police,
Economic Offences Wing,
Coimbatore District,
Coimbatore.

RS

N.ANAND VENKATESH,J

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