(2012) 11 MAD CK 0264

In the Madras High Court

Case No : C.R.P. (NPD) No. 441 of 2012

C. Sukumaran and S. Manikandan — APPELLANT

Vs

The Competent Authority and District Revenue Officer and The Deputy Superintendent of Police, Economic Offences — RESPONDENT

Date of Decision : 15-11-2012

Acts Referred:

Tamil Nadu Protection of Interests of Depositors in (Financial Establishments) Act, 1997 — Section 3, 4, 4(3), 6, 6(3)

Citation : (2013) 1 CTC 326

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : V. Lakshminarayanan for R. Munuswamy, for the Appellant; M. Raja, Government Advocate, for the Respondent

Judgement

R.S. Ramanathan, J.—Revision Petitioners, who are third parties to the proceedings initiated by the Respondents in O.A. No. 6 of 2001 & O.A. No. 53 of 2004, have filed the Application u/s 9 of the TNPID Act to accept a sum of Rs. 30,27,375/- as security in lieu of attachment of the Petition schedule properties and. cancel the interim order of attachment effected by the Government of Tamil Nadu in G.O.Ms. No. 360, Home (Courts II-A) Department, dated 3.4.2001 and G.O.Ms. No. 10, Home (Courts II-A) Department, dated 3.1.2002 and made absolute on 17.10.2003 in O.A. No. 6 of 2011 and consequently cancel the subsequent order of sale made in O.A. No. 53 of 2004 dated 31.12.2004. That Petition was dismissed without numbering the same and aggrieved by that, this Revision is filed. Learned Counsel for the Revision Petitioners submitted that the Petitioners are the absolute owners of the properties mentioned in the Petition which were originally owned by one V. Revathi and the said Revathi sold the property to the Second Petitioner and one Sathyanarayanan for valid sale consideration and executed the Sale Deed dated 19.11.1997. The said Sathyanarayanan settled his half share in favor of the First Petitioner under a Settlement Deed dated 27.1.1999. Therefore, except the Petitioners, no one can claim any right over the property and they came to know that M/s. Southern Enterprises committed default in repayment of deposit to its customers and on the basis of the Application received from the depositors, a case was registered in Crime No. 4 of 1998 against the Financial Establishment and the persons in management of the said Financial Establishment and Mrs. Revathi was the Managing Director of the said establishment and she was also arrayed as an Accused and the property purchased by the Petitioners was attached in G.O.Ms. No. 360, Home (Courts II-A) Department, dated 3.4.2001 u/s 3 of the TNPID Act as if it belongs to P. Venkatesan and the Petitioners filed O.A. No. 35 of 2008 u/s 7(3) of the Act to raise the interim order of attachment. In that Application, the Accused were set ex parte and later, they filed Application to set aside the ex parte order and that was allowed and they contended that the interim order of attachment was made absolute on 17.10.2003 in O.A. No. 6 of 2001 filed by the First Respondent herein and the First Respondent also filed O.A. No. 14 of 2005 to make absolute the interim order passed in G.O.Ms. No. 10, Home (Courts II-A) Department, dated 3.1.2002 and the same is pending and in the meanwhile, the Court below granted permission to sell the property attached under G.O.Ms. No. 360, Home (Courts II-A) Department, dated 3.4.2001 in O.A. No. 53 of 2004 and the First Respondent was permitted to sell the property. The learned Counsel for the Revision Petitioners submitted that the property which was attached by G.O.Ms. No. 360, Home (Courts II-A) Department, dated 3.4.2001 was already sold by Mrs. Revathi to the Second Petitioner and Sathyanarayanan for valid sale consideration on 19.11.1997 and the joint owner Sathyanarayanan settled his half share in favour of the First Petitioner herein on 27.1.1999. Therefore, even prior to the passing of the order of interim attachment in G.O.Ms. No. 360, Home (Courts II-A) Department, dated 3.4.2001, the said Revathi ceased to be the owner of the property and when the interim attachment was made absolute in O.A. No. 6 of 2001, the Revision Petitioners were not made parties and even in O.A. No. 53 of 2004 filed by the First Respondent seeking permission of the Court to sell the property, the Petitioners were not made as parties and therefore, their properties cannot be attached and sold and therefore, they filed O.A. No. 35 of 2008 to raise the order of attachment and that Application is pending and without hearing them, the Court below should not have ordered sale in O.A. No. 53 of 2004 and therefore, they filed Application u/s 9 of the Act by offering the value of the property as security to release the property from the attachment and that was not properly appreciated by the Court below and the Court below also refused to number the same and dismissed the said Application holding that interim order of attachment has been made absolute in O.A. No. 6 of 2001 and the sale was ordered in O.A. No. 53 of 2004 and therefore, the Court has no power to entertain the Application.

2. The learned Counsel for the Revision Petitioners further submitted that the Court below erred in holding that after the order of making interim attachment absolute, the Court has no power to entertain the Application as per the provisions of Section 7(4) of the Act and submitted that Section 9 is an

independent provision by which any person, who claims to be the owner of the property and whose property is under attachment, may apply to the Court for permission to give security in lieu of such attachment and in that Application, the Court has to independently decide whether the property of the Petitioner can be relieved after accepting the security and without taking any decision, the Court should not have rejected the Application without numbering the same. The learned Counsel further submitted that the Court below, without properly appreciating the provisions of Section 8 of the Act, erred in rejecting the Application and as per Section 8, bona fide transferees are protected and without hearing them, the Court should not have passed the order of attachment and therefore, a combined reading of Sections 7 to 9, would make it clear that bona fide transferee can apply for cancellation of interim attachment or the final order of attachment and therefore, the Application filed by the Revision Petitioners are directed to be numbered and disposed of in accordance with law.

3. On the other hand, the learned Additional Government Pleader appearing for the Respondents submitted that as per the provisions of Section 9, 3 & 4 of the Act, once an order of attachment was made absolute, the Special Court has no power to entertain the Application for accepting the security of any third party who claims to be the owner of the property which was under attachment and in this case, not only the attachment was made absolute, but the sale was also ordered in O.A. No. 53 of 2004 and therefore, the Application was rightly rejected by the Court below. The learned Additional Government Pleader further submitted that the value of the property which is sought to be released from attachment is more than the value mentioned by the Revision Petitioners and therefore, the Application cannot be entertained.

4. To appreciate the contention of both the parties, we will have to see the provisions of the Act. It is seen from the object of the Act that many Financial Establishments committed default in repaying the deposits on maturity and thereby inviting the public resentment, which created law and order problem, and to safeguard the interest of the depositors and to make available the funds to the depositors, the Act was passed for providing interim attachment of properties belonging to the persons who were in charge of the Financial Establishment and thereafter, making the interim attachment absolute after giving opportunity to the parties and by ordering sale of the property in public auction for distributing the sale proceeds to the depositors. As a matter of fact, Tamil Nadu Act 30/2003 was brought into force to give teeth to the impugned Act 44 of 1997 and under the Amendment Act 30/2003, the provisions of attachment, sale, realisation and distribution of sale proceeds are added to the Act.

5. Chapter II of the Act deals with the attachment and Section 3 begins with the non-obstante clause and a reading of Section 3 makes it clear that when the Government is satisfied that any Financial Establishment is not likely to return the deposits or to make payment of interest, to protect the interest of the

depositors of the Financial Establishment, the Government may pass an order of interim attachment attaching the money or other property alleged to have been procured either in the name of the Financial Establishment or in the name of any person from and out of the deposits collected by the Financial Establishment. Therefore, for passing an order of interim attachment, the Government has to be satisfied that the property either in the name of the Financial Establishment or any person must have been procured from and out of deposits collected by the Financial Establishment from the depositors and under that sub-section, the property of the Financial Establishment, the Promoter, Partner, Director, Manager or Member of the Financial Establishment or a person who has borrowed money from the Financial Establishment to the extent of his default or such other properties of that person in whose name, the properties were purchased from and out of deposits collected by the Financial Establishment can be attached.

6. u/s 4(3) of the Act, on receipt of the orders of the Government ordering attachment, the Competent Authority shall apply within 30 days to the Special Court constituted under the Act for making ad interim order absolute. As per Section 7(1) of the Act, upon receipt of Application u/s 4, the Special Court shall issue to the Financial Establishment or to any other person whose property is attached by the Government u/s 3, a notice accompanied by the Application and Affidavits and of the evidence, if any, calling upon him to show cause on or before a date to be specified in the notice as to why the order of attachment should not be made absolute. Section 7(2) mandates that the Special Court shall issue such notice to all other persons represented to it as having or being likely to claim, any interest or title in the Financial Establishment to make their objection if they so desire for the attachment to be raised. Section 7(3) also enables any other person claiming interest in the property attached irrespective of receipt of notice and make an objection as aforesaid to the Special Court at any time before an order is passed under sub-section (4) or (6). As per Section 7(4), if any cause is shown and no objections are made on or before the specified date, the Special Court shall forthwith pass the order making the interim order of attachment absolute and as per Section 7(5), if any cause is shown or no objection is made, the Special Court shall investigate the same by following the provisions of the CPC in hearing a Suit and as per Section 7(6), the Special Court shall pass an order within a period of 180 days from the date of Application under sub-section (3) of Section 4 either making ad interim order of attachment absolute or varying it by releasing a portion of the property from attachment or canceling the ad interim order of attachment. As per Section 7(7), once an order of attachment is made absolute on the Application by the Competent Authority, the Special Court shall direct the Competent Authority to sell the property attached, by pubic auction and realise the sale proceeds.

7. Section 8 deals with attachment of property of mala fide transferees and when the Special Court is satisfied by Affidavit or otherwise that there is reasonable cause for believing that the Financial Establishment has transferred any of the property otherwise than in good faith and for consideration, the Special Court

may, by notice, require any transferee of such property 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. As per Section 8(2), if the transferee does not appear and show cause within a specified date, or where the Special Court is satisfied after investigation that the transfer of property was not in good faith and for consideration, the Special Court shall order the attachment of so much of the transferee''s property as in the opinion of the Special Court equivalent to the proper value of the property transferred.

8. Therefore, a reading of Sections 3, 7 & 8 makes it clear that the Government has to form an opinion for attaching the property alleged to have been procured either in the name of the Financial Establishment or in the name of any other persons from and out of the deposits collected by the Financial Establishment and pass an order of ad interim attachment. Thereafter, the Competent Authority shall apply to the Special Court within 30 days for making the order of attachment absolute and u/s 7, the order can be made absolute after giving opportunity to the persons whose property is attached by the Government u/s 6(3).

9. Admittedly, in this case, it is alleged that the property was owned by Mrs. Revathi, who was the Partner of the Financial Establishment and she sold the property under a registered Sale Deed dated 19.11.1997 to the Second Petitioner and one Sathyanarayanan and Sathyanarayanan settled his half share in favour of the First Petitioner under a Settlement Deed dated 27.1.1999. The order of interim attachment was passed by the Government by passing G.O.Ms. No. 360, Home (Courts II-A) Department, dated 3.4.2001. Therefore, on the date of passing of the G.O., making interim attachment, the property ceased to be the property of the Financial Establishment or of the Directors of the Financial Establishment and they have sold the property to the Revision Petitioners. The order of ad interim attachment was made absolute in O.A. No. 6 of 2001 on 17.10.2003 by the Special Court and admittedly, the Revision Petitioners were not parties and they were not heard before the order was made absolute.

10. u/s 7(1), on receipt of Application filed by the Competent Authority u/s 4, a notice shall be issued to the Financial Establishment or to any other person whose property is attached by the Government u/s 3 calling upon that person to show cause why that attachment should not be made absolute. The Petitioners are the owners of the property which is attached by the Government u/s 3 by issuing G.O.Ms. No. 360, Home (Courts II-A) Department, dated 3.4.2001 and Section 7(2) mandates the Special Court to issue notice to all others represented to it as having or being likely to claim any interest or title in the property of the Financial Establishment and irrespective of the notice, any person can also make objection to the Special Court before an order is passed by making the attachment absolute for varying the order of ad interim attachment by releasing a portion of the property by canceling the ad interim attachment.

11. It is the contention of the learned Additional Government Pleader that as per Section 7(3), any person claiming interest in the property attached even though notice was not served on him, can raise objection only before any order is passed u/s 7(4) or 7(6) of the Act and in this case, the interim order of attachment was made absolute by the order made in O.A. No. 6 of 2001 dated 17.10.2003 and therefore, after the attachment was made absolute u/s 7(4) of the Act, it is not open to the Revision Petitioners to file an Application for raising that attachment by offering security in lieu of the attachment. He, therefore, submitted that this was properly appreciated by the Court below while rejecting the Application filed by the Revision Petitioners and therefore, the Revision is not maintainable.

12. I am not inclined to accept the contention of the contention of the learned Additional Government Pleader and also the views expressed by the Court below for rejecting the Application filed by the Revision Petitioners. If the order of the Court below is to be accepted and the arguments of the learned Additional Government Pleader is also to be accepted, then Section 8 of the Act will become redundant and Section 9 will have no Application. It is a rule of interpretation that every provision in an Act has to be properly interpreted and given effect to and by giving importance to one provision, the other provision should not be made redundant and therefore, on a reading of Sections 3, 7, 8 & 9, the order of the Court below cannot be accepted.

13. As stated supra, a duty is cast upon the Special Court to issue notice to the person whose property is attached on receipt of Application u/s 4. As per Section 7(2), a duty is also cast upon the Special Court to issue such notice to all other persons representing to it likely to have any interest or title in the property of the Financial Establishment. Similarly, as per Section 7(3), irrespective of service of notice, any person claiming interest in the property attached can make objection to the Court at any time before the order of attachment is made absolute. Though under sub-clauses (2) & (3) to Section 7, a person having a right or title or interest over the property which is attached can make representation to the Special Court by raising objection, irrespective of the service of notice on them about the attachment, the right of the parties whose property has been attached u/s 3 and who does not make any objection to the Special Court before the order of attachment is made under Sections 4 & 6 is not remedy less as one cannot be expected to raise any objection or apply to the Special Court for raising the attachment when notice was not served on him.

14. Further, as per Section 8 of the Act, in case of mala fide transfers, when the Special Court is satisfied that there is reasonable cause for believing that the Financial Establishment transferred any of the property otherwise in good faith and for consideration, the Special Court may, by notice, require any transferee of the property 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. Therefore, when the property has been transferred by the Financial Establishment or by the persons associated

with the Financial Establishment such as Directors, Partners, etc., and when the Special Court on being satisfied that there is reasonable cause that the transfers are otherwise in good faith and for consideration, the Special Court may, by notice, require any transferee to show cause why the attachment shall not be made in respect of those properties.

15. Therefore, even in the absence of any objection raised by the persons who purchased the property before the order of attachment and before those properties are to be attached, the Special Court has to satisfy itself that the property was transferred otherwise than in good faith and for consideration and thereafter, notice has to be issued to the person to show cause why his property should not be attached and even as per Section 7(5), the order of attachment shall be made absolute only after examining those parties and the Special Court has to follow the procedure contemplated as provided in the Code of Civil Procedure. Therefore, in respect of the properties owned by third parties, a duty is cast upon the Special Court to issue show cause notice to such persons after being satisfied that the transfers were not made in good faith and for consideration and only thereafter pass the order of attachment. Therefore, a reading of Sections 7 & 8 of the Act would make it clear that even though the attachment order was made absolute, so far as the third parties are concerned, without hearing them, the property shall not be attached.

16. Further, it is a fundamental Principle of Natural Justice that no person can be condemned without giving opportunity and when it is proved by the Petitioners that they purchased the property long before the interim order of attachment, from the Financial Establishment against whom the proceedings were initiated under the Act, the property of the Revision Petitioners, who purchased the property earlier to the order of interim attachment, cannot be attached by way of interim attachment without giving them an opportunity and even when the order is also made absolute without giving opportunity to them, it is open to the Revision Petitioners to apply to the Court for raising the order of attachment. As a matter of fact, u/s 9 of the Act, a right is given to the Financial Establishment or persons whose property has been attached or about to be attached to apply to the Special Court at any time for seeking permission to give security in lieu of such attachment and if, in the opinion of the Special Court, the security is satisfactory and sufficient, it may cancel the ad interim attachment or be refrained from passing the order of attachment as the case may be.

17. Therefore, when a right has been given to the party, who was served with notice to apply to the Special Court for raising the attachment by offering security, the said right cannot be denied to the person who purchased the property long before the date of interim attachment and who was also not served with notice by offering security in lieu of such attachment. Further, according to me, passing of ad interim attachment is also illegal as the property was also transferred before the order of ad interim attachment and when the property has already been transferred before the order of interim attachment, the Special

Court has to act only according to Section 8 of the Act and the provision of Sections 4 & 7 will not have any Application in respect of the properties which were already transferred before the order of interim attachment. Nevertheless, having regard to the fact that the Revision Petitioners have offered to pay Rs. 30,27,375/- the Special Court ought to have considered the Application on merits and ought not to have rejected the Application without numbering the same. Hence, the Revision is allowed and the order of the Court below is set aside and the Special Court is directed to number the Application and deal with the Application filed by the Revision Petitioners in the light of the above observation and also in view of Sections 8 & 9 of the Act and pass appropriate orders. No costs.

