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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved On	*Judgment Pronounced On*
12.07.2024	***13.09.2024***

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)Nos.344, 419 and 664 of 2016
and
C.M.P.(MD)Nos.4821, 4822, 5645, 5646 6956, 6957 of 2016

C.M.A(MD)No.344 of 2016:

Vijayalakshmi ... Appellant

Vs.

1.The Competent Authority,
District Revenue Officer,
Virudhunagar.

2.Inspector,
Economic Offence Wing, Unit II,
Virudhunagar.

3.Balaji Agency Groups Traders
Private Limited,
Virudhunagar.

4.P.Sivaraman
5.B.Sudhakaran ... Respondents

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PRAYER: Civil Miscellaneous Appeal is filed under Section 11 of Tamil Nadu Protection of Interest of Depositors Act, read with Order 41 of C.P.C., against Fair and Decreetal order passed by the Special Judge (TNPID Cases), Madurai, in I.A.No.65 of 2013 in O.A.No.3 of 2013, dated 29.03.2016.

For Appellant : Mr.S.Parthasarathy
For R1 and R2 : Mr.R.Baskaran
Additional Advocate General
assisted by Mr.V.Om Prakash
Government Advocate
For R3 to R5 : No appearance

C.M.A(MD)No.419 of 2016:

Balaji ... Appellant

Vs.

1.The Competent Authority,
District Revenue Officer,
Virudhunagar.

2.Inspector,
Economic Offence Wing, Unit II,
Virudhunagar.

3.Balaji Agency Groups Traders
Private Limited,
Virudhunagar.

4.P.Sivaraman
5.B.Sudhakaran ... Respondents

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PRAYER: Civil Miscellaneous Appeal is filed under Section 11 of Tamil Nadu Protection of Interest of Depositors Act, read with Order 41 of C.P.C., against Fair and Decreetal order passed by the Special Judge (TNPID Cases), Madurai, in I.A.No.67 of 2013 in O.A.No.3 of 2013, dated 29.03.2016.

For Appellant	: Mr.S.Parthasarathy
For R1 and R2	: Mr.R.Baskaran Additional Advocate General assisted by Mr.V.Om Prakash Government Advocate
For R3 to R5	: No appearance

C.M.A(MD)No.664 of 2016:

Balaji ... Appellant

Vs.

1.The Competent Authority,
District Revenue Officer,
Virudhunagar.

2.Inspector,
Economic Offence Wing, Unit II,
Virudhunagar.

3.Balaji Chits,
Virudhunagar District.

4.P.Sivaraman
5.B.Sudhakaran ... Respondents

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PRAYER: Civil Miscellaneous Appeal is filed under Section 11 of Tamil Nadu Protection of Interest of Depositors Act, read with Order 41 of C.P.C., against Fair and Decreetal order passed by the Special Judge (TNPID Cases), Madurai, in I.A.No.69 of 2013 in O.A.No.4 of 2013, dated 29.03.2016.

For Appellant : Mr.G.Mariappan
For R1 and R2 : Mr.R.Baskaran
Additional Advocate General
assisted by Mr.V.Om Prakash
Government Advocate
For R3 to R5 : No appearance

COMMON JUDGMENT

The three Civil Miscellaneous Appeals are preferred against the common Fair and Decreetal order dated 29.03.2016 passed under Tamil Nadu Protection of Interest of Depositors Act in I.A.No.65 of 2013 in O.A.No.3 of 2013, I.A.No.67 of 2013 in O.A.No.3 of 2013 and I.A.No.69 of 2013 in O.A.No.4 of 2013 by Special Judge (TNPID Cases), Madurai.

2.(i) The facts stated in C.M.A.(MD)No.344 of 2016 filed against the order passed in I.A.No.65 of 2013 in O.A.No.3 of 2013 are that the Competent

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Authority had filed O.A.No.3 of 2013 before the TNPID Court to pass an order making the ad-interim attachment made G.O.Ms.No.857, dated 14.12.2011 absolute as well as sell the properties so attached by public auction and release the sale proceedings. The petitioner in I.A.No.65 of 2013 namely Vijalakshmi had filed the said I.A. stating that the petition mentioned property originally belonged to the 4th respondent/ accused namely Sivaraman. The said Sivaraman along with others was running a financial establishment namely Balaji Agency Group Traders and had borrowed Rs.93,86,943.11/- from the State Bank of India, Virudhunagar (hereinafter referred to as SBI) and committed default. The SBI sold the property under the SARFAESI Act through auction to one Vijayan son of Sundararajmoorthy dated 06.10.2008 and 13.10.2008 for sale consideration of ? 3,05,001. Thereafter the said Vijayan had sold the property to the petitioner Vijalakshmi on 11.12.2008 through Sale Deed Document No. 7571/08. On 15.12.2008 the SBI executed rectification deed regarding S.No.151/1. The petitioner Vijalakshmi availed loan of ?7,25,000 from Tamil Nadu Mercantile Bank on 26.05.2010 by mortgaging the petition property and constructed a house and resides in the said property. Later on, the petitioner discovered that the property had been attached by the State Government under the TNPID Act due to

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defaults committed by the accused Sivaraman and Sudakaran, the respondents 4 and 5 in financial institutions run by the accused. The interim attachment was made under G.O.Ms.No.857, dated 14.12.2011, and the competent authority filed O.A.No.3 of 2013 for making the attachment absolute. The petitioner submitted that the attachment is illegal since she is a bonafide purchaser for valuable consideration and at the time of purchase there is no interim attachment. Further there is no collusion since the property was sold by SBI under the SARFAESI Act before the attachment order was passed to one Vijayan and the petitioner had purchased from the said Vijayan.

2.(ii) The Competent Authority submitted that the complaint was lodged in the year 2008, even though the SBI is one of the creditors, the property is liable for attachment since the accused had purchased from the funds by defrauding the depositors. The Court held that the petitioner was aware of the debts and the auction sale, further the petitioner Vijayalakshmi is having close ties with the Vendor Vijayan and had purchased the property for only ?1,000 more than the auction price within a month of his purchase, indicating collusion. Furthermore, the SBI did not have the sole right to auction the property to recover

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its loan, as the property was also purchased with funds defrauded from depositors. Against the said order the C.M.A.(MD)No.344 of 2016 is filed raising various grounds.

3.(i) The facts stated in C.M.A(MD)No.419 in 2016 filed against the order passed in I.A.No.67 of 2013 in O.A.No.3 of 2013. Initially, one Sangaiah sold 74¼ cent portion of land in S.No.249/2A to Ponnappan on 17.04.1995, later the said Ponnappan executed power of attorney to Sivaraman, 4th respondent / accused on 09.02.2004. The accused as power of attorney divided the property into plots and sold Plot Nos. F 9, 10, and 11, totaling 16.31 cents, to 5th respondent on 20.01.2005. The 2nd item of the petition schedule property in S.No. 250/1, was purchased by Natarajan from Soorakkammal and Seenivasagan. Natarajan then executed a power of attorney in favor of 4th respondent / accused on 27.05.2002. Thereafter the 4th respondent divided the property into plots and sold a 6.42 cent plot to 5th respondent on 20.01.2005. Similarly, the 3rd item in S.No.250/1A, was originally purchased by Natarajan from Soorakkammal, Srinivasagan, and Lingammal on 24.01.1991. Natarajan again granted a power of attorney to 4th respondent on 27.05. 2002, who then divided the property into

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plots and sold Plot Nos. E 5, 6, and 7, totaling 21.27 cents, to 5th respondent on 12.07. 2004. The accused had mortgaged the property to SBI for loan to the tune of Rs.93,86,943.11 and Rs. 27,64,870.12. Due to default on loans the SBI initiated auction sale under the SARFAESI Act by publishing the auction notice in daily newspapers on 03.10.2008, 06.10.2008 and 13.10.2008. Following this, the property in S.No.249/2A, along with the building on Plot Nos. F 9, 10, and 11, was sold to Velusamy. The property in S.No.250/1 (Plot No. E4) was sold to Vijayakumar on 08.12. 2008 and the property in S.No.250/1A (Plot Nos. E 5, 6, and 7) was also sold to Velusamy on the same date. Velusamy later executed a power of attorney in favor of Vijayakumar, who then sold the property to the petitioner Balaji on 11.03. 2010. The petitioner had made substantial improvements to the property, including constructing a building which is used as factory and do-down.

3.(ii) The Competent Authority submitted that the complaint was lodged on 02.01.2008, leading to the registration of a case in Cr.No.1 of 2008, even though the SBI is one of the creditors, the property is liable for attachment since the accused had purchased from the funds by defrauding the depositors and

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the properties were originally owned by the financial establishment managed by 5th respondent. The Court held that the petitioner was aware of the debts and the auction sale. Further the SBI did not have the sole right to auction the property to recover its loan, as the property was also purchased with funds defrauded from depositors. And the bank did not have superior rights over the other depositors and could not unilaterally sell the property under the SARFAESI Act to recover its loan. Against the said order the C.M.A.(MD)No.419 of 2016 is filed raising various grounds.

4.(i) The facts stated in C.M.A(MD) No.664 in 2016 filed against the order passed in I.A.No.69 of 2013 in O.A.No.4 of 2013 is that the petition schedule property was originally purchased by 4th respondent from Sangaiah on 17.04.1995. This property comprises 18 cents in Survey No.248 and 14 cents in Survey No.249/1A totally 32 cents. Since the accused / respondents 4 and 5 had defaulted to repay the deposit amounts complaint was filed and the petition schedule property was attached under Section 3 of the TNPID Act, as per G.O.Ms. No.839 dated 12.12.2011. The accused had mortgaged the property to SBI for loan to the tune of Rs.93,86,943.11 and Rs. 27,64,870.12. Due to default

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on loans the SBI initiated auction sale under the SARFAESI Act by publishing the auction notice in daily newspapers on 03.10.2008, 06.10.2008 and 13.10.2008. And sold the properties to Ponnupappu on 08.12.2008 and a rectification deed was executed. On 19.02.2010 the petitioner had purchased the property from Ponnupappu for valuable consideration and thereafter, constructed a factory and developed the property.

4.(ii) The Competent Authority submitted that the complaint was lodged leading to the registration of a case in Cr.No.2 of 2008, even though the SBI is one of the creditors, the property is liable for attachment since the accused had purchased from the funds by defrauding the depositors and the properties were originally owned by the financial establishment managed by 5th respondent. The Court held that the petitioner was aware of the debts and the auction sale. Further the SBI did not have the sole right to auction the property to recover its loan, as the property was also purchased with funds defrauded from depositors. And the bank did not have superior rights over the other depositors and could not unilaterally sell the property under the SARFAESI Act to recover its loan. Against the said order the C.M.A.(MD)No.644 of 2016 is filed raising various grounds.

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5. The Learned Counsels appearing for the appellants herein submitted that though the appellants have strong appeal grounds, the attachment may be lifted based on the subsequent events since the amount of the depositors in the alleged financial institutions were settled by the accused and the criminal cases ended in acquittal. And relied on the judgment passed by the TNPID Court in C.C.No.26 of 2013 wherein it is held as under:

> *"23. Further the accused were also charged for the offence under section 24 of TNPID Act. It is stated by the prosecution that the accused were defaulted in repayment of the deposit amount. The nineteen depositors have deposited Rs.27,20,102/- before the Accused No.1 financial establishment. The evidences of witnesses / depositors PW1 to PW17 and PW23 shows that the accused have settled the amount and the matter has been settled. Therefore, the prosecution fails to prove section 5 of TNPID Act.*
>
> *24. From the above discussed reasons, this Court comes to a conclusion that the prosecution had failed to prove that the accused A2 and A3 along with their financial establishment have acted malafide and dishonest intention to swallow and swindle the amount from the depositors. Therefore, for the above discussed reasons, the accused have settled the dues to the depositors and this case need not be proceed further."*

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6. The Learned Additional Advocate General submitted that the accused had repaid the depositors / complainants and as on date there is no complaint. And the Criminal Court had rendered a finding that the prosecution need not be proceeded and acquitted the accused.

7. It is seen that the erstwhile vendors had purchased the properties under auction sale conducted under SARFAESI Act and from them only the petitioners had purchased. Even the contention of the Competent Authority is that the SBI bank is not having sole right to auction the property to recover its loan and the bank is not having superior rights over the other depositors. The allegation of fraud or collusion was not raised against the petitioners herein. Infact such allegation cannot be raised against the petitioners, since the petitioners' vendors had purchased through auction conducted under SARFAESI Act. Even the Criminal Court had rendered a finding that the accused is not having malafide or dishonest intention. When the accused itself in not having malafide or dishonest intention, then the petitioners who are subsequent purchasers cannot be alleged with any criminal motives. In such circumstances, the attachment against the petitioners' property ought to be lifted.

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8. However, the Learned Additional Advocate General submitted that the matter may be remitted back to the TNPID Court for lifting the attachment, since the TNPID Court is the competent Court to lift the attachment. The Learned Counsel appearing for the appellants opposed the contention and submitted that the appeal is continuation of the litigation and there is no illegality to lift the attachment by High Court. Further the appellants had already undergone unnecessary litigation and also under mental distress, therefore the appellants plight ought to be considered and prayed to lift the attachment.

9. This Court is of the considered opinion that in the present case there is no complaint pending, all amounts are settled and the criminal case ended in acquittal against the accused and the petitioners are bonafide purchasers, in such circumstances the attachment ought to be lifted and that too at the earliest. Further the Learned Additional Advocate General had not put forth any legally sustainable ground to remit the case to TNPID Court. Furthermore, by remitting back to the TNPID Court it will take some time to lift the attachment and the pendency of cases would increase. Therefore, this Court to grant speedy justice, is inclined to lift the attachment and accordingly, the attachment is lifted. The

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TNPID Court shall release the properties of forthwith.

10. For the reasons stated supra, the Civil Miscellaneous Appeals are allowed. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

13.09.2024

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

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To

1. The Special Judge (TNPID Cases),
   Madurai.

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

3.The Competent Authority,
  District Revenue Officer,
  Virudhunagar.

4.The Inspector,
  Economic Offence Wing, Unit II,
  Virudhunagar.

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S.SRIMATHY, J.

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C.M.A(MD)Nos.344, 419 and 664 of 2016

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