(2012) 09 MP CK 0078

In the Madhya Pradesh High Court

Case No : Writ Petition No. 727 of 2012

Omkar Singh APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 24-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrankshan Adhiniyam, 2000 — Section 4, 5, 7, 8

Citation : (2012) 5 MPHT 80

Hon'ble Judges : G.D. Saxena, J;A.K. Shrivastava, J

Bench : Division Bench

Advocate : S.K. Sharma, assisted by Mr. V.K. Shrivastava, for the Appellant; Raghvendra Dixit, Govt. Advocate for the Respondent Nos. 1 and 2/ State, for the Respondent

Judgement

G.D. Saxena, J.—By making this application under Article 226 of the Constitution of India, the petitioner has approached this Court seeking issuance of writ/writs commanding the respondents to release his deposited amount with following reliefs:--

(i) That, the respondent No. 2 may kindly be directed to immediately take action to release/refund the amount to the petitioner;

(ii) That, the respondent No. 2 may kindly directed to ensure and protect the rights of the petitioner and grant him all privilege, which he has given to the others so that the money of the petitioner can be returned to him;

(iii) That, any other relief, which this Hon''ble High Court may deem fit, with cost of the petition.

In a nutshell, the case of the petitioner runs as follows:--

The respondent No. 2, the Collector, Gwalior Division, after having exercised the powers u/s 4 of M.P. Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000, hereinafter called as ''the Act, 2000'', issued an order against the Company (respondent No. 3) before this Court, at present declared as Chit Fund Company and thereby attached its properties. The petitioner, who is an Agriculturist and a resident of Mungaoli, District Ashoknagar, on persuasion of his family members and wishing to take advantage of the Scheme sponsored by the Company invested in lump sum amount to the tune of Rs. 1,00,000/- (Rupees One Lac only) with it, The Company/respondent No. 3 issued the certificate in favour of the petitioner marked as Annexure P-1. It was told to him that the deposited amount of Rs. 1,00,000/- would turn into an expected sum of Rs. 4,00,000/- (Rupees Four Lacs) on the expiry date, after lapse of ten years from the date of such deposit. After declaring nomenclature of the Company as Chit Fund Company, all properties and record of business are seized by the Competent Authority. Since there being no hope for receiving the amount back, in such state of affairs, the petitioner has presented the petition before this Court praying that the respondents may be directed to make payment of the admitted amount with such interest as the Court may deem fit w.e.f. the date, when the dues of the petitioner became payable till the date of clearance of the amount in question.

2. Controverting the above submissions made on behalf of the petitioner, it has been submitted by Shri Raghvendra Dixit, learned Govt. Advocate appearing on behalf of the respondent Nos. 1 and 2/ State that the Collector, District Gwalior is the Competent Authority- who passed an ad interim order in the light of Section 4 of the Act with a view to protect the interests of the depositors of the Financial Establishment by attachment of money and other properties allegedly procured either in the name of the said financial institution or in the name of any other financial institution or other person. It is contended that after passing the said order, the Competent Authority applied to the Special Court (District Court designated by the State under the Act, 2000) for making the said ad interim order of attachment absolute. The Special Court, i.e., District Court, Gwalior issued the necessary directions for equitable distribution amongst the depositors of the money realised from the attached properties of the Company. It is submitted that under the circumstances and as per provision of the law, the petitioner being depositor should now approach the Special Court, Gwalior for disbursement of deposited money, and he can receive his deposited amount with all allied benefits, after holding inquiry by the Court.

3. We have carefully perused the materials on record. We have heard Shri S.K. Sharma, learned Counsel for she petitioner and Shri Raghvendra Dixit, learned Govt. Advocate, appearing on behalf of the State/respondent Nos. 1 and 2.

4. Provisions of Sections 4, 5, 7 and 8 of the Act, 2000, being relevant are reproduced below:--

Section 4. 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 depositors or otherwise, the Competent

Authority is satisfied that any financial establishment defaults the return of deposits in cash or kind, as promised, after maturity, or

(ii) where, the Competent Authority has reason to believe that any financial establishment is acting in a calculated manner with an intention to defraud the depositors;

and, if the Competent Authority is satisfied that such financial establishment is not likely to return the deposits, the Competent Authority 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 or 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, as the Competent Authority may think fit.

Section 5. Competent Authority.--

(1) *** *** ***

(2) *** *** ***

(3) The Competent Authority shall apply within fifteen days of the order passed by it to the Special Court designated under this Act for making the ad interim order of attachment absolute.

(4) The Competent Authority may also make an application to any Special Court or designated Court or any other Judicial Forum established or constituted or entrusted with the powers by any other State Government for adjudicating any issue or subject pertaining to any money or assets of a financial establishment under any similar enactment in respect of money or property or assets belonging to or ostensibly belonging to a financial establishment or any person notified under this Act situated within the territorial jurisdiction of that Special Court or Designated Court or any Judicial Forum as the case may be, for passing appropriate orders to give effect to the provisions of this Act.

Section 7. Special Court.-

(1) The State Government may, for the purpose of disposal of cases under this Act, with the concurrence of the Chief Justice of the High Court, by notification, designate Special Courts, which shall not be below the rank of Court of Sessions Judge or an Additional Sessions Judge, as may be necessary for such area or areas as may be specified in the said notification.

(2) The Special Court shall, on an application by the Competent Authority, pass such order or issue such directions as may be necessary for the equitable distribution among the depositors of the money realised from out of the property attached.

(3) In case the money realized from sale of property attached is not enough to cover the shortfall, the Special Court shall decide for imposing such fine to cover the shortfall as may be necessary for the equitable.

Section 8 Power of Special Court regarding attachment.-

(1) *** *** ***

(2) *** *** ***

(3) *** *** ***

(4) *** *** ***

(5) *** *** ***

(6) After investigation under sub-section (5), the Special Court shall pass; an order 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:

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.

(7) Where an application is made by any person duly authorised or specified, by any other State Government under similar enactment empowering him to exercise control over any money or property or assets attached by the State Government, the Special Court shall exercise all its powers, as if such an application were made under this Act and pass appropriate order or direction on such application, so as to give effect to the provisions of such enactment.

5. Let us, now, deal with the merit of the rival submissions made before us on behalf of the parties.

6. What crystallizes from the above submissions made on behalf of the parties is that the respondent No. 3 has not paid the deposited amount of Rs. 1,00,000/- without any justified reasons. What is of utmost importance to note, in this writ petition, is that it transpires from the averments of the petition that even after institution of the writ petition and knowing the fact that the amount aforementioned is, indeed, pending unpaid with respondent No. 3, same has not been re-payed. Thus, in the face of the above materials on record, there can be no escape from the conclusion that an amount of Rs. 1,00,000/- is lying outstanding with the respondent No. 3. Therefore, in the face of the facts so established, this Court has to, now decide as to what relief/reliefs can be granted to the petitioner.

7. While considering the question of relief/reliefs to be granted to the petitioner, it is important to bear in mind that the said Act, 2000 has been enacted to

protect interest of the petitioner from being destroyed on account of delayed payment. A careful reading of the object of this Act shows that in order to protect the interest of the depositors of such financial establishment, the Competent Authority appointed under the Act is authorised to 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 or establishment. Moreover, a bare reading, as a whole, of the said Act and, particularly, of the provisions contained in Section 8 thereof makes it clear that it is mandatory for the Court designated under the Act to investigate the matter after issuing notices to all such persons, who are having or likely to claim any interest or title in the property of the financial establishment and after investigation in terms of Section 5 of the Act, the Court is empowered to pass an order either making ad interim order of attachment absolute or varying it by releasing a portion of the property from attachment cancelling the interim order passed by the Competent Authority at earlier point of time.

8. As discussed above and in view of the fact that the petitioner has successfully shown that an amount of Rs. 1,00,000/- had been kept outstanding by the respondent No. 3 despite repeated demands made by him, there can be no escape from the conclusion that the respondent No. 3 is liable to re-pay said deposited amount. However, since attachment of deposits and the properties has been effected on account of default of return of deposits by the Competent Authority and the matter is now pending with the Special Court, the direction for repayment against the Company cannot be issued at this juncture.

9. Considering, therefore, the matter in its entirety, and looking to the submissions made by the learned Counsel for the parties, in the opinion of this Court, following directions in regard to the payments of the amount can be issued:--

(i) The petitioner is hereby directed to approach the Court to claim the admitted amount of Rs. 1,00,000/- (Rupees One lac only) with interest until date the said dues are totally cleared. It is further directed that the dues aforementioned with interest would be cleared within a period of three months from the date of presentation of the application by the petitioner.

(ii) The petitioner and other creditors of the Chit Fund Company (respondent No. 3) against whom the Competent Authority is appointed under Notification by the State Government, in order to protect the interest of the depositors of the Company, which issued an interim order of attachment of money and" other properties and applied to the Special Court designated under the said Act in prescribed time, shall apply to such Court alongwith certificates or other admissible proofs of deposits issued by the Company and their Claim shall be decided within a period of three months from receipt of such applications by the concerned Court.

(iii) The Special Court on receipt of the applications from the petitioner and other creditors of the Chit Fund Company shall either by itself or through Commissioner appointed in that behalf, as the case may be, verify the liability of payment of deposits and interests accrued till date from record of the Company seized by the Competent Authority and then shall pass necessary order for equitable distribution amongst the depositors'' of the money realised from out of the property attached and after realising the money from sale/auction of the property attached if the same is not found sufficient to cover the shortfall, the Court shall decide for imposing such fine on the Company or its Directors to cover the shortfall, which may be necessary for the equitable within a year from the date of issuing such process in this regard by the Special Court of the area.

Subject to directions made above, this writ petition stands disposed of. No order as to costs.

A copy of this order be forwarded by the Registry without causing any delay to respondent No. 2 - Collector as well as Special Court designated under the Act for compliance in terms of above directions.