

(2011) 11 AP CK 0124

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 384 of 2006

P. Suresh Chandra Chakravarthy and P. Sainath Chakravarthy APPELLANT
Vs

The District Collector, Chittoor, District Collectorate, RESPONDENT
Greampet, Chittoor and Others

Date of Decision : 18-11-2011

Acts Referred:

Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 —
Section 3, 4(3), 7(5), 8

Citation : (2012) 2 ALD(Cri) 465

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : Vijaya Chandra Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

Samudrala Govindarajulu, J.—The appellants 1 and 2 are respondents 15 and 19 in CrI. M.P.No. 1 of 2001 in the lower Court. The said petition was filed by the competent authority u/s 4(3) of the Andhra Pradesh Protection of Depositors of Financial Establishments Act 1999 (in short, the Act), for making ad-interim order of attachment absolute. Ex.A1 is G.O.Ms.No. 30 of Home (General-B) Department of Government of Andhra Pradesh dated 02.02.2001, by which several properties were initially attached u/s 3 of the Act. By following he prescribed procedure, the lower Court issued notices to all the concerned who have semblance of any interest in the properties attached u/s 3 of the Act. After receiving the said notices, the appellants/respondents 15 and 19 filed objections in the lower Court. The respondents 15 and 19 are brothers. It is their contention that they have purchased vacant site of 325.0342 square yards in S. No. 196 of Kammapalle, under five registered sale deeds between 30.10.1998 and 12.08.1999 for total sum of Rs.2.78 lakhs and that subsequently, they levelled the land spending enormous amounts and constructed two storied building spending about Rs.16,00,000/- and have rented out ground floor of the building to BSNL (Bharat Sanchar Nigam Limited) and are living in the first floor. It is

their contention that the vacant site purchased by them did not belong to commercial finance syndicate or its sister concerns nor was it purchased from out of the deposits received by the financial institutions and that they have nothing to do with the said financial establishments and that therefore, the vacant site is not liable to be attached under the Act and that the financial institutions have got adequate assets to satisfy its depositors. After making appropriate enquiry in which PW1 was examined and Exs.A1 to A7 were marked on behalf of the competent authority; and RWs 1 and 2 were examined and Exs.B1 to B3 were marked on behalf of all the respondents, the lower Court passed the impugned order making the interim attachment covered by Ex. A1 absolute.

2. In this appeal, it is contended by the appellants counsel that the lower Court did not conduct enquiry as a Civil Court in accordance with the procedure under the CPC and that the lower Court should have seen that the properties of the appellants are not liable for attachment u/s 3 of the Act and at best, they can be proceeded with u/s 8 of the Act in case, the properties held by the financial establishment and its partners, managers and members are not sufficient to satisfy repayment of deposits collected from the depositors.

3. Contention of the appellants' counsel that the lower Court did not make proper enquiry as per the provisions of Code of Civil Procedure, is not correct. Since this is only an enquiry being made by the Special Court u/s 7(5) of the Act, there was no need for framing of issues herein. Section 7(5) of the Act reads as follows:

7(5). If any objection is made or cause is shown as aforesaid, the Special Court shall proceed to investigate the same, and in doing so, as regards the examination 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 Court in hearing a Suit under the Code of Civil Procedure, 1908 (Central Act No. V of 1908) and any person making an objection shall be required to adduce evidence to show that at the date of the attachment, he had some interest in the property attached.

4. The above provision contemplates following the procedure and exercising of powers of Court in hearing a Suit under CPC by the Special Court. There was no necessity for the Special Court to frame any issues during enquiry u/s 7(5) of the Act. Settlement of issues under Order XIV C.P.C. arises after filing of plaint by the plaintiff and filing of written statement by the defendant. Hearing of the Suit and examination of witnesses starts after settlement of issues in accordance with order XVIII C.P.C. Section 7(5) of the Act contemplates the Special Court to follow the procedure and exercise all powers of Court in "hearing a Suit". Therefore, following the procedure and exercise of powers by the Special Court is from the stage of "hearing of a Suit" and not in a stage which is anterior to hearing of the Suit. Hence, Section 7(5) of the Act does not contemplate following the procedure of settlement of issues in an enquiry there under in accordance with Order XIV C.P.C.

5. During enquiry in the lower Court, none of the respondents 15 and 19 examined themselves as witnesses nor filed any documents in support of their case. In the statement of objections filed by them in the lower Court, they did not give even dates of their five sale deeds nor gave the persons from whom they purchased those properties under those undisclosed sale deeds. They did not file either original sale deeds in their favour nor registration extracts thereof. In the absence of adducing any evidence in support of their bald objections and in the absence of substantiating their objections before the lower Court during enquiry, now the appellants cannot be heard to say that the lower Court failed to consider their interest in the properties.

6. RWs 1 and 2 who are admitted partners/members of the defaulted financial establishment admit the joint meetings held before the Revenue Divisional Officer, Madanapalle, between the depositors and management of the financial establishment and its sister concerns. The said meetings were held between 20.03.1998 and 06.05.1998. In the said admitted meetings, management of the defaulted financial establishment and its sister concerns agreed for sale of all properties owned by various firms and also their partners in their individual names and listed out the properties and delivered documents relating to those properties. A close scrutiny of minutes of the meetings discloses that the partners were not disclosing the properties at a time and were disclosing the properties and giving title documents relating thereto in piecemeal manner. The alleged sale deeds in favour of the respondents 15 and 19 are stated to be between 30.10.1998 and 02.08.1999. All the alleged sale deeds in favour of the respondents 15 and 19 are subsequent to the meetings which were held under Exs.A2 to A7. It only suggests that the partners of the financial establishment without disclosing all the assets held either by the financial establishment or its sister concerns or by their partners personally, have secreted some more properties and indulged in sale of the said secreted properties subsequent to the meetings held under Exs.A2 to A7. The contention of the appellants' counsel that the appellants are bona fide purchasers of the properties, is not proved by letting in any evidence in support of the said contention; and on the other hand, it is proved that all the alleged sales in favour of the respondents 15 and 19 which took place subsequent to the meetings held under Exs.A2 to A7 were not bona fide and were tainted with oblique motive. Without adducing any evidence, now it is open to the appellants to contend that the lower Court did not conduct enquiry properly.

7. It is pointed out by the appellants' counsel that PW1 in cross-examination stated that he does not have any material to show that the respondents purchased the schedule properties with the amounts of the depositors. The partners of the financial establishment came forward in the joint meetings held under Exs. A2 to A7 to sell their personal properties also for discharge of dues payable to the depositors because, the properties held by the financial establishment and its sister concerns were not sufficient to discharge the claims of depositors. PW1 who is the Deputy Tahsildar in the office of District Collector/

Competent Authority, Chittoor, cannot be expected to know source of consideration with which the properties were purchased by the partners. The respondents 15 and 19 did not adduce any evidence to show that their vendors did not acquire the vacant site purchased by them with and from out of the deposits collected by the financial establishment. RWs 1 and 2 did not claim that the properties sold to the respondents 15 and 19 were purchased with any independent source of income than the amounts collected by the financial establishment from its depositors. Therefore, in the absence of any evidence before the lower Court, the lower Court rightly held that ad-interim attachment made under Ex.A1 - G.O. is liable to be made absolute.

8. Accordingly, the Criminal Appeal is dismissed.