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 Nos.1947 & 1948 of 2023

CMA.No.1947 of 2023

Arjunan (died)

1.A.Kasthuri
2.A.Sivakumar
3.A.Sekar
4.A.Thulasi ...Appellants

Vs

1.The Secretary to Government,
Home Department,
Fort St.George, Chennai-9.

2.The Competent Authority &
District Revenue Officer,
Collector's Office, Chennai.

3.The Deputy Superintendent of
Police, EOW-II, Chennai.

4.G.Devarajan
5.K.Elamvazhuthi ...Respondents

CMA.No.1948 of 2023 :

K.Elamvazhuthi ...Appellant

Vs

1.The Secretary to Government,
Home Department,

Fort St.George, Chennai-9.
2.The Competent Authority &
District Revenue Officer,
Collector's Office, Chennai.

3.The Deputy Superintendent of
Police, EOW-II, Chennai.

4.G.Devarajan
5.A.Arjunan (died) ...Respondents

APPEALS under Section 11 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 against the orders both dated 19.5.2023 passed respectively in O.A.Nos.2 and 3 of 2012 on the file of the Special Court under the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997, Chennai-104.

For Appellants in both the appeals	:	Mr.Jeremiah Gregory John
For R1 to R3 in both the appeals	:	Mr.A.Edwin Prabhakar, State GP assisted by Mr.B.Tamilnidhi, AGP

COMMON JUDGMENT

These appeals have been filed under Section 11 of the the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 (for short, the Act) against two separate orders both dated 19.5.2023 made respectively in O.A.Nos.2 and 3 of 2012 on the file of the Special Court under the Act, Chennai-104 dismissing the applications filed by the appellants under Section 7(3) of the Act to raise the orders of interim attachment pertaining to the properties owned by the respective appellants.

2. The case of the appellants leading to filing of these appeals is as follows :

(i) One Mr.A.Arjunan was doing real estate business along with one Mr.K.Elamvazhuthi. They purchased certain properties for development into house sites and for selling the same to the prospective purchasers. They came to know that the fourth respondent was owning the subject properties. The fourth respondent purchased the subject properties through registered sale deeds dated 27.6.2006. In turn, the fourth respondent executed two power of attorney documents both dated 24.4.2008 in favour of (i) the said Mr.A.Arjunan (four properties) and (ii) the said Mr.K.Elamvazhuthi (three properties). By using the said two power of attorney documents executed in their favour, the said Mr.A.Arjunan and the said Mr.K.Elamvazhuthi sold each other the subject properties as reflected in the power of attorney documents by way of two separate sale deeds dated 28.7.2008.

(ii) A first information report came to be registered in Crime No. 3 of 2009 on the file of the Deputy Superintendent of Police, Economic Offences Wing, Chennai against M/s.Suprabath Chits and Investments Private Limited on 29.9.2009 on the allegation that the fourth respondent and his family members were running a finance company and that they failed to pay back to the depositors. Pursuant to that, the Government issued G.O.Ms.No.215 Home (Police XIX) Department dated 23.2.2010 attaching several properties, which also included the subject properties belonging to the said Mr.A.Arjunan and the said Mr.K.Elamvazhuthi. However, no notice was issued to the said Mr.A. Arjunan and the said Mr.K.Elamvazhuthi at the time of passing the orders of interim attachment.

(iii) When it came to light, the said Mr.A.Arjunan and the said Mr.K.Elamvazhuthi filed O.A.Nos.2 and 3 of 2012 respectively before the Special Court to raise the orders of interim attachment. Further, the second respondent namely the Competent Authority-cum-District Revenue Officer, Collector's Office, Chennai filed a counter to O.A.No.2 of 2012. The third respondent namely the Deputy Superintendent of Police, Economic Offences Wing-II, Chennai filed a counter to O.A.No.3 of 2012. During the pendency of O.A.No.2 of 2012 before the Special Court, the said Mr.A.Arjunan died and hence, his legal heirs were brought on record. Ultimately, these applications were dismissed by the Special Court by the impugned orders both dated 19.5.2023. Aggrieved by that, the legal heirs of the said Mr.A.Arjunan and the said Mr.K.Elamvazhuthi have filed these appeals before this Court.

3. Before this Court, the third respondent namely the Deputy Superintendent of Police, Economic Offences Wing-II, Chennai filed two separate counters in both the appeals wherein he had taken a stand that the fourth respondent and his family members were running a finance company, that they collected huge deposits, that the money was not paid back to the depositors, that a first information report came to be filed in Crime No.3 of 2009 on the file of the Deputy Superintendent of Police, Economic Offences Wing, Chennai dated 29.9.2009, that the fourth respondent utilized the deposits that were collected and purchased the subject properties in the year 2006, that during the course of investigation, it came to light that there are 1197 depositors and a sum of Rs.34,52,04,228/- was collected from the depositors. It was under those circumstances, the subject properties were identified and attached by the said Government Order.

4. In the counters filed before this Court, the third respondent took a specific stand that the transfer of the subject properties in favour of the said Mr.A.Arjunan and the said Mr.K.Elamvazhuthi was a

mala fide transfer, that the same was considered by the Special Court and that the applications filed by the said Mr.A.Arjunan and the said Mr.K.Elamvazhuthi to raise the orders of attachment were rightly rejected by the Special Court. Accordingly, the third respondent sought for dismissal of these appeals.

5. Heard the learned counsel for the respective appellants and the learned State Government Pleader assisted by Mr.B.Tamilnidhi, learned Additional Government Pleader appearing for respondents 1 to 3.

6. 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 orders passed by the Special Court.

7. There is no dispute with regard to the fact that the said Mr.A.Arjunan and the said Mr.K.Elamvazhuthi purchased the subject properties from the fourth respondent by mutually utilizing the two power of attorney documents executed in their favour. The fourth respondent was running a company along with his family members from 1986 onwards. Deposits were collected and the fourth

respondent purchased the subject properties. At the time when the subject properties were purchased by the fourth respondent, the finance company was being run and deposits were collected.

8. The scope of Section 3 of the Act was dealt with by a learned Single Judge of this Court (as he then was) in the case of ***V.Kalpana Vs. State of Tamil Nadu [reported in 2011 SCC Online Madras 1446]*** wherein the relevant portions are extracted as hereunder :

> *"12. Section 3 of the Tamil Nadu Act 44 of 1997, empowers the Government to order the attachment of properties, under certain circumstances. The fact that those circumstances existed, at the time when G.O.Ms.No.41 was passed, is not seriously in dispute. Interestingly, Section 3 empowers the Government to attach two types of properties viz.:-*
>
> *(i) properties alleged to have been procured from and out of the deposits collected by the financial establishment, either in the name of the financial institution or in the name of any other person and*
>
> *(ii) such other property of the financial institution or the promoter, partner, director, manager or member of the financial establishment or a person who has borrowed money from the financial institution, to the extent of his default.*
>
> *13. In other words, an attachment under Section 3 may be (i) of a property purchased from out of the funds of the financial institution or (ii) of some other property, not necessarily purchased from out of the funds, but standing in the name of any of the persons described in Section 3, if the value of the properties*

purchased from out of the funds are not sufficient for repayment to depositors.

14. Therefore, it is clear that it is not necessary that the property attached should be a property purchased from and out of the funds of the financial establishment. If the value of the properties purchased from out of the funds of the financial establishment are not sufficient to repay the depositors, the Government can attach such other property of the establishment, promoter, partner, director, manager or member of the financial establishment.

.....

20. It is on the basis of the above calculations that the learned counsel for the petitioners contends that all the amounts payable to the depositors have already been deposited in the form of fine by the father of the petitioners and the second accused in the case. Therefore, it is his contention that there is no necessity to continue the order of attachment. In short, his contention is that when no more amount is payable to the depositors, the property cannot be kept under attachment.

21. But the said contention would merit consideration, only if the Special Court can be taken to have finally determined the amounts payable to the depositors, while disposing of the criminal cases filed against the finance company and its partners. If the judgment of the Special Court in the criminal cases can be taken to be an adjudication of the actual amounts payable to the depositors, then the contention of the learned counsel for the petitioners would be correct. But if that judgment cannot be taken to be an adjudication of the amounts payable to the depositors, then the disbursement of the amounts to depositors, from out of the fine paid by the accused, cannot be taken to be a *complete discharge of the obligations of the accused to the depositors.*

22. In other words, the crucial question to be considered before raising the order of attachment, is as to whether the accused could be taken to have discharged their obligations to the depositors, merely because a portion of the fine amount had been disbursed to the depositors by the Special Court. To find an answer to this question, it is necessary to look into the provisions of Act 44 of 1997.

23. Section 3 of the Act, provides both for attachment of properties and for transferring the control over such properties to the Competent Authority. Section 5 is the penal provision, making every person responsible for the management of the affairs of a financial institution, which had committed default, to imprisonment and fine. Section 5-A provides for compounding of offences. Section 6 (4) empowers the Special Court to try, along with an offence punishable under Section 5 of the Act, any other offence for which the accused may be charged under the Code of Criminal Procedure.

24. A careful reading of the provisions of the Act would show that the Special Court is invested with the powers of a Civil Court as well as a Criminal Court. While the former is under Section 7, the latter is under Section 13. While the powers of attachment, sale, realisation and distribution conferred upon the Special Court are traceable to Section 7, the procedure and powers regarding offences are traceable to Section 13. Therefore, while prosecuting a person for an offence under Section 5 of the Act read with any other relatable offence under any other enactment, the Special Court acts as a Criminal Court, following the provisions of the Code of Criminal Procedure, 1973, by virtue of Section

13 of the Act. But while dealing with an application under Section 4 (3) for making the order of attachment absolute and while ordering the release of the property from attachment and directing the sale of the property by public auction for equitable distribution to the depositors, the Special Court acts as a Civil Court, following the provisions of the Code of Civil Procedure, by virtue of Section 7 of the Act.

25. Section 7 of the Act prescribes an elaborate procedure (i) for adjudicating an application for making absolute, the order of attachment passed by the Government (ii) for directing the sale of the attached property by public auction and (iii) for equitable distribution of the sale proceeds, among the depositors. But the Special Court is not concerned with attachment, sale, realisation and distribution, while acting under Section 13. In a proceeding under Section 13, the focus is on the offences committed. In a proceeding under Section 7, the focus is on getting the money invested by the depositors, back to them.

26. If the above distinction between Section 7 and Section 13 is understood, it will be clear that the fine imposed by the Special Court while exercising its criminal jurisdiction and the direction issued by it to pay a part of the fine amount to the depositors, cannot be taken to be a final adjudication of the liability of the finance company to its depositors. It is only when the Special Court acts under Section 7 and determines the amount payable to the depositors, that an adjudication can be said to have taken place."

9. The above judgment of this Court clearly brings out the distinction between the proceedings initiated for attachment and sale

of properties, which is civil in nature and the prosecution against accused persons for the offence under Section 5 of the Act. It was made abundantly clear that the main focus of the proceedings under Section 7 of the Act is to get the money invested by the depositors back to them.

10. The next judgment that was relied upon by the learned State Government Pleader is by a learned Single Judge of this Court in the case of ***P.Palanisamy Vs. District Revenue Officer-cum-Competent Authority [reported in 2023 SCC Online Madras 6270]*** wherein the relevant portions are extracted as hereunder :

> *"17. As per the Act, once the Government is satisfied that the properties have to be attached they should first look for properties which were procured in the name of the financial establishment or in the name of any other person out of the deposits collected by the financial establishment. If those properties are not available, then other properties of the financial establishment or properties of the Promoter, Partner, Director, Manager or Member of the said financial establishment, can be attached. Thus, the Act visualizes attachment of two types of properties i.e., (a) Properties procured from and out of the deposits collected either in the name of the financial establishment or any other person; and (b) Other properties of the financial establishment or of its Promoter, Partner, Director, Manager or Member of the said financial establishment. The Government while*

attaching the property has to be specific as to under which category the property falls under.

18. Thereafter, when an application is made by the competent authority, it is incumbent upon the competent authority to state and establish under which category the property sought to be attached falls under i.e. to say whether it is a property procured by the collection of deposits or is it any other property since, the property procured by collection of deposits is not available. Thereafter, if it is a property, which is not procured from and out of the deposits, then the competent authority has to specifically state as to under which category the person, whose property sought to be attached falls under i.e., the competent authority has to specify whether the person whose property is attached is a Promoter or Partner or Director or Manager or Member of the said financial establishment or borrower from the financial establishment. Unless, this clarity is there in the application, the Special Court cannot merely accept the application and make the interim order of attachment, absolute, on mere asking by the competent authority.

19. Thereafter, the Special Judge before making the interim order of attachment absolute, has to ensure that the Government had exercised the power under Section 3 of the TNPID, correctly. After this stage is crossed, the Special Court will thereafter adjudicate the objections for making the interim order of attachment, absolute. The procedure for hearing the objections is provided under Section 7 of the TNPID Act. On receipt of the objections, the Special Court has powers to investigate into the objections and while doing so, can exercise all powers of the civil Court. The nature of the objections can broadly be that the property sought to be attached was not procured out of the deposits *collected; that the person from whom the property sought to be attached, is not a Promoter, Partner, Director, Manager or Member of the said financial establishment or that the property belongs to a third person and it is not that of the financial establishment, etc.*

20. At this stage, as stated earlier, the Special Court cannot be called upon to decide whether the person whose property sought to be attached is guilty of the offence. The questions that are to be determined before the Special Court is whether the financial establishment had defaulted in repayment of deposits; whether the financial establishment is not likely to return the deposits; and whether the property sought to be attached was procured out of the deposits; or whether the property sought is to be attached belongs to any Promoter, Partner, Director, Manager or Member of the said financial establishment or borrower from the financial establishment. Therefore, if any plea is taken by any person, whose property is sought to be attached, that he would not fall within the category of persons whose property can be attached under Section 3 of the Act, the Special Court is bound to consider the same and should not await the decision of the criminal Court. Once this exercise is done by the Special Court and it finds that the objections are not sustainable, then notwithstanding the result of the criminal proceedings, the interim order of attachment, can be made absolute and the properties can be sold.

21. Thus the powers and functions of the Special Court while considering the application for making the interim attachment absolute can be summed up as follows:

(i) When an application is filed under Section 4(3) of the Act by the competent authority, the Special

Court should first ascertain if the Government has exercised its powers in accordance with Section 3 of the Act.

(ii) If the property that is sought to be attached is not that of the financial establishment or purchased from out of the deposits, the Special Court has to ascertain under what category the person whose property is sought to be attached falls under i.e. whether he is a Promoter, Partner, Director, Manager or Member of the said financial establishment or a borrower from the financial establishment.

(iii) If any objection is received from any person that he is not a person whose property can be attached under Section 3 of the Act or on receipt of any other objections whatsoever, the Special Court is bound to consider the same. The Special Court cannot observe that the objections has to be decided by the criminal Court, as the power to attach property is independent of the criminal proceedings and they in operate two different fields.

(iv) While considering the aforesaid objections, the Special Court shall exercise the powers of a Court hearing a suit under the CPC.

(v)There may be instances, where a person may not be an accused in the criminal case, but his property can be attached under Section 3 of the TNPID Act. For instance, a sleeping partner in a financial establishment, which is a partnership firm, may not be an accused in the criminal case (as he wouldn't have had any role in the crime), but his property can be attached as per Section 3 of the Act.

(vi) There may be cases where, the person may be an accused in a criminal case, but yet, he may not fall under the category of persons mentioned in Section 3 of the TNPID Act. For instance, a third party who

> *enters into a conspiracy with the promoters of the financial establishment, to cheat the public and collect the deposits may be guilty of the offence of conspiracy, but if he has no connection with the financial establishment as Promoter, Partner, Director, Manager or Member of the said financial establishment or a borrower from the financial establishment, then, his property cannot be attached, unless, the property is purchased out of the deposits collected."*

11. The above judgments threadbare considered the scope of Section 3 of the Act.

12. In the instant case, the main ground that was raised by the learned counsel for the appellants is that the subject properties were sold in favour of the said Mr.A.Arjunan and the said Mr.K.Elamvazhuthi on 28.7.2008 itself whereas the first information report was registered only subsequently i.e on 29.9.2009 on the ground that default had been committed by the company in paying back to the depositors, that the said Mr.A.Arjunan and the said Mr.K.Elamvazhuthi were bona fide purchasers for value, that the orders of interim attachment were passed without notice to them, that the subject properties purchased by both the said Mr.A.Arjunan and the said Mr.K.Elamvazhuthi cannot be made the subject matter of attachment and that the attachment orders have to be raised in so far as the subject properties are

concerned.

13. A property will be subjected to attachment under Section 3 of the Act if that property has been purchased in the name of any person from and out of the deposits collected by the financial establishment. The subject properties were purchased by the fourth respondent in the year 2006 and at that point of time, the fourth respondent and his family members were running a financial institution by collecting deposits. Therefore, the source of income for purchasing the subject properties is from the deposits that were collected.

14. Obviously, the properties purchased out of the funds collected from the depositors will become the subject matter of attachment once the deposits are not paid back to the depositors and therefore, proceedings were initiated under the Act. The transfer that was made by the fourth respondent in favour of the said Mr.A.Arjunan and the said Mr.K.Elamvazhuthi will not save the subject properties from attachment and such transfer must be held to be a mala fide transfer considering the fact that the default started almost immediately after the subject properties were dealt with by the fourth respondent. The Special Court properly evaluated the evidence and came to the conclusion while dismissing the applications filed by the

said Mr.A.Arjunan and the said Mr.K.Elamvazhuthi for raising the interim orders of attachment.

15. The learned counsel for the appellants, as an alternative submission, contended that before the Special Court, the fourth respondent had offered to deposit the guideline value + 15% of the guideline value of the attached properties, which were belonging to him, that the Special Court accepted this offer and cancelled the interim attachment order and that if such kind of leniency was shown to one of the partners of the defaulting firm, there is no reason as to why the legal heirs of the said Mr.A.Arjunan and the said Mr.K.Elamvazhuthi, who are the appellants in these appeals, should not be given such an opportunity.

16. Section 9 of the Act deals with the above scenario. The Special Court can always receive sufficient security and release the immovable property by cancelling the order of interim attachment. To undertake such an exercise, the Special Court must satisfy itself that the security offered by the concerned person is satisfactory and sufficient. On carefully going through the order dated 19.5.2023 in O.A.No.85 of 2010 filed by the second respondent before the Special Court, it is clear that there is no indication as to whether the Special

Court had really attempted to ascertain the actual market value of the properties belonging to the fourth respondent. It is a known fact that the guideline value and the market value are never in tandem. In other words, the guideline value does not really reflect the market value in all cases. Therefore, if a person offers to pay the guideline value by adding a small percentage to it and gives it as a security to get his property released from attachment, the offer, by itself, cannot be taken to be the final word and the Special Court is expected to ascertain the actual market value of the property offered and satisfy itself that sufficient security has been offered.

17. In turn, the learned State Government Pleader appearing on behalf of respondents 1 to 3 submitted that steps are being taken to file an appeal against that portion of the order passed by the Special Court permitting the fourth respondent to offer security for the properties owned by him and getting his properties released from attachment.

18. The manner, in which, the properties of the fourth respondent were released by the Special Court, prima facie, does not satisfy the requirements of Section 9 of the Act. Such a prima facie finding is rendered only to hold that such a concession cannot be

mechanically extended to both the legal heirs of the said Mr.Arjunan as well as the said Mr.K.Elamvazhuthi, who are the appellants in these appeals.

19. In the light of the above discussions, this Court does not find any merits in these appeals.

20. Accordingly, the above civil miscellaneous appeals stand dismissed. No costs.

29.7.2024

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes

To
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Protection of Interests of Depositors
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