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CMP(MD)No.2044 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 25/03/2024

CORAM

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

CMP(MD)No.2044 of 2024

in

CRP(MD)SR No.10782 of 2024

P.Ramesh : Petitioner/Third Party

Vs.

1.The Competent Authority/
District Revenue Officer,
Under TNPID Act,
District Revenue Office,
Trichy District.

: R1/Competent Authority

2.Thirunavukkarasu

: R2/Petitioner

PRAYER:-Civil Miscellaneous Petition is filed under section 151 of the Civil Procedure Code, to grant leave to the petitioner to file the above said Civil Revision Petition.

For Petitioner : Mr.K.Baalasundharam
Senior Counsel
for Mr.M.Karunanithi

For 1st Respondent : Mr.J.Ashok
Additional Government Pleader

For 2nd Respondent : Mrs.S.Prabha

O R D E R

This civil miscellaneous petition is filed seeking leave to the petitioner to file the main CRP.



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2. The facts in brief:-

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On 08/07/2011, the Inspector of Police attached to Economic Offences Wing, Trichy, registered a case in Crime No.02 of 2011 for the offences under sections 409, 420 of IPC and section 5 of TNPID Act, against the Company called 'Money Cube Investment and Spirits Tech' run by one Siva and four others. In the complaint, it was stated that promising to pay higher interest @ 11%, the accused invited deposits and thereafter, cheated the depositors numbering about 25. A case was registered in Crime No.02 of 2011 as noted above, on 08/07/2011. After completing the investigation, final report was filed, on 27/02/2012 and taken cognizance by the Special Court in CC No.02 of 2012. Witnesses were examined. At that time, one Balasubramanian, who is the father of the accused filed a petition before this Court in WP No.20649 of 2013 and Crl.OP No.478 of 2015. That Writ Petition was dismissed for non-prosecution, on 27/09/2016.

3.The properties worth about Rs.23,00,000/- were identified at Pulivalam Village and the order of attachment was passed by the Government in GO(Ms)No.985/2012, dated 24/12/2012. Attachment was made absolute, on 26/05/2015. Auction was conducted by the



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District Revenue Officer, Trichy, on 29/11/2023. Total auction amount is Rs.56,30,000/-. Auction purchaser deposited the amount. In the meantime, A2-Parathesi Reddiyar died, on 25/12/2013. He contested the matter before the competent authority as well as the District Revenue Officer.

4.After that, the Government Pleader filed a petition before the Special Court seeking permission to disburse the amount to the depositors. In the meantime, a petition is filed by the petitioner with the following averments:-

"CRP(MD)No.2831 of 2023 is filed before this court challenging the order passed, dated 26/05/2015 in OA No.5 of 2013. When the matter was taken up for hearing, it is submitted by the Government Pleader that the sale was already effected. Now the present petition is filed stating that he is not a party before the TNPID Court or the before the Competent Authority. Paradeshi Reddiyar purchased the properties in Survey No.443/3 to an extent of 6 cents by a registered sale deed, dated 03/12/2001. Paradeshi Reddiyar constructed a building measuring about 3400 sq.feet for residential house and commercial purpose. He also obtained loan of Rs.5,50,000/- from the



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Indian Overseas Bank, Pulliakumam branch and deposited the title documents. In the meantime, GO.Ms No.985/2012, was passed, on 24/12/2012 without completing proper adjudication. Thereafter, he filed WP(MD)No.2814 of 2013 seeking the relief of preventing the DRO, Trichy, to take possession of the property without completing the adjudication proceedings under section 4 of the TNPID Act. Interim order was granted, on 21/02/2013. It was also made absolute, on 12/03/2013. After that, the Competent Authority filed a petition under section 7(7) of the Act before the Special Court for interim attachment to make absolute.

5. Pending the above said process, the father gifted the property to his wife and the petitioner herein by settlement deed, dated 22/07/2013. As per the above said settlement deed, the petitioner and her mother is entitled for the properties. The father died, on 25/12/2013 leaving behind his wife namely Saroja and daughter namely Mani @ Suriyaprabha and Geetha and this petitioner.

6. Later, he filed a petition in WP(MD)No.2814 of 2013 to substitute him in the place of his father. That was also allowed in MP(MD)No.1 of 2014, by order, dated



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19/10/2016. After the death of the father, the petitioner and his sister namely Geetha were not impleaded in OA No.5 of 2013. Without impleading them, the order has been obtained. It is not reflected in the encumbrance certificate also regarding the loan obtained by his father from the Bank. WP(MD)No.2814 of 2013 was disposed of granting liberty to the petitioner to challenge the final report, on 04/08/2022. Due to the lack of communication between him and the Advocate, he could not pursue the matter further. Thereafter only, he filed CRP(MD)No.2831 of 2023. Later, the sale proceedings were taken and completed, on 22/07/2013. Since, he is the affected party, he has challenged the same by way of this petition.

7.Heard both sides.

8.At the time of argument, the learned Senior counsel appearing for the petitioner has submitted that the Competent Authority invoked the section 7(7) of the Act, which was deleted by the subsequent amendment in Tamil Nadu Act 18 of 2008 by invoking the deleted provision, attachment was made. But this argument was not raised either by the father of the petitioner, while filing WP(MD)No.2814 of 2013 and so also by this



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petitioner, while filing the impleading petition and after the impleadment also. The copy of the order passed in WP(MD)No.2814 of 2013 is also enclosed in the typed of papers. Para 2 reads as under:-

"2.On instructions, the learned Government Advocate for the respondents submits that the provisional order of attachment made in the impugned Government Order has been confirmed by the TNPID Court as contemplated under Section 7 of the said Act. The petitioners have also filed some applications before the said TNPID Court for taking back their articles from the house property. Since final orders have been passed by the TNPID Court, no further adjudication is required in this writ petition, under which, the provisional order of attachment has been challenged. The petitioner is at liberty to challenge the final orders passed by the TNPID Court in the attachment proceedings before the appropriate forum."

9.The writ petition was dismissed, on 04/08/2022 granting liberty to the petitioner to challenge the order. Now he says that challenging the above said order, he filed CRP(MD)No.2831 of 2023. But pending process, the property was sold. So, this petition.



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10.The main grievance of the petitioner is that the Competent Authority did not implead him and his sister namely Geetha. Without impleading all the legal heirs, the above proceedings were taken.

11.He would also further submit that the father during his life time also executed a settlement, deed dated 22/07/2013. The copy of which is also made available. But the settlement deed was effected by the father only subsequent to the order of attachment.

12.Whether the order of attachment has been validly made and the sale conducted is valid are all matters, which can be raised by invoking section 11 of the TNPID Act.

13.Section 11 of the TNPID Act reads as follows:-

"11.Appeal.-Any person including the competent authority, if aggrieved by an order of the Special Court, may appeal to the High Court within thirty days from the date of order."



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14.It is not necessary that a person aggrieved must be a party before the TNPID Court or the Competent Authority, either at the time of attachment or at the time of making attachment of sale or at the time of sale. Without exhausting the appeal remedy, this petition has been preferred solely on the ground that he was not impleaded before the Competent Authority. So, according to him, it is a clear suppression of facts, which vitiates the entire proceedings. Article 227 of the Constitution of India can be involved in an exceptional circumstances.

15.As stated above, if the petitioner is the aggrieved person, either by the attachment or by sale, he can very well maintain the appeal by invoking section 11 of the Act. Without resorting to the appeal remedy, filing of the Civil Revision Petition is not maintainable. As stated in WP(MD)No.2814 of 2013, liberty was granted to the petitioner to challenge the order. But repeated filing of the civil revision petitions on the very same ground cannot be entertained. So, liberty is granted to the petitioner to challenge the proceedings under Section 11 of the TNPID Act.



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16.With the above said liberty, this civil
miscellaneous petition stands **dismissed**. No costs.

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Index:Yes/No
Internet:Yes/No
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To,

- 1..The Competent Authority/
District Revenue Officer,
Under TNPID Act,
District Revenue Office,
Trichy District.
- 2.The Additional Government Pleader,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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