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CMA.No.2145 of 2023

In the High Court of Judicature at Madras

Reserved on : 24.7.2024	Delivered on : 29.7.2024
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Civil Miscellaneous Appeal No.2145 of 2023 &
CMP.Nos.20709 & 20710 of 2023 & 9505 of 2024

1.K.Nagarathinam
2.Uma Nagarathinam

...Appellants

Vs

1.The Competent Authority,
District Revenue Officer,
Collector's Office, Chennai-1.

2.M/s.Suprabath Chits & Investments
Pvt. Ltd., No.18, 10th Cross
Street, Indira Nagar, Chennai-20
rep.by Sl.No.5, 7, 8, 9 & 13

3.M/s.Balaji Hire Purchase (Pvt.)
Ltd., No.C1, Brindavan
Apartments, Mylapore, Chennai-4
rep.by Sl.Nos.5, 6 & 7

4.M/s.Krishna Finance Chennai,
No.C1, Brindavan Apartments,
Mylapore, Chennai-4 rep.by
Sl.Nos.5, 8 & 10

5.K.Kannaian
6.Tmt.Sulochana
7.Thiru.Devarajan
8.T.Kannappan Gurukkal
9.K.Srinivasan
10.K.Chitra Devi
11.Rajkumar



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12.Prithima

13.P.Sugumar

14.Association of Depositors of
Suprabath Chits & Investments,
rep.by Gowri Shankar,
Authorized Representative,
Chennai-41.

15.M/s.Suprabath Investment,
Chennai-20.

16.K.B.Investment, Chennai-20.

...Respondents

APPEAL under Section 11 of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 against the fair and decretal order in O.A.No.85 of 2010 dated 19.5.2023 passed by the Special Court under the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, Chennai-104, to set aside the same and to release the properties in Sl. Nos.18 and 31 in G.O.Ms.No.215 dated 23.2.2010 from attachment.

For Appellants : Mr.J.Kalidas for
Mr.S.Jaganathan

For R1 : Mr.A.Edwin Prabhakar, State GP
assisted by Mr.C.Sathish, GA

For R2 : Mr.M.Kamalakannan

JUDGMENT

This is an appeal filed by the appellants under Section 11 of the Tamil Nadu Protection of Interests of Depositors (in Financial



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Establishments) Act, 1997 (for short, the Act) against the order dated 19.5.2023 passed by the Special Court under the Act, Chennai-104 allowing O.A.No.85 of 2010 and confirming the attachment of the properties in Sl.Nos.18 and 31 in G.O.Ms.No.215 Home (Police XIX) Department dated 23.2.2010.

2. When the matter came up for hearing on 11.6.2024, this Court passed the following order :

"Heard the learned counsel for the appellants, learned Government Advocate appearing on behalf of the 1st respondent and Mr.M.Kamalakaran, learned counsel appearing on behalf of the depositors, who are the 14th respondent in this appeal.

2. The appellants have filed C.M.P.No.9505 of 2024 to receive the additional documents in order to establish the source of income through which the properties which are the subject matter of attachment were purchased during the relevant point of time.

3. Counter affidavit has been filed opposing this petition.

4. The facts over which there is no dispute are that the 1st appellant purchased the subject property in Sl.Nos.18 and 31 through two registered sale deeds both dated 31.08.1990 and registered as Document No.3583 and 2958 of 1990 respectively. The 2nd appellant was inducted into the firm as a partner on 07.06.1989 and that she retired from that position on 31.03.1999. The mother of the 2nd appellant was also a partner in the firm during the relevant point of time.



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The default was committed by the firm from the year 1997 onwards. The complaints regarding the non-payment of the deposit started coming in from the year 2009 and the FIR was registered in Crime No.3 of 2009.

5. The Special Court has rendered a finding that in so far as the superstructure that was constructed over the subject property, it was done with the funds obtained by way of loan by the 1st appellant. A finding to that effect is found at page No.78 of the order.

6. The additional documents filed by the 1st appellant shows that he was appointed in State Bank of India in the year 1978. The second document relates to the Income Tax returns of the 1st appellant for the Assessment Year 1991 - 1992. In the Income Tax returns, the 1st appellant has shown the source of income for purchasing the subject property. He has stated that he had earned some income by way of salary from the Bank where he was employed. That apart, he has also received a sum of Rs.35,000/- from his mother-in-law. The other source of income is the loan that was obtained from the 2nd appellant, who is the wife of the 1st appellant. It is therefore evident that the subject property was purchased not merely from the funds of the 1st appellant and the 1st appellant has received certain amounts from the 2nd appellant as well as mother-in-law, who were admittedly partners in the firm.

7. The short issue that arises for consideration is the interpretation of the term "property purchased from and out of the deposits collected by the financial establishment".

8. For the benefit of the counsel appearing on either side to make their further submissions, the following points for determination are formulated:-



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(a) When a property is purchased and the funds for this property has also flown from some of the partners of a firm which is running a finance business and during the relevant point of time when the funds were given, there was no default committed by the firm and what was given as funds for purchasing the property was the income earned by the partners during the relevant point of time, whether such property can become a subject matter of attachment at a future point of time on a subsequent default committed by the firm?

(b) Whether the term "from and out of the deposits collected" will include within its fold the income earned by the partners legitimately during the relevant point of time and even such income can be brought within the fold of Section 3 of the TNPID Act.

(c) Whether the default which started from the year 1997 by itself is an indication that the liabilities were far exceeding the assets or such symptoms have started even much before 1997. For this purpose, the 1st respondent must see what was the assets and liabilities that were available during the year 1990 when the subject property was purchased by the 1st appellant.

9. Post this case under the caption 'part heard cases' on 24.06.2024 at 02.15 PM."

3. The first respondent - Competent Authority filed a counter affidavit by taking a stand that the entire transaction took place within close relatives, that the property in plot No.49 belonged to one Mr.T.Vedadri, who is none other than the brother of the first appellant's father-in-law, that in so far as the other portion of the property in the very same plot is concerned, it was sold by none other



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than the mother-in-law of the first appellant through a registered sale deed dated 31.8.1990, that apart from that, the first appellant was not able to establish the source of his income for purchase of the subject properties, which have been attached, that the second appellant is none other than the wife of the first appellant, that she was a partner of the defaulting firm, that her mother was also yet another partner of the firm during the relevant point of time and that therefore, the Special Court took into consideration all the available materials, rightly came to the conclusion and allowed O.A.No.85 of 2010 by the impugned order. The first respondent ultimately sought for dismissal of this appeal.

4. One of the depositors representing the body of depositors, which was arrayed as the 14th respondent in this appeal, also filed a counter to the effect that the wife of the first appellant was a partner in the defaulting firm from 07.6.1989 to 31.3.1999, that the first appellant purchased the subject properties only after the induction of his wife as the partner of the firm, that the transaction was among close relatives and that the source of money was clearly traceable to the deposits that were received by the firm from the depositors. In view of the above, the 14th respondent also sought for dismissal of this appeal.



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5. Heard the learned counsel appearing on behalf of the appellants, the learned State Government Pleader assisted by the learned Government Advocate appearing for the first respondent and the learned counsel appearing for the body of depositors namely the 14th respondent.

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

7. M/s.Suprabath Chits & Investments was incorporated under the Companies Act, 1956 in the year 1986. They received deposits from general public. The wife of the first appellant was inducted as a partner on 07.6.1989. The first appellant purchased the subject properties namely Sl.Nos.18 and 31 of the said Government Order through two independent sale deeds both dated 31.8.1990. The first sale deed was executed by the brother of the first appellant's father-in-law and the second sale deed was executed by the mother-in-law of the first appellant.



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8. It has to be noted that the mother-in-law of the first appellant was also a partner in the firm during the relevant point of time. As per the first information report, which was registered in the year 2009 in Crime No.3 of 2009 on the file of the Deputy Superintendent of Police, Economic Offences Wing, Chennai, default was committed by the partnership firm from the year 1997. The second appellant, who is the wife of the first appellant, retired from the firm on 31.3.1999. The second appellant and her mother were shown as accused in the criminal case.

9. The Inspector of Police, Economic Offences Wing-II, Chennai submitted a report dated 18.1.2010 to the Government stating that the firm acted in a calculated manner to defraud the depositors. Totally, 1242 depositors were left high and dry and the total amount to be paid to the depositors worked out to Rs.23,12,59,636/-. Based on this report, the Government of Tamil Nadu issued the said Government Order attaching several properties including the subject properties under Section 3 of the Act. Schedule I to the said Government Order contained 18 items of movable properties, which were attached and Schedule II contained 32 items of immovable properties.



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10. The grounds that were raised by the learned counsel for the appellants and also the additional documents that were sought to be brought in in this appeal have already been dealt with in the earlier order dated passed on 11.6.2024, which has been extracted supra.

11. 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



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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



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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



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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."



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12. 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.

13. 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



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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



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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



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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



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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.



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(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."

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

15. In the instant case, the main ground that was raised by the learned counsel appearing on behalf of the appellants is that the first appellant was never a partner in the firm, that he had independent source of income to purchase the subject properties and that therefore, it cannot be held that the subject properties were purchased by the first appellant from and out of the deposits collected by the financial establishment.

16. In the earlier order passed on 11.6.2024, three questions



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were formulated as the points for consideration in this appeal.

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17. For the first question, which was formulated by this Court, the learned State Government Pleader appearing for the first respondent submitted that the income earned by the partners during a specific period, though not be the period, during which, the default was committed, remains to be income from the firm and that therefore, whenever there is a subsequent default, such income, from which, the properties were purchased, will be deemed to the properties purchased from and out of the deposits collected.

18. For the second question that was formulated by this Court, the learned State Government Pleader appearing for the first respondent submitted that the question of legitimacy of the income earned by the partners becomes irrelevant since the intention is not a criterion while deciding the attachment proceedings and that therefore, even if the income has been earned by the partners during the relevant point of time, the properties purchased subsequent to that should be deemed to have been purchased from and out of the deposits collected.

19. In so far as the last question that was formulated by this Court is concerned, the learned State Government Pleader appearing



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for the first respondent submitted that the answers given to the first two questions will sufficiently take care of the third question that was formulated by this Court.

20. In the instant case, the first appellant was not able to produce any material before the Special Court to substantiate his stand that the subject properties were purchased from and out of his own income. In order to fill up this lacuna, the appellants filed C.M.P. No.9505 of 2024 to receive additional documents. On carefully going through these additional documents, it is seen that the first document pertains to the appointment of the first appellant as the Technical Officer (Agri.) Grade II by the State Bank of India in the year 1978 and the second document relates to the income tax returns of the first appellant for the assessment year 1991-92.

21. In the said income tax returns, the first appellant had shown the source of income for purchasing the subject properties. One such source was the income derived by way of salary from the Bank where the first appellant was employed. That apart, he also received a sum of Rs.35,000/- from his mother-in-law, who was one of the partners in the defaulting firm. The third source is his wife, who was also a partner in the defaulting firm. A sum of Rs.15,000/- was given to the



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first appellant from the price money and another sum of Rs.35,000/- was given to the first appellant out of the drawings made from M/s.Krishna Finance, which was a sister concern of M/s.Suprabath Chits and Investments Private Limited. Therefore, except for a small portion of the amount that was contributed by the first appellant from his own funds, a major chunk has been received from his wife and mother-in-law, who were the partners of the defaulting firm and who had no other income except the income earned from the defaulting firm.

22. The first appellant would not have been able to purchase the subject properties had he not borrowed the amounts from his wife and mother-in-law. At the risk of repetition, it is made clear that this income was derived by the wife and the mother-in-law of the first appellant from the firm, which subsequently defaulted. In view of the same, it has to be necessarily concluded that the subject properties were purchased by the first appellant only from and out of the deposits collected by the firm. After all, the income of the partners of the firm is only from the deposits, which they collected. Hence, their income and the deposits cannot be separated. In the light of this finding, the attachment of the subject properties squarely falls within the scope of Section 3 of the Act.



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23. The subject properties were purchased by the first appellant from his close relatives. Both the relatives had some connection with the partners in running the firm. Therefore, it is not a case where the first appellant is a rank third party nor he purchased the subject properties as a bona fide purchaser without knowing its source and background. Hence, the subject properties in the hands of the first appellant can be construed to be the properties of the firm and two of its partners namely the wife and the mother-in-law of the first appellant in view of the fact that they contributed large chunk for the purchase of the subject properties.

24. In fine, this Court finds that the subject properties are liable to be attached and brought for sale and that the findings rendered by the Special Court in this regard are not liable to be interfered by this Court. The Special Court considered the entire issue in detail and concluded that the subject properties are liable to be attached and brought for sale. Such a finding rendered does not suffer from any illegality or perversity warranting the interference of this Court.

25. The learned counsel for the appellants, as an alternative submission, contended that before the Special Court, the seventh



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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 first appellant should not be given such an opportunity.

26. 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.

27. On carefully going through the impugned order passed by 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 seventh 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 of a property by adding a small percentage to it and



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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.

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

29. The manner, in which, the properties of the seventh 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 the first appellant also.

30. In the light of the above discussions, this Court does not find any merits in this appeal.

31. Accordingly, the above civil miscellaneous appeal stands dismissed. Consequently, the connected CMPs are also dismissed. No



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costs.
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RS

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, Chennai-104.
- 2.The Competent Authority,
District Revenue Officer,
Collector's Office, Chennai-1.

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