(2015) 12 MAD CK 0103

In the Madras High Court

Case No : C.M.A.(MD) No. 807 of 2014 and M.P.(MD) Nos. 1 and 3 of 2014

N. Vanjimuthu APPELLANT

Vs

The Competent Authority & Commissioner of Land Administration, DRO and Others RESPONDENT

Date of Decision : 15-12-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 64
Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Tamil Nadu Protection of Interests of Depositors in (Financial Establishments) Act, 1997 — Section 15(1), 3, 4, 4(3), 4(4)

Citation : (2016) 1 LW 436 : (2016) 1 MLJ 32

Hon'ble Judges : D. Hari Paranthaman, J.

Bench : Single Bench

Advocate : R. Janakiramalu, for the Appellant; G. Muthukannan, GA, for the Respondent

Judgement

D. Hari Paranthaman, J.—This matter relates to unfortunate depositors whose deposits are not returned for more than 15 years.

2. The 2nd respondent/Ravi & Company Bankers, Dindigul, collected deposits from 1521 persons to the tune of Rs. 3,62,68,430/- before the year 2000. In spite of the deposits got matured, the depositors were not returned with money. Hence, about 528 complaints were sent by those depositors to various authorities.

3. Acting on the complaints, the Government issued G.O. Ms. No. 1362, Home (Courts IIA) Department, dated 18.12.2000, under Section 3 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997, (shortly, the Act) by making interim attachment of the properties and the money as per the schedule to the said G.O. At this juncture, it is useful to extract the schedule to G.O. Ms. No. 1362, Home (Courts IIA) Department, dated 18.12.2000.

"THE SCHEDULE DETAILS OF MONEY AND MOVABLE PROPERTIES

IMMOVABLE

Dindigul Town - Survey No. 2572 to 257 (Total area 15,000 SQ.FT., Built up area 6000 Sq ft.) - Hotel Swagath

MONEY:--

SANTHA SHEELA NAIR SECRETARY TO GOVERNMENT"

4. It could be seen from the aforesaid schedule that the attached Hotel Swagath is having the built up area measuring 6000 sq.ft in Dindigul Town in the total area of 15,000 sq.ft. The interim attachment was made in the interest of the depositors. The aforesaid properties were purchased from the deposits of the depositors.

5. According to the appellant herein, even before the interim attachment made in the year 2000, the financial establishment (hereinafter referred to as respondents 2 to 6) entered into a lease with him for running the Hotel Swagath. He admits in his counter affidavit filed before the TNPID Court, more particularly, paragraph 3 that the respondents 2 to 6 herein informed him about the complaints preferred by the depositors against the Bankers for not returning the deposits. Hence, on their request, the appellant herein surrendered possession of the Hotel Swagath to them in December 2000. According to the appellant, in July 2001, the respondents 2 to 6 approached him once again to run the Hotel Swagath on lease basis. The said affidavit proceeds that the respondents 2 to 6 went on pestering him unabatedly to purchase the property, as many depositors approached the court of law and obtained decrees against them in various courts of law, besides initiating criminal proceedings.

6. It is also averred that with a view to emancipate the respondents 2 to 6 from the financial distress, the appellant purchased the Hotel Swagath by means of a registered sale deed dated 11.08.2003 for a valuable consideration from them.

7. Before the petitioner purchased the property by way of a sale deed dated 11.08.2003 as stated above, one of the partners of M/s. Hotel Swagath filed W.P.5342 of 2001 before the Principal Seat, seeking to quash the aforesaid G.O. Ms. No. 1362, Home (Courts IIA) Department, dated 18.12.2000 issued under Section 3 of the Act, making interim attachment. The said W.P.5342 of 2001 was disposed of with some directions on 02.07.2001.

8. This Court without deciding any issues, left all the issues to be decided by the Special Court constituted under the Act, however, directed the District Collector and the Revenue Divisional Officer, Dindigul, to hand over possession of the property to the owners of the Hotel Swagath, on condition that the owners of the Hotel shall remit Rs. 50,000/- per month until further orders to be passed by the Special Court under the Act. The Special Court was further directed to dispose of the miscellaneous petition filed by the competent authority under Section 5 of

the Limitation Act, for condoning the delay in filling the petition under Section 4 of the Act, to make the interim attachment absolute, within a period of six weeks.

9. In these circumstances, the Special Court passed an order dated 26.11.2001 in I.A. No. 21/2001 in O.A. No. Unnumbered/2001, condoning the delay of 62 days in filing the application by the competent authority under Sections 4(3) and 4(4) of the Act, to condone the delay in filing the application to make the interim attachment absolute. The Court held that the Limitation Act is applicable in considering the application filed under Sections 4(3) and 4(4) of the Act.

10. After condoning the delay, original application was numbered as O.A. No. 8/2001 and after hearing both sides, the interim attachment issued in G.O. Ms. No. 1362, Home (Courts IIA) Department, dated 18.12.2000 was made absolute by the TNPID Court, by order dated 19.05.2003 in O.A.8/2001.

11. While so, the appellant herein, aggrieved against the aforesaid order dated 19.05.2003 made in O.A. No. 8/2001 making the interim attachment absolute, filed appeal in CMA. No. 805/2010. In the meantime, O.A. No. 8/2001 was transferred to the Special Court at Madurai, from the Special Court at Madras, on the basis of territorial jurisdiction and renumbered as O.A. No. 19/2011.

12. Without interfering with the order of attachment referred to above and without going into the merits and demerits of the case, this Court disposed of CMA. No. 805/2010 on 08.08.2011, directing the TNPID Court, Madras, to dispose of the original application within a period of three months.

13. In view of the aforesaid transfer of the original application, CMA. No. 805/2010 was posted before this Court under the caption, ''for being mentioned'' for suitable modification of the order. Accordingly, on 21.10.2011, this Court directed the TNPID Court at Madurai to dispose of the original application within a period of three months. That is, further time is granted for disposal of O.A.

14. Subsequently, this Court by another order dated 23.11.2012 in CMA. No. 805 of 2010, granted four more months for the TNPID Court, Madurai, to dispose of O.A. No. 19/2011.

15. In these circumstances, the TNPID Court at Madurai recorded evidence. When the evidence was closed, the appellant filed I.A. Nos. 74 and 76 of 2013 to re-open his evidence and to recall the witnesses. The same was dismissed by the TNPID Court on 31.10.2013 and 11.11.2013 respectively. Those orders rejecting I.A. Nos. 74 and 76 of 2013 were questioned by the appellant herein in CMA(MD) Nos. 1865 and 2072 of 2013 before this Court. This Court on 02.01.2014 set aside those orders and permitted the petitioner to let in additional evidence. However, this Court directed to dispose of the original application at the earliest point of time.

16. In the meantime, the appellant also filed TR.CMP. No. 433/13 to transfer O.A. No. 19/2011 from the Special Court at Madurai to some other court. However, on 03.01.2014, the appellant withdrew the said TR.CMP.

17. The Special Court, Madurai, passed an elaborate order dated 18.06.2014 in O.A. No. 19/2011, making the interim attachment absolute. The order dated 18.06.2014 was passed after consideration of oral and documentary evidence let in by the parties.

18. Now the petitioner has filed this Civil Miscellaneous Appeal questioning the aforesaid order dated 18.06.2014, making the interim attachment absolute in O.A. No. 19/2011.

19. Heard both sides.

20(i). The learned counsel for the appellant vehemently contended that the Special Court, Madurai, has no power to entertain the original application to make the stay absolute, if the same is not filed within 30 days from the date of interim attachment. According to him, since the application under Sections 4(3) read with 4(4) of the Act was not filed within 30 days and the same was filed with the delay of 62 days, the Special Court ought not to have entertained the application to make the interim attachment absolute. In this regard, the learned counsel has placed heavy reliance on the judgment of this Court in Tvl. Vijayalakshmi Chit Funds Vs. The Competent Authority and Revenue Officer and Others, .

(ii). The learned counsel for the appellant has further submitted that the appellant is a bona fide purchaser and he parted away with the huge sum of money as consideration for purchasing the property. The interim attachment did not reflect in the encumbrance. Hence, the interim attachment should not have been made absolute by the Special Court, Madurai, as the appellant is a bona fide purchaser. The learned counsel for the appellant also submitted that the petitioner settled 297 depositors. Hence, the Special Court was not correct in making the interim attachment absolute.

(iii). According to him, the interim attachment could have no effect on the sale of the concerned attached property purchased by the appellant by way of the sale deed dated 11.08.2003. In this regard, he placed reliance on the judgment of this Court in K.D.P. Properties Pvt. Ltd. Vs. The Sub-Registrar and Another, .

(iv). Further, he also placed reliance on the judgment of this Court in G.D. Subramaniam Vs. The Sub Registrar, P. Shanmugam, B. Dillibabu and B. Vasu, and the judgment of the Apex Court in S.N. Ranade v. The Union of India and another, reported in AIR 1964 SCJ 133 in support of his contentions.

21. On the other hand, the learned counsel for the respondents/bankers sought to sustain the order. Further, they disputed about the receipt of consideration from the appellant pursuant to the sale deed dated 11.08.2003. They relied on one Varthamana Deed dated 11.08.2003 executed by the appellant and submitted that the appellant failed to pay any amount to the depositors as agreed to by him and the sale was made only for the said purpose and ultimately, it was the bankers who settled some of the depositors and the

appellant did not settle the deposit amount payable to any depositors.

22(i). The learned counsel for the depositors who got impleaded as respondents 8 to 13, submitted that the depositors are yet to be settled for the past 15 years and the lis between the appellant and the bankers could be resolved by the competent civil court and the dispute between them could not be put against the interests of the depositors. According to him, the very purpose of the Act is to protect the innocent depositors. Therefore, he prayed for a direction to the special court to proceed further with the sale of the attached property so as to settle the depositors. According to him, there are many more depositors who lost their money. However, they did not approach the authority due to frustration. Hence, the Special Court shall take all efforts to settle all those depositors also in the true spirit of the Act.

(ii). He further submitted that the Act was upheld by the Full Bench of this Court in Mrs. S. Bagavathy Vs. State of Tamil Nadu, and the same was taken to Apex Court. The Apex Court confirmed the judgment of the Full Bench. The Act is a beneficial piece of legislation, as in this country thousands of innocent depositors are cheated by the financial establishment.

(iii). The learned counsel for the depositors sought to rely on the judgment in Ashok Vs. The Competent Authority and District Revenue Officer and Others, , more particularly, paragraph 12 therein and another judgment in K. Veerasamy Vs. The Secretary to Government, Home (Police-XIX) Department, Fort St. George, Chennai-600009 and Others--> more particularly, paragraph 13 therein, in support of his submission that Section 5 of the Limitation Act is applicable in considering the application of the competent authority seeking to condone the delay in filing the application to make the interim attachment absolute under Sections 4(3) and 4(4) of the Act.

(iv). The learned counsel appearing for the depositors sought to distinguish the judgment in Tvl. Vijayalakshmi Chit Funds Vs. The Competent Authority and Revenue Officer and Others, , on the ground that in that case, no application was filed by the competent authority to condone the delay that only made the court to set aside the order of the competent court making the interim attachment absolute. He also relied on the judgment of this Court in Employees'' Provident Fund Organization & another v. The Inspector General of Registration & others reported in 2013 (8) MLJ 636 : 2014 WLR 950, more particularly, paragraph 54.2(II), wherein this Court held following the judgment of the Apex Court in Nancy John Lyndon Vs. Prabhati Lal Chowdhury and Others, , that any sale made during the pendency of the attachment is null and void. He also relied on the judgment in T. Alamelu Ammal Vs. Mangalakshmi, .

23. I have considered the submissions made by either side.

24. Since there were many complaints, complaining that the deposits made by the public are not returned by the financial establishments and the innocent public are cheated, the Tamil Nadu Government enacted the Tamil Nadu

Protection of Interests of Depositors (In Financial Establishments) Act, 1997 (Tamil Nadu Act 44 of 1997). It is useful to extract the objects and reasons leading to the enactment.

"There is mushroom growth of Financial Establishments not covered by the Reserve Bank of India Act, 1934 (Central Act II of 1934) in the State in the recent past with the sole object of grabbing money received as deposits from the public, mostly middle class and poor, on the promise of unprecedented high rates of interest and without any obligation to refund the deposits to the investors on maturity. Many of these Financial Establishments have defaulted to return the deposits on maturity to the public running to crores of rupees and there by inviting public the resentment, which created law and order problems in the State. The Government have, therefore, decided to undertake suitable legislation, in the public interest, in order to regulate the activities of such Financial Establishments, other than those covered by the Reserve Bank of India Act, 1934 (Central Act II of 1934).

2. The Bill seeks to give effect to the above decision."

25. The charging section is Section 3 of the Act. Section 3 vests with the Government to make interim attachment, on complaints from the depositors, the properties of the financial establishment that were acquired through the deposits of the depositors either in their names or in the name of others. This Section also empowers to attach money. The section opens with the non obstante clause, making it clear the policy of the State to secure the interests of the innocent depositors. Thus, the appellant cannot advance argument that he was a bonafide purchaser. At this juncture, it is useful to extract Section 3 of the Act.

"3. Attachment of properties on default of return of deposits.

-- Notwithstanding anything contained in any other law for the time being in force ---

(i) where upon complaints received from a number of depositors, that any Financial Establishment defaults the return of deposits after maturity, or fails to pay interest on deposit or fails to provide the service for which deposit has been made, or

(ii) where the Government have reason to believe that any Financial Establishment is acting in a calculated manner with an intention to defraud the depositors,

and if the Government are satisfied that such Financial Establishment is not likely to return the deposits, or to make payment of interest or to provide the service, the Government may, in order to protect the interests of the depositors of such Financial Establishment, pass an ad-interim order 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 other person from and out of the deposits collected by the Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the promoter, partner, director, manager or member of the said 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 properties were purchased from and out of the deposits collected by the Financial Establishment, as the Government may think fit, and transfer the control over the said money or property to the Competent authority."

26. The purpose of the Act is to secure the deposits of the depositors, who are cheated by financial companies, at the earliest point of time and after the interim attachment is made, the Act contemplates filing of an application by the competent authority under the Act before the Special Court constituted under the Act, to make the interim attachment absolute, within a period of 30 days. In fact, earlier, the competent authority was to file such application within a period of 15 days. The purpose is to file the application as early as possible, so that the interests of the depositors are secured at the earliest point of time. This could be seen from sections 4(3) and 4(4) of the Act. It is useful to extract the entire section 4 in this regard.

"4. Competent authority.--(1) The Government may, by notification, appoint [one or more authorities for such area or areas or such case or cases as may be specified in the notification] hereinafter called ''''the Competent authority'''' to exercise control over the properties attached by the Government under section 3 .

(2) The Competent authority shall have such other powers as may be necessary for carrying out the purposes of this Act.

(3) Upon receipt of the orders of the Government under section 3 , the competent authority shall apply within thirty days to the Special Court constituted under this Act for making the ad-interim order of attachment absolute and for a direction to sell the property so attached by public auction, and realise the sale proceeds.]

(4) An application under sub-section (3) shall be accompanied by one or more affidavits, stating the grounds on which the belief that the Financial Establishment has committed any default or is likely to defraud, is founded, the amount of money or value of other property believed to have been procured by means of the deposit, and the details, if any, of persons in whose name such property is believed to have been invested or purchased out of the deposits or any other property attached under section 3 .

(5) The Competent authority shall make an application to any court having jurisdiction to try similar cases or deal with the subject matter pertaining to money or property belonging to a Financial Establishment or any person specified in section 3 situated within the territorial jurisdiction of that court for appropriate orders.

(6) For the purpose of crediting and dealing with the money realised by the Competent authority, he shall open an account in any Scheduled commercial bank."

27. While the Act contemplates the competent authority to make an application within 30 days to the Special Court, to make the interim attachment issued by the Government absolute, it also enjoins the Special Court to dispose of such application filed by the competent authority within a period of 180 days from the date of such application as per Section 7(6) of the Act.

28. Before deciding the application of the competent authority to make the interim attachment absolute, the Special Court shall also hear the persons who are having or likely to have interest in the property of the financial establishment that was under interim attachment. The Special Court shall also consider any objection made by the financial establishment as well as the persons claiming interest on the attached property. It is also useful to extract entire section 7 of the Act.

"7. Powers of Special Court [regarding attachment, sale, realisation and distribution].--(1) Upon receipt of an application under section 4 , the Special Court shall issue to the Financial Establishment or to any other person whose property is attached by the Government under section 3 , a notice accompanied by the application and affidavits and of the evidence, if any, recorded, calling upon him to show cause on a date to be specified in the notice why the order of attachment should not be made absolute and the property so attached be sold in public auction.]

(2) The Special 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 calling upon such person to appear on the same date as that specified in the notice and make objection if he so desires to the attachment of the property or any portion thereof on the ground that he has an 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 Special Court at any time before an order is passed under sub-section (4) or sub-section (6).

(4) If no cause is shown and no objections are made on or before the specified date, the Special Court shall forthwith pass an order making the ad-interim order of attachment absolute and direct the competent authority to sell the property so attached by public auction and realise the sale proceeds.

(5) If cause is shown or any objection is made as aforesaid, the Special Court shall proceed to investigate the same, and in so doing, as regards the examinations of the parties and in all other respects, the Special Court shall,

subject to the provisions of this Act, follow the procedure and exercise all the powers of a Court in hearing a suit under the Code of Civil Procedure, 1908, (Central Act V of 1908) and any person making an objection shall be required to adduce evidence to show that at the date of attachment he had some interest in the property attached.

(6) After investigation under sub-section (5), the Special Court shall pass an order within a period of one hundred and eighty days from the date of receipt of an application under sub-section (3) of section 4 either making the ad-interim order of attachment absolute or varying it by releasing a portion of the property from attachment or cancelling the ad-interim order of attachment and then direct the competent authority to sell this property so attached by public auction and realise the sale proceeds;

Provided that the Special 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 three will remain under attachment an amount or property of value not less than the value that is required for re-payment to the depositors of such Financial Establishment.]

(7) [***]

(8) The Special Court shall, on an application by the Competent authority, pass such order or issue such direction as may be necessary for the equitable distribution among the depositors, of the money attached or realised out of the sale;

Provided that the Special 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 than the value that is required for re-payment to the depositors of such Financial Establishment."

29(i). In exercise of the rule making power under Section 15(1) of the Act, the Government also framed rules namely, Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Rules, 1997, (shortly, the rules).

(ii) Rule 7 is relevant for the purpose of this case and rule 7 makes it clear that any property that was under interim attachment shall not be transferred to any other person by any mode whatsoever and if any such transfer is made, the same shall be null and void. Hence, the plea of the appellant that he was a bonafide purchaser deserves to be rejected. It is useful to extract rule 7 of the rules.

"7. When an order is made attaching the money or other property, transfers void.--When an ad-interim order attaching the money or other property of a Financial Establishment is made by the Government under section 3 of the Act, such money or property referred to in the order shall not be transferred to any other persons by any mode whatsoever and if any such transfer is made, it shall be null and void."

30. As rightly contended by the learned counsel for the depositors, the vires of the Act was questioned before this Court by the financial establishment. The Full Bench of this Court repelled the contentions and upheld the Act in its detailed judgment in Mrs. S. Bagavathy Vs. State of Tamil Nadu, . The matter was taken to the Apex Court and the Apex Court also confirmed the same in its judgment in K.K. Baskaran Vs. State rep. by its Secretary, Tamil Nadu and Others, .

31. Thus, in my view, this appeal shall be considered in the light of the aforesaid facts and taking into account the interests of the depositors.

32(i). It is unfortunate that it stares in one''s face that though 15 years have lapsed, the depositors are yet to get their money and the matter is again and again agitated either by the financial establishment or the appellant, who bought the property after the interim attachment was made absolute by the Special Court. Immediately after the interim attachment was made by the Government, by filing W.P.5342/2001, the respondents 2 to 6 came with the promise that they would pay the depositors.

(ii). The promise was observed more in breach. It is useful to extract the directions issued by this Court while disposing W.P.5342/2001 on 02.01.2014.

"10. Therefore, I am inclined to hold as follows:--

(i) Respondents 2 and 3 are directed to hand over possession of the property to the petitioner forthwith.

(ii) The petitioner shall reoccupy the property subject to the terms and conditions prescribed under the order of attachment. He shall also hold the property subject to the condition of remitting a sum of Rs. 50,000/- per month till further orders to be passed by the Special Court.

(iii) The Special Court is directed to dispose of the miscellaneous petition under section 5 of the Limitation Act filed by the competent authority for condoning the delay in filing the petition under section 4 of the Act within a period of six weeks from the date of receipt of a copy of this order. The writ petition is disposed of subject to the above terms. No costs.''"

33(i). In the aforesaid order, this Court refused to quash the interim attachment, while granting time to the financial establishment to settle the amount by remitting Rs. 50,000/- every month till the disposal of the case by the Special Court. The said direction of remittal to pay Rs. 50,000/- every month till the disposal of the case, was breached in its compliance. It seems that the remittance was made only for few months and thereafter, admittedly, the same was not continued. But, had it been complied with, almost, all the depositors could have been settled.

(ii) Now, it has to be taken note of that similar arguments advanced by the appellant herein were also advanced by the financial establishment in the aforesaid writ petition. They are the two sides of the same Coin. Both have their own interests in their mind and they have no interest about the interests of the depositors.

(iii) It was contended by the financial establishment that the Special Court has no power to entertain the application of the competent authority and there is no provision, if the application is filed beyond 30 days after the interim attachment and hence, the application filed by the competent authority to condone the delay of 62 days in filing the application to make the interim attachment absolute under Sections 4(3) and 4(4) of the Act, is without jurisdiction. It was contended that Section 5 of the Limitation Act would not apply.

(iv) While disposing W.P.5342/2001, this Court made it clear in paragraph 7 of its order dated 02.07.2001 in W.P.5342/2001 that this Court did not propose to go into the issue as to the applicability of Section 5 of the Limitation Act and the same would be decided by the Special Court. It is useful to extract the following passage from paragraph 7 of the order.

"I do not propose to go into the issue as to whether section 5 of the Limitation Act would apply or not considering that the petition is before the Special Court and it is for the Special Court to decide whether section 5 of the Limitation Act would apply."

34. Thereafter, a direction was issued in paragraph 10 of its order disposing of the writ petition in W.P. No. 5342/2001 and the same is extracted above.

35(i). After the order of this Court dated 02.07.2001 in W.P.5342/2001 the Special Court decided I.A. No. 21/2001 in O.A. No. Unnumbered/2001 seeking to condone the delay of 62 days in filing the application to make the interim attachment absolute. Two issues were framed by the Special Court and those issues are as follows:--

"Point No. 1 Whether the petition is not maintainable?

Point No. 2 Whether the petitioner has sufficient cause for condoning the delay?"

(ii). By placing reliance on the judgment of this Court in T. Alamelu Ammal Vs. Mangalakshmi, , the Special Court recorded its finding that Section 5 of the Limitation Act is applicable. The Special Court also found that the competent authority gave sufficient reasons to condone the delay of 62 days. This order dated 26.11.2001 of the Special Court attained finality and the same was not questioned either by the appellant or by the financial establishment.

36. Thereafter, the original application was numbered and the Special Court passed an order dated 19.05.2003 in O.A. No. 8 of 2001 making the interim attachment absolute. Therefore, the Special Court should have proceeded further to sell the property so as to settle the claims of the depositors out of the sale proceeds, but either the financial establishment or the appellant came in the way. Ultimately, the appellant herein filed CMA. No. 805/2010 questioning the

aforesaid order dated 19.05.2003 complaining that his objections were not considered. This Court disposed of CMA.805/2010, by order dated 08.08.2011, without interfering with the attachment made. It is useful to extract paragraph 7 of the order dated 08.08.2011 in CMA.805/2010.

"7. Without going into the merits and demerits of the case and after having regard to the submission made by the learned counsel appearing on either side, I am of the opinion that the order of attachment need not be interfered with. Therefore, there shall be a direction to the court below to take up the O.A. and to dispose the same within a period of three months from the date of receipt of a copy of this order."

37. After passing of the order on 08.08.2011, taking into account the fact that the Special Court was constituted in Madurai, and O.A. No. 8/2001 was transferred to the Special Court at Madurai from Chennai, on the basis of territorial jurisdiction and renumbered as O.A. No. 19/2011, CMA. No. 805/2010 was posted under the caption ''for being mentioned'' on 21.10.2011 for appropriate modification in the order dated 08.08.2011 and this Court directed the Special Court, Madurai, to dispose of the original application within a period of three months. That is, further time was granted by this Court to the Special Court to dispose O.A. The said period was further extended by another order dated 23.11.2012 for four more months. In the meantime, the appellant also made another attempt by filing W.P.(MD) No. 11116/2012 seeking to forbear the competent authority and the Revenue Divisional Officer, Dindigul, from interfering with the peaceful possession and enjoyment of the property that was attached. This Court rejected W.P.(MD) No. 11116/2012 on 13.08.2012.

38. In these circumstances, the Special Court at Madurai, recorded evidence. Here again, the appellant filed applications I.A. Nos. 74 and 76 of 2013 to re-open his evidence and to let in additional evidence and the same were dismissed by the TNPID Court on 31.10.2013 and 11.11.2013 respectively. Against those orders rejecting I.A. Nos. 74 and 76 of 2013, the appellant herein filed CMA(MD) Nos. 1865 and 2072 of 2013, contending before this Court that he wanted to examine 297 depositors and he undertook to examine the witnesses within four months. In view of the said statement, in order to give an opportunity, by order dated 02.01.2014 in CMA(MD) Nos. 1865 and 2072 of 2013, this Court set aside the orders dated 31.10.2013 and 11.11.2013 in I.A. Nos. 74 and 76 of 2013 and directed the Special Court to give opportunity to the appellant to examine the witnesses. However, taking into account the plight of the depositors, this Court directed the Special Court to dispose of O.A. No. 19 of 2011 at the earliest point of time.

39. As stated above, in the meantime, the appellant filed TR.CMP. No. 433/13 to transfer O.A. No. 19/2011 from the Special Court at Madurai to some other court. However, he withdrew the said TR.CMP after the order dated 02.01.2014 in CMA(MD) Nos. 1865 and 2072 of 2013.

40. Ultimately, the financial establishment examined one witness namely, Ramesh Babu as RW1 and the appellant examined himself as RW2 and examined the depositors as RW5 to RW17. The appellant also examined RW18 and RW19 to establish that the depositors received money paid by him and the receipts for having paid money to those depositors were endorsed by RW19-Oath Commissioner/Advocate and the same were attested by RW18. RW3 and RW4 were employed as Accountant and Manager respectively, in M/s. Hotel Swagath. PW1 was examined on the side of the competent authority/1st respondent herein. No document was produced on behalf of the 1st respondent and Ex. R1 to R10 were marked by the bankers and the appellants.

41. The Special Court, Madurai, passed a detailed order dated 18.06.2014 in O.A. No. 19/2011 after considering the oral evidence as well as the documents, making the interim attachment absolute.

42. The main contention of the learned counsel for the appellant is that the 1st respondent ought to have filed application under Sections 4(3) and 4(4) of the Act, within 30 days from the date of interim attachment issued by the Government under Section 3 of the Act. Beyond 30 days of interim attachment, the 1st respondent competent authority has no power to make an application under Sections 4(3) and 4(4) of the Act, to make the interim attachment absolute. According to him, the interim attachment automatically lapses after 30 days, and Section 5 of the Limitation Act is not applicable and hence the sale deed executed on 11.08.2003 is perfectly valid and the same cannot become null and void.

43. I have perused the judgment relied on by the learned counsel for the appellant in Tvl. Vijayalakshmi Chit Funds Vs. The Competent Authority and Revenue Officer and Others, . In my view, as rightly contended by the learned counsel for the depositors, the competent authority did not make any application in that case, to condone the delay in filing the application under Sections 4(3) and 4(4) of the Act, to make the interim attachment absolute i.e., in that case, the interim attachment was made by the Government under Section 3 by issuing G.O. Ms. No. 572, Home (Courts-IIA) Department, dated 26.04.2004, but the application was filed by the competent authority under Section 4(3) of the Act, to make the interim attachment absolute only on 22.12.2004 without any application to condone the delay. In those circumstances, the court set aside the order of the competent court making the interim attachment absolute in the order dated 20.08.2010 in O.A. No. 38/2008. It is relevant to extract the following passage from paragraph 8 of the said judgment.

"8..... Learned Special Government Pleader has made an attempt to contend that an application for condoning the delay in preferring the Original Application under Section 4(3) could have been made and the Original Application could have been taken on file after passing an order condoning the delay in filing the Original Application. But, this court, after going through the original records summoned from the TNPID Court, is able to find absence of any such interlocutory application or any order condoning the delay in preferring the original application under Section 4(3) of the Act. It is pertinent to note that the application filed by the Competent Authority simply refers to the date of ad-interim order of attachment passed by the government as 26.04.2004."

The Court also recorded in paragraph 9 of the order that the competent authority cannot flout the statutory provision.

44(i). On the other hand, the decision cited by the learned counsel for the depositors in Ashok Vs. The Competent Authority and District Revenue Officer and Others, , directly supports the proposition that Section 5 of the Limitation Act is applicable for entertaining the application under Section 4(3) and 4(4) of the Act. In that case, the competent authority filed applications in respect of two matters with the delay of 308 days and 276 days. The financial establishment took a plea that Section 5 of the Limitation Act is not applicable. The same was repelled by this Court after surveying various judgments and in paragraph 12, this Court held that Section 5 of the Limitation Act is applicable to an application under Sections 4(3) and 4(4) of the Act. It is useful to extract paragraph 12 of the said judgment.

"12. In view of the ruling of the Supreme Court in Mangu Ram case and the observation of the Division Bench of this Court in Indira Devi case (supra) Page 2498 and since the prescribed period of 30 days is only directory in nature rather than mandatory, keeping in mind that the TNPID Act is a social piece of legislation aimed at protecting the interest of the poor depositors, I am convinced that the provisions of Section of the Limitation Act can be made applicable to an application under Section 4(4) of the TNPID Act and the first point for consideration is answered in these terms."

(ii). In T.S. Kannaiyan v. J.B. Associates, reported in 2012 (1) MWN (Civil) 830, relied on by the learned counsel for the depositors, a learned single Judge of this Court took the same view, wherein, the competent authority filed an application to condone the delay of 296 days in filing the application under Section 4(3) and 4(4) of the Act to make the interim attachment absolute. A similar plea taken by the financial establishment was rejected by this Court., relying on various decisions. Ultimately, the ratio was laid down in paragraph 13 as follows:--

"13. Therefore, in the light of the above decision, I hold that there is no express exclusion of the Indian Limitation Act and the Indian Limitation Act is applicable to the proceedings initiated under the Act. Further, a perusal of the records would also reveal that the competent authority has assigned justifiable reasons for condonation of the delay and therefore also, I hold that the learned Special Judge under TNPID Act is right in exercising his discretionary powers to condone the delay in filing the application."

(iii). Again, the same issue came up for consideration in K. Veerasamy Vs. The Secretary to Government, Home (Police-XIX) Department, Fort St. George, Chennai-600009 and Others--> , wherein, the competent authority filed an application to condone the delay of 94 days. This Court held that Section 5 of the Limitation Act is applicable and the Special Court has perfectly justified its power to condone the delay and upheld the order of the Special Court condoning the delay. It is useful to extract the following passage from paragraph 13 in this regard.

"13...... Similarly on a careful consideration of Section 4 of the Act, it is evident that Section 4(3) stipulating 30 days'' time does not specifically exclude the application of Limitation Act or devise the consequence of not filing the application within the time limit stipulated therein. In the absence of such provision which does not disclose the consequence of not filing application within the time stipulated, Section 29 of the Limitation Act comes for rescue, which specifically mentions two circumstances under which the said provision could be utilized. Firstly, there must be a provision for period of limitation under any special law or local law in connection with the suit, appeal or application. Secondly, such prescription of limitation under the special law or local law should be different from the limitation period prescribed under the Limitation Act and thereby expressly excludes the provisions contained under Section 4 to 24 of the Limitation Act.''"

45. Reverting to the case on hand, it could be seen that the issue was canvassed before the Principal Seat in W.P.5342 of 2001, while challenging the interim attachment made by the Government in G.O. Ms. No. 1362, Home (Courts IIA) Department, dated 18.12.2000 issued under Section 3 of the Act. This Court left all the issues to be decided by the Special Court. Ultimately, the Special Court passed an order dated 26.11.2011 in I.A. No. 21/2001 in O.A. Unnumbered/2001, condoning the delay of 62 days in filing the application under Sections 4(3) and 4(4) of the Act. The Special Court considered the judgment of this Court in T. Alamelu Ammal Vs. Mangalakshmi, . It is useful to extract the following passage from the order of the Special Court.

"The Learned Special Public Prosecutor appeared for the petitioner would contend that in the absence of any specific exclusion of the Limitation Act, Section 5 of the Limitation Act is application. He relied on the decision in T. Alamelu Ammal Vs. Mangalakshmi, by the Hon''ble Madras High Court, wherein it has been held that in the absence of any specific provision expressly excluding the provisions of the Limitation Act, particularly section 3 , it is presumed that section 5 of the Limitation Act is applicable. In TNPID Act also there is no specific provision expressly excluding the provisions of the Limitation Act. Hence following the decision of our High Court in the above case, I hold that this petition u/s. 5 of the Limitation Act is maintainable."

46. Therefore, there are four decisions of this Court categorically considering the applicability of Section 5 of the Limitation Act to the application filed under Section 4(3) and 4(4) of the Act, by the competent authority. Hence, I am of the view that the desperate attempt made by the appellant to set at naught the order dated 02.01.2001 passed 14 years back by the competent authority fails.

47. The other submission of the learned counsel for the appellant has no merits. The plea of bona fide purchaser cannot be put against the innocent depositors. In fact, there are rival contentions by the financial establishment on the one hand and the appellant on the other, as to the receipt of consideration and the some payment made to some depositors settling their claims.

48. In my view, the appellant has miserably failed to establish his case. The appellant is estopped from taking a plea that he is an innocent purchaser, in view of his own counter affidavit filed before the Special Court in O.A. No. 19/2011. The counter affidavit was sworn to on 01.03.2012. The following passage at paragraphs 3 and 4 of the affidavit of the appellant filed before the Special Court would make it very clear that he is not an innocent purchaser and he was well aware of the deposits being not repaid by the financial establishment, when M/s. Hotel Swagath was under his management due to the lease entered into between him and the financial establishment.

"3...... Not to mince matters, it was only with view to helping them to tide over their financial crisis that I ventured into taking the property namely hotel ''''SWAGATH'''' on lease from the respondents 1 to 5 herein when they approached me and laid bare their financial woes and worries, and admitted in disarming candour that they were incapable of running the said hotel profitably. Later, the respondents 1 to 5 herein pleaded with me to surrender possession of the said hotel to them by stating that certain difficulties have been encountered by them owing to the complaints preferred by some of the depositors who have deposited their money in their financial institution. As I was not very particular then in running the said hotel on lease basis in deference to their request I immediately surrendered possession of the hotel to them in December 2000. Later once again in July 2001 they approached me and requested me to run the hotel once again on lease basis and directed me to pay the lease amount of Rs. 50,000/- to the District Revenue Officer, Dindigul, who is the Competent Authority by stating that they have taken required steps to tide over their financial crisis.....''''

"..... Thus from August 2001 onwards, I once again started to running the said hotel and made deposits through the respondents 1 to 5 to the District Revenue Officer of Dindigul to the tune of Rs. 22,08,335/-....."

"4. I very respectfully submit that in the meanwhile the respondents 2 to 5 approached me with a fervent pleas to purchase the said property by me and deployed all sorts of wordy jugglery and verbal acrobatism, besides pestering me with constant and consistent inducements and enticements. They went on pestering me unabatedly stating that I should purchase the property in view of the fact that many of their depositors have approached the court of law and have also obtained decrees against them in various courts of law and were also initiating criminal prosecution for not discharging the dues of the depositors. It was only with a view to emancipating the respondents 2 to 5 from their financial distress that I purchased the said hotel ''''SWAGATH'''' by means of a registered sale deed dated 11-08-2003 for valuable consideration from them. As a matter of fact, in the said sale deed itself, I was specifically directed by the respondents 2 to 5 to clear and discharge the dues of the depositors and I was also directed to take necessary steps to clear the interim attachment made by various court of law and the sale consideration of the hotel was also fixed at Rs. 1,15,00,000/- (Rupees one crore fifteen lakhs) for the said purpose. Thus the respondents 2 to 5 with all their being and bearing when they were full of themselves and with full comprehension of what they were doing, sold the property to me and have also directed me to adjust the sale consideration to clear off the outstanding dues to the depositors....''''

"...... As a matter of fact, in the office of the Sub Registrar concerned within whose jurisdiction the document was got registered, no reference could be found regarding the interim attachment made in respect of the said hotel...."

49. Even the remittance of Rs. 50,000/- to the District Collector and the Revenue Divisional Officer, Dindigul, is pursuant to the order of this Court dated 02.07.2001 in W.P. No. 5342/11 that was preferred by the financial establishment. The financial establishment obtained an order to deposit the aforesaid amount, so as to take over possession of the aforesaid hotel, pursuant to interim attachment. In this regard, RW3 and RW4 were examined and gave evidence before the court. Their evidence was considered by the Special Court in paragraph 12 and they did not support the plea of the appellant. The following passage in paragraph 12 of the judgment is extracted hereunder:--

"Another witness R.W.4 Balasubramanian and R.W.3 Periasamy were also signed the receipts Ex. R3 series. R.W.3 in his evidence deposed that he was the Accountant for 6 years (i.e. 2000 to 2006). But R.W.3 in his cross admitted that-

As per R.W.3 admission he was not an Accountant in the Hotel Swagath R.W.4 deposed that he was worked as a Manager in the Hotel Swagath from 2000 to December 2005 and he deposed that he deposited Rs. 50,000/- before the D.R.O. by way of Demand Draft R.W.4 in his cross stated that "

50. Furthermore, in view of the policy of the State which is to secure the interests of the depositors by enactment of the Act namely, Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997, the appellant cannot set up a plea of bona fide purchaser. If at all he has any claim, he could make against the financial establishment in a civil court and proceed against them and he could not set up such plea as against the innocent depositors. In any event, i.e., while I reject the plea of the appellant that he is an innocent purchaser in view of the averments at paragraphs 3 and 4 of the counter affidavit as extracted above, and the facts of this case, I am of the view that in law, the purchasers cannot set up such plea, in view of the categorical declaration made in rule 7 that such transactions are null and void. In this case, the appellant purchased the property after the interim attachment was made absolute and therefore, he could not put up a technical plea that interim

attachment did not reflect in the encumbrance, as if, he is an innocent purchaser, while he pleaded in paragraphs 3 and 4 of his own counter affidavit referred to above, about his knowledge on all the matters relating to non payment of deposit amount to the depositors.

51. The other plea made by the appellant also has no merits. When he sought to file applications in I.A. Nos. 74 and 76 of 2013 to re-open his evidence and to recall the witness, the same was dismissed by the Special Court on 31.10.2013 and 11.11.2013 respectively. When those orders rejecting I.A. Nos. 74 and 76 of 2013 were questioned by the appellant herein in CMA(MD) Nos. 1865 and 2072 of 2013, this Court set aside those orders and permitted the appellant to let in additional evidence. It is relevant to extract the following passage from paragraph 5 of the aforesaid order of this Court.

"An affidavit has been filed today by the learned counsel for the petitioner stating that he wants to examine 297 depositors and other witnesses required to be examined by him and he undertakes to examine those witnesses within four months from the date of receipt of a copy of this order. The petitioner should make all efforts to see that all the witnesses are examined within four months time. If four months time is over and the petitioner is unable to examine all the witnesses, the number of witnesses who have been examined alone within that time needs to be taken into consideration and thereafter, no time is to be granted to the petitioner by the trial Court. At the end of four months, evidences of the petitioner shall be closed. After closing of the evidence of the petitioner, the trial Court may proceed with further proceedings and dispose of the matter on merits at the earliest point of time. Meanwhile, if the petitioner requires to file an additional statement of objection in the main petition, is he at liberty to do so within one week from the date of receipt of a copy of this order."

52(i). Before the Special Court, the appellant examined RW5 to RW17 depositors to prove his case that the depositors were settled by him alone. He also produced Ex. R3 series in this regard containing 296 receipts. But, RW5 to RW17 examined by the appellant did not support his case. Likewise, RW18 and RW19, who endorsed and attested the receipts also did not support the case of the appellant. It is useful to extract the following passage from paragraph 12 of the order of the Special Court that is questioned before this Court in this regard.

"The 7th respondent contended that he settled the dues of 296 depositors up to Rs. 1,15,00,000/-. So he claimed the Hotel Swagath. He has filed the payment receipt and were marked as Ex. R3 series. To prove the discharge of dues to the depositors, the 7th respondent side examined witnesses R.W.5, R.W.6, R.W.7, R.W.8, R.W.9, R.W.10, R.W.11, R.W.12, R.W.13, R.W.14, RW15, R.W.16, R.W.17, all the witnesses categorically admitted in their cross that they have received the money at the Hotel Swagath from Ravichandran and they have not deposed the receipt of money from 7th respondent Thiru. Vanjimuthu. On the perusal of payment receipts, the depositors received money or their dues only from Ravichandran in the receipts they got endorsement from one oath Commissioner/

Advocate Mr. A.M. Rafiq. Oath Commissioner/Advocate Mr. A.M. Rafiq was examined as R.W.19 R.W.19 in his cross deposed as.

RW.18 is one of the attesting witness signed the receipts

RW.18 in his cross stated as follows:

(ii). The aforesaid passage also makes it clear that RW18 and RW19 who made endorsement in the receipts did not support the case of the appellant. Hence, on facts also, the appellant failed to establish his case before the court.

53. In any event, in my view, the entire issue is left to the Special Court to settle the dues to the depositors by proceeding further with the sale of the attached property at the earliest point of time on disposal of this appeal.

54(i). As stated above, the judgment relied on by the learned counsel for the appellant in Tvl. Vijayalakshmi Chit Funds v. The Competent Authority and Revenue Officer, Coimbatore, is not applicable to this case. The another judgment relied on by the learned counsel for the appellant in G.D. Subramaniam Vs. The Sub Registrar, P. Shanmugam, B. Dillibabu and B. Vasu, , has nothing to do with the issue that has arisen for consideration in this appeal. In that case, the petitioner therein was the purchaser of a property. The vendor sought to cancel the sale deed unilaterally. This Court held in the said case that such a unilateral cancellation is void. I am unable to understand as to how this case has any relevance to the issue involved in this case.

(ii). In yet another judgment, K.D.P. Properties Pvt. Ltd. Vs. The Sub-Registrar and Another, , relied on by the learned counsel for the appellant, the petitioner therein purchased a property that was already under attachment, pursuant to the proceedings before the Debt Recovery Tribunal at the instance of the lending bank. While so, the petitioner therein purchased the attached property from the vendor. The petitioner therein filed writ petition seeking a direction to the Sub Registrar to register the document and to release the same after registration. A plea was taken that there was an attachment. This Court held that the same cannot come in the way of releasing the document. However, this Court held in paragraph 19 of he judgment that the sale is void in respect of the order of attachment obtained by the bank which is the 2nd respondent in the writ proceedings i.e., the law laid down therein is that the sale of the attached property is void in so far as the bank is concerned, since the bank had an order of attachment in their favour while the same is not void in respect of others. The following passage at paragraph 19 of the judgment goes against the point canvassed by the appellant herein.

"However, if the 2nd respondent-Bank exercises its right as against the property, the petitioner cannot raise any objection because the sale of the vendor in favour of the petitioner is void in respect of the order of attachment obtained by the 2nd respondent Bank. So, even if the property is sold in favour of the petitioner, the 2nd respondent-Bank can always exercise its right as against the said property."

(iii). The last judgment relied on by the learned counsel for the appellant in S.N. Ranade v. The Union of India and another, reported in AIR 1964 SCJ 133 has nothing to do with the facts of this case. That case relates to the grant of right in water. The Apex Court held that the grant of right would be with regard to the stagnant water in the ponds or wells and not the flowing water of the river on interpreting the document involved therein. I am not able to understand as to how this case could render any assistance in this case.

55. On the other hand, in the judgment of the Apex Court Nancy John Lyndon Vs. Prabhati Lal Chowdhury and Others, , relied on by the learned counsel for the depositors, the Apex Court held that any sale of property that was under attachment is void and the same was also considered by this Court in Employees'' Provident Fund Organization & another v. The Inspector General of Registration & others reported in 2013 (8) MLJ 636 : 2014 WLR 950. It is useful to extract paragraph 54.2(II) of the said judgment reported in 2013 (8) MLJ 636.

"(II) The Apex Court judgment in Nancy John Lyndon Vs. Prabhati Lal Chowdhury and Others,   :

(i) This case does not arise out of the attachment or sale made under the rules of the Second Schedule to the Income Tax Act. It arose out of the sale of property made in contravention of Section 64 of the Code of Civil Procedure. The appellant before the Apex Court filed an execution petition before the First Sub Judge at Alipore in West Bengal on 31.07.1970, pursuant to a decree of a civil court, for attachment of the land belonging to the judgment-debtor. On 03.08.1970, the attachment of the property of the judgment-debtor was made by the executing court. Thereafter, on 14.09.1970 judgment-debtor sold a portion of the attached property to another person. The property was brought to sale by the execution court by issuing a proclamation of sale. At this juncture, the purchasers filed an application for release of the property from attachment. That application was rejected by the execution court on 11.08.1980. The matter was taken to the Calcutta High Court by way of appeal. The appeal was allowed on 16.03.1982. The appellant before the Apex Court is the Decree-holder, who filed the execution application.

(ii) The plea was that in view of Section 64 of the Code of Civil Procedure, the sale by the judgment-debtor during the period of attachment is void. Accepting the same, the Apex Court reversed the order of the High Court and restored the order of the execution court.

(iii) Rule 16(2) of the Second Schedule to the Income Tax Act and Section 64 of the Code of Civil Procedure are in pari materia.

(iv) Therefore, the sale executed by the third respondent in this case shall be void as per the pronouncement of the Apex Court."

56. For all the aforesaid reasons, I am of the view that there is no merit in the appeal. Accordingly, the Civil Miscellaneous Appeal fails and the same is

dismissed. No costs. While dismissing the appeal, a direction is issued to the Special Court under TNPID Act Cases (Financial Establishment), Madurai, to proceed further with the matter to see that all the amounts are settled to the depositors, by selling the attached property as provided under the Act, at the earliest point of time.

57. The interim stay granted on 04.07.2014 is vacated. Accordingly, M.P.(MD) No. 1 of 2014 is dismissed and M.P.(MD) No. 3 of 2014 is allowed.

