(2013) 11 MP CK 0061

In the Madhya Pradesh High Court

Case No : Miscellaneous A. No. 556/2012

Saksham Dairy India Ltd. APPELLANT

Vs

State of M.P. RESPONDENT

Date of Decision : 21-11-2013

Acts Referred:

Citation : AIR 2014 MP 79 : (2014) 2 MPHT 150 : (2013) 4 MPJR 274

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

G.D. Saxena, J.—Present appeal u/s 11 of M.P. Nikshepakon Ke Hiton Ka Sanrankshan Adhiniyam 2000, hereinafter called as the Act, 2000 has been preferred by non-petitioner/appellant having been aggrieved by an order dated 14th September 2011 passed in Miscellaneous Civil Case No. 38/2012 by the District Judge, Gwalior M.P., thereby allowing the application submitted u/s 5(3) of the aforesaid Adhiniyam 2000 while making absolute the order dated 15th June 2011 in respect of attachment of the movable or immovable properties owned by the non petitioner/appellant, herein. Bare facts for just decision of this appeal are that the non-petitioner/appellant is a registered company indulged in running dairy vis-?-vis other allied businesses having its registered Office at J.A. 19B Phase-1 Ashok Vihar, New Delhi and Branch Office in Jhavar Estate, Midland Plaza, Gandhi Road, Gwalior M.P. It is admitted that the company did not possess the valid licence for running its banking transactions from the Reserve Bank of India nor did it ever make any endeavour to inform about its business in the area of jurisdiction to the Competent Authority as required u/s 3 of the aforesaid Adhiniyam. It is also admitted that the Company has established the Milk Plant and Water Plant units on the land provided at Gwalior and Malanpur Industrial Areas at Bhind M.P. The Collector/Competent Authority on receiving complaints and information that the company for purchasing the milking animals accepted the loans/deposits from the persons/depositors on the assurance that the amount would turn into an expected sum at the time of returning but made defaults in returning the amount of deposits. After making necessary enquiries and issuing the notices to the Company, the Collector/Competent Authority by an order dated 15th June 2011 attached all the immovable and movable properties of the Company and also debarred the Company from transferring the assets by way of sale mortgage or gift or otherwise. In compliance of the order above, as an interim measure, the State Authorities attached and sealed all the properties of the non petitioner/Company. Thereafter, the State through Competent authority filed an application u/s 5(3) of the Adhiniyam 2000 before the Special Court/District Court Gwalior constituted u/s 7 of the Act 2000. The non-petitioner/appellant filed reply to the petition alongwith copy of the documents as per list filed on behalf of the Company before the Special Court/District Judge, Gwalior. However, no person on behalf of the depositors of company appeared before the Special Court in support of the illegal activities of the company/non-petitioner/appellant. The learned Special Court after considering the proof and evidence on record passed the order confirming the order of the Collector regarding attachment of the properties belonging to the non-petitioner/Company for the time being. So, it was the order whereby the District Judge, Gwalior confirmed the ad-interim attachment of movable/immovable properties of the appellant/Company against which the present appeal has been filed.

2. Learned counsel for the appellant contended that the order impugned in this appeal is per se illegal, without jurisdiction and contrary to the evidence available on record. He contends that on perusal of the bye-laws and memorandum of the appellant registered company, it is well established that the company never purchased the agricultural lands, nor received public funds as deposits from the public. Therefore the provisions of the Adhiniyam 2000 are not at all applicable on regular business of the company and therefore the Collector fell in error to pass attachment order in respect of immovable or immovable properties belonging to the company. It is contended that the said lapse committed by the Collector was not examined by the Special Court/District Judge and without making proper enquiry, the order confirming the ad interim direction of attachment of the properties was passed. On these grounds, it is prayed that by allowing the appeal, the order dated 14th September 2011 passed by the District Judge, Gwalior confirming the interim order issued by the Collector/Competent Authority for attachment of all immovable/movable properties of the company may be set aside.

3. The respondent/State, on the other hand, by filing the reply alongwith documents as per list contended that order dated 14th September 2011 passed by the Special Court confirming the order of Competent authority/District Collector Gwalior for attachment of the properties belonging to the company is correct in law and thus no interference is warranted. It is contended that from the documents as produced or received by the Competent Authority, it is well established that without getting permission u/s 45 of the RBI Act, the company received the deposits for a stipulated period on payment of interest or enhanced

agreeable amount payable on the maturity dates from the depositors. The company received the deposits in the name and business of "Saksham Real Con Ltd." with rubber stamp of "Skaksham Dairy Ltd." Gwalior which clearly denotes the fraud and cheating committed with the innocent depositors. Learned counsel contends that from the material it also appeared that milking animals (she buffaloes) were purchased from sellers on different dates for "Saksham Dairy India Ltd." 411 Midland Plaza Jhavar Estate Thatipur Gwalior from Rohtak Haryana and village Dhamitha Tahsil Porsa District Morena, M.P. So, the company by adducing the evidence failed to prove that dairy for Milk Plant was established and that the business was for providing milking animals to the beneficiaries attached to its Milk Plant situated at Gwalior by receiving deposits from its depositors. Therefore, according to the learned counsel for the respondent, the appeal is bereft substance and deserves to be dismissed.

4. Heard the learned counsel for appellant-Company and the learned Dy. Advocate General appearing for the respondent/State. Also perused the record of the Special Court and the documentary evidence filed alongwith appeal with the reply and the law applicable to the present case.

5. Before examining the validity of the impugned order, it would be necessary to enlighten on the relevant provisions of M.P. Nikshepakon Ke Hiton Ka Sanrankshan Adhiniyam 2000, same follows as under:--

Section 2 Definitions.-

(b) "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 any kind or in form of a specified service with or without any benefit in term of interest, bonus profit or in any other form. But does not include,-

(i) Amounts contributed as capital by the partners of a firm,

(ii) Amounts received from a scheduled banks or a cooperative bank or any other banking company as defined in clause (c) of Section 5 of the Banking Regulation Act 1949 (10 of 1949)

(iii) Any amount received form.--

(a) the Industrial Development Bank of India (IDBI),

(b) a State Financial Corporation

(c) Any financial institution specified in u/s 6-A of the Industrial Development bank of India Act 1964 (18 of 1964):or

(d) Any other institution that may be specified by the Government in this behalf,

Explanation.- Any credit given by a seller to a buyer on sale of any property (whether movable or immovable) shall not be deemed to be deposit for purpose of this clause.

(c) "Financial establishment" means an individual, an association of individuals or a firm or a company incorporated under the Companies Act 1956 (1 of 1956) receiving deposits under any scheme or arrangement or in any other manner but does not include, a Corporation, or a Cooperative Society owned or controlled by the State Government or as the Central Government or a Banking Company as defined under clause (e) of Section 5 of the Banking Regulation Act 1949).

Section 3.- Intimation of Business.--(1) Every financial establishment, about its business in the area of jurisdiction of Competent Authority, shall, intimate the Competent Authority to that effect.

(2) The financial establishment shall file a copy of each periodical statement to the Competent Authority as may be required to be filed, under any law with other supervisory authority including Securities and Exchange Board of India (SEBI) and Reserve Bank of India (RBI).

(3) The Competent Authority at his discretion may at any time direct any financial establishment carrying on business in the area of jurisdiction of the Competent Authority to furnish in such form, at such intervals and within such time, such statements, information or particulars relating to or connected with deposits received by the establishment, as may be specified in a general or special order.

(4) Whosoever contravenes the provisions of this section, shall be punished with imprisonment which may extend to three months or with fine which may extend to one thousand rupees or with both.

Section 4.--Attachment of Properties on default of return of deposits.--Not withstanding anything contained in any other law for the time being in force.-

(i) Whereupon complaints received

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

And if the competent authority is satisfied that such establishment is not likely to return the deposits, the competent authority may, in order to protect the interest of the depositors of 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 establishment pass an interim, pass an ad interim order attaching money or other property alleged to have been procured either in the name of the financial establishment or in the name of other person or establishment or if transpires that such money or that property is not available for attachment or not sufficient for repayment of depositors such other property of the said financial establishment or the promoters, partners directors, managers or members of the said financial establishment, as the competent authority may think fit.

Section 5 Competent Authority-

(1) XXXX

(2) XXXX

(3) The competent authority shall apply within fifteen days of the order passed by it to the Special Court designed 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 Designed 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 before passing appropriate orders to give effect to the provisions of this Act,

Section 7. Special Courts.-

(1) XXXX

(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 realized from out of the property attached.

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

Section 8.- Power of Special Court regarding attachment--

(1) Upon receipt of an application u/s 5 the special court shall issue the financial establishment or any other person whose property is attached by the competent authority u/s 4, notice accompanied by the application, calling upon him to show cause on the date specified in the notice why the order of attachment should be made absolute,

(2) The special Court shall also issue such notice to all such persons who have represented before it as having or likely to claim, any interest or title in the property of financial establishment, calling upon to appear on the dates as specified in the notice and making objections if he so desires, to the attachment of the property or any 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 u/s (4) or Sub-section (6).

(4) If no cause is shown and no objection are made on or before the specified date, the special court shall forthwith pass an order making ad interim order of attachment of attachment absolute.

(5) If a cause is shown and 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 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 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 requited for re payment to the depositors of such financial establishment.

(7) Where an application is made by any person duly authorized 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 discretion on such application, so as to give effect to the provisions of such enactment.

Section 10.- Security in lieu of attachment.-

Any financial establishment or person whose property has been or is about to be attached under this Act may, at any time, apply to the Special Court for permission to give security in lieu of such attachment and where the security offered and given is, in the opinion of the Special Court, satisfactory and sufficient, it may cancel the ad interim order of attachment or as the case may be, refrain from passing the order of attachment.

6. On perusal of the relevant provisions of the Act as mentioned herein above, it is clear that sub-section (1) of the Act is enacted for protection of deposits made by public in financial institution receiving deposits in violation of the provisions of RBI Act and against provisions of the Act. Violation of intimation of business receiving deposits from public by the financial institutions as mentioned is made penal u/s 3 of the Act. (Section 3). To save the interests of the depositors from defaults the return of the deposits after maturity to depositors by the financial establishments, the competent authority/District Collector, on receiving the information from credible sources is empowered to attach the properties of the

defaulted financial institutions by issuing ad interim order of attachment. (Section 4). Thereafter within fifteen days the competent authority has to apply before Special Court for making absolute the ad interim order of attachment. (Section 5). The Special Court on receiving the application u/s 4, has to follow the prescribed procedure under the CPC 1908 and after recording the evidence of the parties and hearing the arguments has to pass the order making absolute the ad interim order of attachment or to very it by releasing the portion of the property from attachment or cancel the ad interim attachment order of properties of the financial institution (Section 7). The Special Courts are also empowered to 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 and in case the money realised from sale of property is not enough to cover the shortfall, the Special Court shall decide for imposing such fine to recover the shortfall as may be necessary for equitable (Section 7). In case of noncompliance of the provisions of law as mentioned above for protection of interest of the unsecured depositors, the adequate penal and other measurements by way of attachment of properties and sale of properties are provided in the Act.

7. On coming back to the present case, it clearly appears from the pleadings, evidence as available on the record and as appears from the order under appeal that the non-petitioner/appellant which is a registered company was having its office at JA19B Phase -1 Ashok Vihar New Delhi and for the purposes of expending the business at Gwalior or nearby places at Gwalior its subsidiary company in the name and style of "Saksham Dairies" was introduced with its office at Mid land Plaza Jhanwar State Gwalior. It is admitted that the aforesaid company did not possess the valid licence from the Reserve Bank of India for banking transactions nor did it intimate about its business in the area of jurisdiction to the competent authority as required u/s 3 of the Adhiniyam 2000. It is also admitted that the company has established the Milk plant and Water Packed Plant on the lands provided at Gwalior Industrial area and Malanpur Industrial Area Bhind M.P. When the Collector/competent authority received information that the company for purchasing the milking animals and providing some benefits to the persons depositors accepted the loans/deposits from the public and making defaults in returning the amount of deposits after making due inquiries and issuing the notice to the company the Collector/competent authority by an order dated 15th June 2011 attached all the immovable and movable properties belonging to the company and also debarred the company from making transfers/alienation by way of sale mortgage or gift or otherwise. It has come on the record that during inquiry, the company did not produce the satisfactory explanation that the company was not involved in banking business neither filed the statements of depositors from whom the company received deposits for its business or deposits received for providing milking animals purchased by the company for its depositors or filed the list/statement of the depositors to whom the amount of deposits were/are returned by the company.

In support of the list/statements of depositors or list of paid deposits to the depositors, the company did not file the copy of the auditor''s report in relation of the business of the company conducted from Gwalior office or adjourning places. Even no person on behalf of the depositors of the company/non-petitioner/ appellant nor the officers of the company appeared before the Special Court in support of/denying activities of receiving deposits and returning of deposit amount to the depositors before the Special Court. The Special Court after considering the proof and evidence on record passed the order confirming the ad-interim attachment order of properties belonging to the non-petitioner company under appeal which could not be termed to be illegal. In the case of New Horizon Sugar Mills Ltd. Vs. Govt. of Pondicherry, , the Hon. Apex Court has observed that the court should keep in mind the beneficial nature of the three legislations which is to protect the interests of small depositors, who invest their life''s earnings and savings in schemes for making profit floated by unscrupulous individuals and companies, both incorporated and unincorporated.

8. Thus, a reading of the impugned order shows that while deciding the case, the Court has set down clear reasons for its conclusions, which cannot be said to be far fetched or untenable. However, after analysing the principles underlying the object and considering the prayer made by the learned counsel for the appellant, it is directed that the appellant/company shall apply u/s 10 of the Adhiniyam 2000 to the Special Court seeking for permission to give security in lieu of attachment of properties for return of deposits of unpaid depositors within a stipulated period, as may be fixed by the court alongwith all proof and evidence subject to the satisfaction of the Special court and thereafter the Special Court after holding enquiry shall pass the appropriate order as per law, in an expeditious manner not more than within a period of three months from the date of submission of the said application before the court. Subject to the above, the appeal stands disposed of.

