IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO.94 OF 2024

[Dr. D Y Patil International Academy and others .vs. State of Maharashtra and others]

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Ms. Surabhi Naidu (Godbole), Advocate for Appellants.
Mr. S.A. Ashirgade, Additional Public Prosecutor for R-1/State.

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Coram : Nitin B. Suryawanshi and M.W. Chandwani, JJ.
Dated : January 10, 2025.

1. This appeal filed under Section 11 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short ‘the said Act’) challenges the order below Exh.1 passed by the learned Additional Sessions Judge, Nagpur in Misc. Criminal Application No.611/2016, thereby directing issuance of attachment warrant against applicant no.1 to the extent of Rs.1,40,00,000/-.

2. Offence vide Crime No.156/2014 is registered with Ambazari Police Station, Nagpur for the offence punishable under Sections 109, 420, 406, 409, 506, 120-B of the Indian Penal Code, 1860 read with Section 3 of M.P.I.D. Act, 1999, under Sections 45 (1)(a), 45 (s) of Reserve Bank of India Act, 1934 and under Section 24 (1), 27 of the Securities and Exchange Board of India Act, 1992 against the Directors and Management of Wasankar Wealth Management Limited.

3. During the course of investigation of the said crime, the Investigating Officer, Economic Offence Wing, Crime Department, Nagpur issued notices to the appellant on 17.12.2015, 05.01.2016 and 20.01.2016 stating that the Directors of the Wasankar Wealth Management Limited has malafide transferred an amount of Rs.1,00,00,000/- on 20.11.2012 and Rs.40,000/- on 26.08.2013 from the companies of H.D.F.C Bank account. When explanation of these amounts was called from the appellant, the appellant has explained that the said amounts are received as donations from the said company. Since the said company has deceived hundreds of depositors by promising them exorbitant interest on their deposits, the properties involved in the crime are required to be attached to protect the interest of the depositors. Hence, the appellant was asked to deposit an amount of Rs.2,39,20,000/- by the end of December, 2015 in Special Sessions Court, MPID Court, Nagpur.

4. Appellant, by filing Misc. Criminal Application No.410/2016 on 17.02.2016, by referring to Section 8 & 7 (5) of the said Act, objected the attachment of the said amount and sought direction to the Investigating Officer to withdraw the notices issued to the appellant.

5. Respondent No.1, Investigating Officer, on 10.03.2016, filed Misc. Criminal Application No.611/2016 under Section 8 of the said Act seeking attachment of amount of Rs.1,40,00,000/- from the appellant.

By filing reply to this application, appellant opposed the said application and also contended that their Misc. Criminal Application No.410/2016 is pending for consideration of the court.

6. Trial Court, by impugned order passed below Exh.1 in Misc. Criminal Application No.611/2016 allowed the application filed by the State and directed issuance of attachment warrant to the extent of Rs.1,40,00,000/- to the appellant. This order is impugned in the present appeal.

7. Heard learned advocate for the appellants and learned Additional Public Prosecutor for the respondents-State. Perused the appeal memo, annexures thereto, the reply-affidavit filed by respondent no.1 and additional affidavit.

8. For consideration of rival contentions of the parties it is apt to reproduce relevant provision of the said Act :

> **7. Powers of Designated Court regarding attachment :**
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> *(1) Upon receipt of an application under section 5, the Designated Court shall issue to the Financial Establishment or to any other person whose property is attached and vested in the Competent Authority by the Government under section 4, a notice accompanied by the application and affidavits and of the evidence, if any, recorded, calling upon the said Establishment or the said person to show cause on a date to be specified in the notice, why the order of attachment should not be made absolute.*
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> *(2) The Designated Court shall also issue such notice, to all other persons represented to it as having or being likely to claim, any interest or title in the property of the Financial Establishment or*

the person to whom the notice is issued under sub-section (1), calling upon all such persons to appear on the same date as that specified in the notice and make objection if they so desire to the attachment of the property or any portion thereof, on the ground that they have interest in such property or portion thereof.

(3) Any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the Designated Court at any time before an order is passed under sub-section (4) or subsection (6).

(4) The Designated Court shall, if no cause is shown and no objections are made under sub-section (3), on or before the specified date, forthwith pass an order making the order of attachment absolute, and issue such direction as may be necessary for realisation of the assets attached and for the equitable distribution among the depositors of the money realised from out of the property attached.

(5) If cause is shown or any objection is made as aforesaid, the Designated Court shall proceed to investigate the same and in so doing, as regards the examination of the parties and in all other respects, the Designated Court shall, subject to the provisions of this Act, follow the summary procedure as contemplated under Order 37 of the Civil Procedure Code, 1908 and exercise all the powers of a court in hearing a suit under the said Code and any person making an objection shall be required to adduce evidence to show that on the date of the attachment he had some interest in the property attached.

(6) After investigation under sub-section (5), the Designated Court shall pass an order either making the order of attachment passed under sub-section

(1) of section 4 absolute or varying it by releasing a portion of the property from attachment or cancelling the order of attachment :

Provided *that the Designated Court shall not release from attachment any interest, which it is satisfied that the Financial Establishment or the person referred to in sub-section (1) has in the property, unless it is also satisfied that there will remain under attachment an amount or property of value not less then the value that is required for repayment to the depositors of such Financial Establishment."*

8. Attachment of property of mala fide transferee :

(1) Where the assets available for attachment of a Financial Establishment or other person referred to in section 4 are found to be less than the amount or value which such Financial Establishment is required to re-pay to the depositors and where the Designated Court is satisfied, by affidavit or otherwise, that there is reasonable cause for believing that the said Financial Establishment has transferred (whether before or after the commencement of this Act) any of the property otherwise than in good faith and for consideration, the Designated Court may, by notice, required any transferee of such property (whether or not he received the property directly from the said Financial Establishment) to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.

(2) Where the said transferee does not appear and show cause on the specified date, or where after investigation in the manner provided in sub-section (5) of section 7, the Designated Court is satisfied that the transfer of the property to the said transferee was not in good faith and for

consideration, the Designated Court shall order the attachment of so much of the said transferee's property as is in the opinion of the Designated Court equivalent to the proper value of the property transferred.

9. Security in lieu of attachment :

Any Financial Establishment or person whose property has been or is about to be attached under this Act may, at any time, apply to the Designated Court for permission to give security in lieu of such attachment and where the security offered and give is, in the opinion of the Designated Court, satisfactorily and sufficient, it may cancel, the order of attachment or, as the case may be, refrain from passing the order of attachment."

9. Under sub-section (3) of Section 7 of the said Act, any person claiming an interest in the property can make an objection to the Designated Court, any time before an order is passed under sub-section (4) or sub-section (6). Sub-section (5) of Section 7 of the said Act contemplates investigation on the part of Designated Court which may include examination of the parties and following summary procedure as contemplated under section 37 of the Code of Civil Procedure, 1908. While doing so, the Designated Court exercises all the powers of a court in hearing a suit under the said Code and any person making an objection shall be required to adduce evidence to show that on the date of the attachment he had some interest in the property attached.

10. In terms of sub-section (6) of section 7, after investigation under sub-section (5), the Designated Court shall pass an order either making the order of attachment passed under sub-

section (1) of Section 4 absolute or varying it by releasing a portion of the property from attachment or cancelling the order of attachment.

11. It is a matter of record that Misc. Criminal Application No.410/2016 was filed challenging notices of attachment and attachment of the said amount prior to Misc. Criminal Application No.611/2016. Trial Court, while passing the impugned order below Misc. Criminal Application No.611/2016, has observed; "*the transfer from the financial establishment must be in good faith. Whether the transferee accepted the amount in good faith or whether the transaction was in good faith on the part of the transferee is immaterial. So, submission of the learned advocate for the non-applicant nos.1 to 6, that they accepted the donation from the non-applicant no.7, in good faith cannot be accepted.*"

It is clear from the above observations and the impugned order that Trial Court has misread and misconstrued the provisions of the said Act and has not considered the objection raised by the appellant in the proper perspective. Trial Court has denied opportunity to the appellant to substantiate its objection. Procedure prescribed in sub-section (5) of Section 7 of the said Act is not followed while passing the impugned order. Thus, the Trial Court has denied reasonable and fair opportunity of hearing to the appellant to contest its application on merits. Impugned order, therefore, cannot be sustained.

While considering Misc. Criminal Application No.611/2016, objection filed by the appellant needs to be considered by the Trial Court by following procedure prescribed in Section 7 of the said Act.

12. Learned Advocate for appellant submits that in terms of Section 9, appellant can furnish bank guarantee in case the trial Court is inclined to attach said amount. This submission will have to be considered by the Trial Court, in case, it comes to the conclusion that the amount of Rs.1,40,00,000/- is liable to be attached from appellant.

13. In the result, we quash and set aside the impugned order passed below Exh.1 by the learned Additional Sessions Judge, Nagpur in Misc. Criminal Application No.611/2016 and remand the matter back to the Trial Court for fresh consideration on merits.

14. Misc. Criminal Application Nos.410/2016 and 611/2016 shall be decided by the Trial Court, after following the procedure prescribed under Section 7 of the said Act.

15. Appellant is at liberty to invoke Section 9 of the said Act, if the need be, before the Trial Court, if necessary.

16. Trial Court shall decide Misc. Criminal Application No.611/2016 and Misc. Criminal Application No.410/2016, after giving an opportunity of hearing to the concerned parties, within a period of two months, from the date of receipt of writ of this order.

17. Criminal Appeal is disposed of accordingly. Pending application (s), if any, also stands disposed of.

(M.W. Chandwani, J.) (Nitin B. Suryawanshi, J.)

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