(2018) 09 BOM CK 0078

In the Bombay High Court

Case No : Criminal Appeal No.159 Of 2018

Ramesh S/O. Ramchandra Havale And Others — APPELLANT

Vs

State Of Maharashtra And Others — RESPONDENT

Date of Decision : 10-09-2018

Acts Referred:

Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 — Section 11
Indian Penal Code, 1860 — Section 34, 406, 420
Code of Criminal Procedure, 1973 — Section 156(3)

Citation : (2018) 09 BOM CK 0078

Hon'ble Judges : T. V. Nalawade, J;Vibha Kankanwadi, J

Bench : Division Bench

Advocate : Rahul G. Joshi, S. J. Salgare, N. Y. Kingaonkar

Final Decision : Dismissed

Judgement

T. V. Nalawade, J.)

1. Both the sides are heard.

2 Both the appeals are filed under the provisions of Section 11 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments)

Act, 1999 (hereinafter referred to as ""the Act"") to challenge the order made by the learned Sessions Judge, Aurangabad in the proceeding pending

before him.Â The application filed at ExhibitÂ99 by the Competent Authority from Aurangabad appointed under the Act in Special (MPID) Case

No.4 of 2016 is decided against the Appellants of both the proceedings.Â The case is filed for the offences punishable under Sections 420, 406 and

34 of the Indian Penal Code and also Sections 3 and 4 of the Act.Â Criminal Application No.692 of 2018 is filed in Criminal Appeal No.159 of 2018

by one Sudhir Deshpande, first informant, original Complainant for permission to intervene in the matter as he wants to oppose the proceeding.Â The

same person has filed Criminal Application No.1059 of 2018 for intervention in Criminal Appeal No.188 of 2018.

3 The application at ExhibitÂ99 was filed by the Competent Authority under the provisions of Section 5(3) of the Act.Â The application is allowed

and the learned Sessions Judge, who is appointed as Designated Court under the Act, has confirmed the order of attachment made by the State

Government by issuing notification under the Act and further direction is given by the Designated Court to sell the property by name Vedant Hotel /

Vits Hotel situated at Aurangabad by public auction and to deposit the sale proceeds of the same in the Court.Â By the same order some

applications, which were at Exhibits 150 to 159 and 173 to 176, which were filed as objections to application filed at ExhibitÂ99, are rejected by the

Designated Court. 4 The rival contentions and the relevant facts for the present purpose can be quoted as under:

(a) The complaint was filed by Sudhir Deshpande against Appellants, Ramesh Havele, wife of Ramesh Havele, by name Veena and others before the

Judicial Magistrate First Class, Aurangabad for the aforesaid offences and it was referred for investigation by the Judicial Magistrate First Class

under Section 156(3) of the Code of Criminal Procedure.Â ChargeÂsheet is filed in the said FIR and aforesaid number given to the special case, filed

against the Appellants.Â This case is treated as a case filed under the Act and so it is before the Designated Court.Â

Â (b) It is the contention of Sudhir Deshpande, Complainant that he, his relatives and others had registered Vedant Hotel Private Limited Company in

the year 1986 and the office was established at Aurangabad.Â The Registrar under the Companies Act gave permission to convert it into public

company and public company came into existence in the year 1990.Â It was created for running star hotels and for promotion of tourism in

Aurangabad. Accordingly, Vedant Hotel was opened in Aurangabad and the management was given to one reputed company from America viz

â??Quality Innâ?. The amount of more than Rs.4.25 crores was invested by the Complainant and others.Â It is the contention that for some time the

things were going on smoothly, but then the company started suffering huge losses and it was not able to repay the loan taken from many institutions.Â The hotel was then closed for many years and it was taken in possession by the bank, which had given loan.Â Due to that, the value of

the shares in the market came down and there was a possibility of company going into liquidation.

(c) It is the case of the Complainant that Accused No.1, Ramesh and his wife Veena approached him and represented to the Complainant that they

would help Vedant Hotel Private Limited financially and they would also see that the investors get good returns.Â Proposal was given to transfer the

company alongwith property to Dhanada Corporation Limited.Â It is contended that steps were then taken for revival of Vedant Hotel Limited

Company and for its transfer to Dhanada Corporation and it was actually transferred.Â

(d) It is the contention of the Complainant that after transfer of Vedant Hotel Private Limited, the Accused persons gave another proposal by making

similar representation to transfer Girja Complex, immovable property, which was owned by three companies of the Complainant and others like

Maharashtra Hospitality, Vedant Lapidary Private Limited and Devgiri Panel Board.Â It is contended that due to representation made by the

Accused and the promise of giving good returns, steps were taken under the Companies Act and three companies were amalgamated and those

properties were also transferred to the company of Accused.

(e) It is the case of Complainant that from the year 2003Â04 itself, Accused had taken steps to through the Complainant to collect investment in

Vedant Hotel Private Limited and accordingly, the Complainant had collected deposits from many persons and this amount was lying in the account of

the Company and it was around Rs.2.06 crores.Â It is the contention of the Complainant that this amount was also transferred to the Accused as

deposit.Â It is contended that there was a promise to give handsome return in the form of interest and return the deposit also as and when demanded

and till January 2013, some interest was paid by the Accused persons on deposit amount.Â It is contended that after January 2013, Accused stopped

making payment of interest and they also refused to return the deposit amount and thereby they committed the offence of criminal breach of trust.

(f) It is the case of the Complainant that from the year 2003Â04, he personally made many payments to the Accused due to the aforesaid false promise and false representation and more amounts like amount of Rs.37.27 lacs and Rs.5 lacs were given by cheques to Dhanada Corporation and

holding companies of Dhanada.Â

(g) It is contended by the Complainant that he has reliable information that Accused are trying to change the names of the concerns and they are

trying to transfer the funds collected from the Complainant and others to other companies illegally.

(h) It is the contention of the Complainant that there was a representation and false promise from the Accused to see that proper returns in respect of

investment made by the Complainant and others in Vedant Hotel Private Limited are given.Â Particulars of that promise are mentioned and the value

of the shares, which was to be given is also mentioned.Â It is contended that neither the shares were given nor the value which was agreed was

given by the Accused and that amount was more than Rs.7.07 crores.

5 Before mentioning the contentions of the other side, some other relevant facts need to be mentioned as on the basis of those facts, some arguments

are advanced for the Appellants.Â Prior to registration of crime in Aurangabad, a similar crime was registered in Khothud Police Station, Pune.Â

Investigation was made in that case and chargeÂsheet came to be filed subsequently.Â Thus, at the time of issuing of notification under the Act, two

crimes were registered against the Accused, one in Pune and one in Aurangabad.Â The notification was issued under Section 4 of the Act and the

properties of Dhanada Corporation and other companies of Accused and also of Accused are attached.Â The property involved in the present

matter, Vedant Hotel from Aurangabad was mentioned in the said notification dated 7th May, 2016.

6 In the present crime, after filing of chargeÂsheet, the Competent Authority from Aurangabad filed application before the Designated Court under

Sections 3 and 5 of the Act.Â The Designated Court issued show cause notices to the concerned and they were served on the Appellants.Â Not

only the Appellants filed objections to the proceeding filed by the Competent Authority, but some other persons filed objections by contending that they

were share holders. They made contentions which were similar to the contentions made by the present Appellants.

7 The present Appellants have challenged the order made by the Designated

Court on various grounds. It is their case that the objections raised

before the Designated Court are not properly decided and the order made is mechanical one.Â It is their contention that they have filed Criminal Writ

Petition No.5224 of 2017 at Principal Seat of this Court and in that proceeding, notification issued by the State Government and also the order made by

the Tahsildar, Pune against the Appellants directing them to handover the possession of the properties mentioned in the notification, is challenged.Â It

is the contention of the Appellants that the Honourable Single Judge of this Court sitting as Vacation Court has granted stay in the writ petition against

the order of handing over possession made by the Tahsildar for Complainant Authority from Pune.Â It is the contention of the Appellants that this

circumstance was brought to the notice of the Designated Court from Aurangabad, but this circumstance is not properly considered by the Designated

Court.

8 The other contentions and grounds of the Appellants are as follows:

(a) That the Competent Authority, Pune had already taken steps in respect of Government notification and so it was not open to the Competent

Authority from Aurangabad to take steps like to file proceeding under the Act before the Designated Court from Aurangabad.Â It is contended that

the point of jurisdiction of the Competent Authority and also the Designated Court is involved.Â It is contended that a proceeding is filed before the

Designated Court at Pune and that circumstance also ought to have been considered by the Designated Court from Aurangabad.

(b) That the amount which the Complainant has mentioned in the complaint, is the amount given as a share capital and that amount was not deposit

amount.

(c) That the crime is registered against the Appellants, private individuals and not against the companies including Dhanada Corporation and so the

property of Dhanada Corporation could not have been attached and the Designated Court could not have made any order in respect of this property.

(d) That the procedure given under Order 37 of the Code of Civil Procedure for inquiry of objections was not followed by the Designated Court and

so, the order cannot sustain in law.

(e) That the Designated Court could not have given further directions like sale of property attached in view of nature of proceeding filed before it.

(f) That on merits also, the order is not tenable as Ramesh had produced record showing that there was an agreement of sale of equity shares and

there was no agreement showing that the amount was accepted as deposit.

Â (g) That the procedure of attachment given under Section 4 of the Act was not followed and so all the further orders even made by the Designated

Court are illegal.

(h) That the original Complainant has filed Special Civil Suit No.31 of 2015 in Aurangabad Court for recovery of amount of Rs.11.77 crores and due

to that the action under the Act is not possible.

9 The applications at Exhibits 150 to 159, 175 and 176 contain similar contentions as made by the Appellants and they contended that they were share

holders of the company.

10 The Competent Authority, Aurangabad had filed proceeding under Section 5(3) of the Act on the basis of material collected by police during

investigation of the crime.Â It is the contention of the Competent Authority that the Appellants had started three investment companies by name

Dhanada Corporation, Dhanada Portfolio Management and Dhanada Holdings Private Limited and in those names all the Accused had collected

money as deposit.Â It is contended that the Accused had made false representation and had given false promise to give huge rate of interest and

return the money, but after some time, they stopped giving interest and they are not returning the amount collected as deposit.Â It is the contention of

the Competent Authority, Aurangabad that the act of the Accused amounts to cheating and criminal breach of trust.

11 For deciding the aforesaid grounds raised by the Appellants and the contentions of the Complainant, it is desirable first to mention the relevant

provisions of the Act to see the scheme of the Act.

12 The provisions of the Act show that the Act was made to protect the depositors from unscrupulous activities of financial establishments.Â In the

present matter, it is not disputed that the aforesaid three companies including Dhanada Corporation fall under the definition of the ""Financial

Establishment"" given in Section 2(d) of the Act.Â Accused persons are also covered.Â There is no need to quote this Section.Â It is also not

disputed that the Complainant and others have given money to Dhanada Corporation though it is specifically contended by Accused that it was accepted by Accused, Ramesh and Accused, Ramesh had given promise to sell the shares to Complainant.Â Thus, directly or indirectly the ground of

default is made out as mentioned in Section 4 of the Act.Â The amount is with the Accused and shares are not allotted.

13 The main contention of the Accused persons is that the amount given to them is not deposit, it does not fall under the definition of ""deposit"" given in

Section 2(c) of the Act.Â The relevant portion of Section 2(c) of the Act runs as under:

(c) ""deposit"" includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any Financial

Establishment to be returned after a specified period or otherwise, either in cash or in kind or in the form of a specified service with or without any

benefit in the form of interest, bonus, profit or in any other form, but does not include Â?Â?

(i) amount raised by way of share capital or by way of debenture, bond or any other instrument covered under the guidelines given, and regulations

made, by the SEBI, established under the Securities and Exchange Board of India Act, 1992 ;â??

The defence taken by the Appellants is that the amount was given for purchasing shares, but there is no record produced by the Appellants, which is

ordinarily created for creation and allotment of share capital under guidelines given and regulations made by the SEBI.Â Though there is mention

about the orders made by this Court at Principal Seat for allowing amalgamation and for transfer of Vedant Company, the further things which ought

to have been done for compliance are not on record.Â In any case, the separate amount which is more than Rs.2 crores is said to be deposit amount

and there is no specific answer in the form of record to that contention.

14 It is the contention of the Complainant that as there was a transfer of deposit amount collected, there was a promise and representation from

Accused that the deposit amount made will be returned with interest at the rate of 17% per annum if the amount was kept for one year and the

interest can go upto 19% if the amount was kept with the Accused for a period of six years.Â It is contended that different rates were given if the

interest was to be collected on monthly basis, quarterly basis and six months basis.Â The correspondence made by the Accused in that regard is produced.Â It is specifically alleged that in respect of the value of investment made in Vedant Hotel Private Limited, there was a promise to give the

returns after some time as per the agreement with increasing value of the shares.Â Thus, for the value of each share of Rs.57.10, the amount of

Rs.92.18 was to be considered as value per share in future.Â On that basis, amount of Rs.11.55 crores had become due as on 31st December, 2014.

15 It is specifically contended by the Complainant that for returning the amount, four cheques of amount of Rs.50 lac each were given to him and to

his family members and three cheques of Rs.5 lacs each were also given.Â It is contended that when the first cheque bounced and it was realized

that the cheque will not be enchashed, the remaining cheques were not presented for encashment.Â These cheques are with the Complainant and

that record also can be considered.Â Some record of payment of actual interest as per the aforesaid agreement is produced in respect of many

persons and that record shows that for some time, interest was actually paid.Â Some record is produced to show that the persons like Ravindra Dalal,

Smt. Sudha Dalal had transferred amounts in the account of Ramesh and that was done in the years 2004, 2007 and 2008.Â Thus, there is record in

support of the contentions made by the Complainant against the Accused persons.

16 The case of the Complainant that after transfer of Vedant Hotel Private Limited to the Dhanada Corporation, Accused, Ramesh became Chairman

and also Managing Director is not disputed.Â Both Ramesh and his wife are Appellants before this Court.Â The record shows that application was

filed by the wife of Ramesh before the Designated Court, Aurangabad in the present case and she had claimed that some properties were belonging

to her and they cannot be attached.Â In the writ petition filed at principal seat for three companies including Dhanada Corporation, the wife of

Ramesh contended that she was representing the three companies.Â All these circumstances show that the Appellants / Accused are trying to

obstruct and oppose the proceeding started under the Act in the interest of depositors.

17 The present matter involve only one property viz property of Vedant Hotel Private Limited / Vits Hotel (present name).Â The value of this

property is given as Rs.15 crores.Â In the notification of the Government, Accused, Ramesh is shown as Chairman and Managing Director of this concern, Dhanada Corporation.Â All these circumstances show that there is no force in the contentions of the Appellants that the transactions were

made by Ramesh in private capacity and they were not made for Dhanada Corporation.

18 In the writ petition filed at principal seat, relief of setting aside the entire notification is claimed.Â The relief of setting aside the order due to which

the property was sealed for giving effect to the notification, is also claimed.Â Interim order was made by the Vacation Court, learned Single Judge of

this Court at principal seat and stay was granted only to the order of Tahsildar due to which direction was given to handover possession of some

property from Pune to the Authority.Â Reasons given for interim relief show that the power, which is available to the Competent Authority under

Sections 4 and 5 of the Act is considered and as there was no order of the Designated Court in that regard, the interim order is given.

19 The present matter is of different nature and the present matter comes into existence after the notification.Â If the notification, attachment is

confirmed by the Designated Court and further orders are made, the order made by the Designated Court itself needs to be challenged.Â The

notification merges into the order.Â In Section 4 of the Act, the power of the State Government is given and Section 4(2) of the Act shows that on

publication of notification in official gazette, the property mentioned in notification stands vested in the Competent Authority forthwith and that

continues till the further order is made by the Designated Court.Â Section 4(2) of the Act runs as under:

Â Â ""(2) On the publication of the order under subsection (1), all the properties and assets of the Financial Establishment and the persons mentioned

therein shall forthwith vest in the Competent authority appointed by the Government, pending further order from the Designated Court.

20 The contention of the Appellants that the Competent Authority from Pune was considering the Government notification and so the Authority from

Aurangabad could not have taken steps, is not at all acceptable.Â The provision of Section 5 of the Act shows that it is upto the Government to

appoint as many officers as required to work as Competent Authority.Â The submissions made show that the State Government has appointed

Residential Deputy Collector (RDC) and SubÂDivisional Officers, who are of the rank of Deputy Collector of all the districts to work as Competent

Authority.Â The record in that regard is also produced.Â It needs to be kept in mind that when a property situated in a particular district and further

in a particular division of that district, the Competent Authority, who is also revenue officer for that divisions, is the best person for collecting the

record in respect of the property and to understand the dispute, if any, raised by anybody in respect of attachment of that property.Â The power

cannot be effectively exercised by the officers of other district.Â In the present matter, the property is situated in Aurangabad city and officer of

aforesaid rank, who is appointed as Competent Authority had taken steps as provided in Section 5(3) of the Act.Â Further, in the proceeding, the

Designated Court is expected to consider the objections of the nature mentioned in Section 7(2) of the Act and give decision on it.Â Thus, every

property mentioned in the notification needs to be considered separately and objections in respect of attachment of that property need to be dealt with

separately.Â For these reasons, it cannot be said that the Competent Authority of one district, who has acted first only needs to take steps in respect

of the property situated in all the districts.Â If the interpretation is done that way, then the purpose of enactment itself will be defeated.Â Further, the

procedure given in Section 7(5) of the Act shows that the Designated Court is expected to follow summery procedure as contemplated under Order

37 of the Code of Civil Procedure, 1908 and exercise all the powers of the Court in hearing the suit under the said Code for deciding the objections.Â

In view of these circumstances also, it needs to be presumed that the Competent Authority of the district where the property is situated, is expected to

take steps as provided in Section 5(3) of the Act and then the objections can be heard by the Designated Court as provided in Section 7 of the Act.Â

The Designated Courts are constituted under Section 6 of the Act and in every District and Sessions Judge and also Additional Sessions Judges are

expected to function as Designated Court.

21 In the matter like present one, the other provisions of the Act like provision of Section 9 providing for giving of security in lieu of attachment and

the provision of Section 10 providing for taking steps for administration of property attached, need to be considered. Section 9 of the Act shows that it

is open to the Accused to show bonafides and if the Designated Court is satisfied, it can release the attachment by accepting the security offered.Â

Such step is not taken by the Accused persons and that circumstance again shows that the Appellants are defaulters and the default is of the nature

mentioned in Section 4 of the Act.

22 The aforesaid discussion shows that there are sufficient provisions in the Act and complete scheme is given to take care of the interest of other

persons also, who have interest in the property attached or portion thereof.Â In the present matter, the property belongs to Dhanada Corporation and

not to any individual like the persons who have filed objections.Â It is not their case that they have interest of the kind mentioned in Section 7(2) of

the Act.Â The relevant facts show that there was a default and the Appellants or their companies are not able to discharge the liability towards the

depositors.Â As the present property belongs to Dhanada Corporation, financial institution, there is no need to consider other grounds.Â This Court

holds that the learned Sessions Judge has not committed any error in making the order of aforesaid nature against the Appellants.Â In the result, the

following order is passed:

1. Both the appeals stand dismissed.

II. The applications filed for intervention are allowed.

