

(2011) 11 MAD CK 0151
In the Madras High Court
Case No : C.M.A. No. 1120 of 2011

T.S. Kannaiyan and Others

APPELLANT

Vs

Competent Authority and District Revenue Officer
Sathuvachari, Vellore-9 Vellore District

RESPONDENT

Date of Decision : 02-11-2011

Acts Referred:

Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Penal Code, 1860 (IPC) — Section 109, 120, 406, 409, 420
Tamil Nadu Protection of Interests of Depositors in (Financial Establishments) Act,
1997 — Section 4, 5, 7(7)

Citation : (2011) 11 MAD CK 0151

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : P. Jagadeesan in both the Appeals, for the Appellant; M. Venugopal Additional Government Pleader (Civil Suits) in both the appeals, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice B. Rajendran

1. CMA No. 1120 of 2011 has been filed against the order dated 24.09.2010 passed in I.A. No. 51 of 2010 in I.A. No. 28 of 2010 in O.A. No. 23 of 2010 by the Special Judge under TNPID Act, 1997, Chennai - 104, by which the petition filed by the petitioners to set aside the exparte order dated 10.06.2011 was dismissed.

2. CMA No. 2877 of 2011 has been filed against the Judgment and Decree dated 18.02.2011 passed in I.A. No. 64 of 2010 in O.A. No. Nil of 2010 by the Special Judge under TNPID Act, 1997, Chennai - 104 by which the delay of 77 days in filing the Original attachment was allowed.

3. The facts which led to filing of C.M.A. No. 1120 of 2011 is as follows:-

The competent Authority and District Revenue Officer has filed O.A. No. 23 of 2010 before the learned Special Judge under TNPID Act, Chennai contending that complaints have been received that the respondents therein, who are running financial establishments, are not likely to return the deposit amount to the depositors and therefore, the investigation officer namely Deputy Commissioner of Police, Economic Offences Wing-II, Sathuvachari conducted investigation and the investigation led to filing of a case in Crime No. 3 of 2007 u/s 120(b), 406, 409, 420, 421 and 109 IPC and Section 5 of TNPID Act against them. The investigation officer also submitted his report stating that the respondents therein have defaulted in repayment of the deposit amount payable to 411 depositors to the tune of Rs.12,41,06,900/-. The investigation officer also submitted in his report furnishing the movable and immovable properties possessed by the financial establishments and its partners and prayed for attaching those properties to realise the public deposit. Based on the said report, the Government issued G.O. Ms. No.351, Home (Police XIX) Department dated 24.04.2009 attaching the properties of the financial establishments and directed the competent authority to pursue further action in accordance with Sub-Sections (3) and (4) of Section 4 of TNPID Act. Based on the same, the competent authority has filed the said O.A. No. 23 of 2010 praying to make the order of attachment passed by the Government absolute, with permission to sell the properties as contemplated u/s 7(7) of the TNPIC Act. Along with O.A. No. 23 of 2010, an application in I.A. No. 28 of 2010 was filed stating that as per sub-section (3) and (4) of Section 4 of TNPIC Act, the Original Application ought to have been filed within 30 days from the date of receipt of the Government Order for making the interim order of attachment absolute but there was a delay of 296 days and the delay has caused due to compliance of various administrative formalities. The learned Special Judge, TNPID Act, condoned the delay and allowed the application on 10.06.2010 after setting aside the petitioners exparte. Aggrieved by the said order, the petitioners herein have filed I.A. No. 51 of 2010 praying to set exparte aside order passed against them on 10.06.2010 and permit them to contest the case. The said application was dismissed by the learned Special Judge under TNPID Act, against which the present C.M.A. No. 1120 of 2011 has been filed.

4. C.M.A. No. 2877 of 2011 arise out of a similar application filed by the learned Competent Authority and District Revenue Officer, Vellore in I.A. No. 64 of 2010 in O.A. No. Nil of 2010 for condonation of delay of 77 days in filing the Original Application for making the interim order of attachment passed by the Government, absolute. The delay was condoned by the learned Special Judge under TNPID Act, by an order dated 18.02.2011, against which the present appeal in C.M.A. No. 2877 of 2011 has been filed.

5. The grievance of the petitioners in both the appeals are common besides that both the Original Applications were filed by the Competent Authority and District Revenue Officer, Vellore before the learned Special Judge under TNPID Act, seeking identical relief. Therefore, both the appeals are taken up together and

disposed of by this common judgment.

6. The main grievance of the petitioners in both the appeals is that the learned Special Judge under TNPID Act ought not to have condoned the delay in filing the Original Applications inasmuch as he has no jurisdiction to condone the delay. According to the petitioners, Section 5 of the Limitation Act has no application to a special enactment and therefore, they have come forward with the present appeals.

7. In so far as the first appeal namely C.M.A. No. 1120 of 2011 is concerned, the petitioners would also contend that the case was posted in the list before the Special Judge under TNPID Act for taking steps to bring on the legal heirs of the 18th respondent, but on that day, an endorsement was made on behalf of the competent authority that they are not taking any steps for bringing the legal heirs of 18th respondent on record. Based on such endorsement, without giving further time to the petitioners, herein, the delay was condoned and therefore also, C.M.A. No. 1120 of 2011 has to be allowed on the ground of violation of principles of natural justice.

8. The learned Special Government Pleader appearing for the competent authority would mainly contend that the learned Special Judge under TNPID Act is right in allowing the applications filed u/s 5 of the Limitation Act for condonation of delay. Even though the dispute sought to be adjudicated upon is under a special enactment, the provisions contained in The Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997, hereinafter referred to as Act, does not specifically exclude the Indian Limitation Act from being invoked. In the absence of such exclusion, the Court below is justified in condoning the delay and therefore the order passed by the learned Special Judge under TNPID Act is well within its jurisdiction. The exercise of discretion by the learned Special Judge under TNPID Act is in accordance with law and therefore, it need not be interfered with by this Court. Furthermore, the appellants are unable to point out any perversity or illegality in the order passed by the Special Judge under TNPID Act and therefore also the appeals deserve to be dismissed. Lastly, the learned Additional Government Pleader brought to the notice of this Court the decision of this Court reported in Antony and others vs. Competent Authority and Additional Commissioner (Cinema & Irrigation) Land Administrative Department, Chennai - 5 and another 2008 (2) MLJ (Cri) 582 and contend that there is no express or implied exclusion of Section 5 of the Limitation Act for application to the proceedings under the Act and therefore he prayed for dismissal of both the appeals.

9. I heard the counsel for both sides. The main point for consideration in these appeals is whether the learned Special Judge under TNPID Act has jurisdiction to extend the time limit beyond 30 days, as contemplated u/s 4(3) of the Act, and to condone the delay in filing the original applications by the competent authority.

10. The learned counsel for the petitioners would vehemently contend that when

the Act does not specifically contemplate that Section 5 of the Limitation Act is applicable to the proceedings initiated under the Act and when Section 4(3) of the Act specifically contemplates 30 days for filing an application to make the ad-interim order of attachment passed by the Government, absolute, the order passed by the learned Special Judge under TNPID Act is without jurisdiction and contrary to the provisions of Section 4(3) of the Act.

11. The argument advanced on behalf of the petitioners cannot be accepted. A perusal of the provisions of the Act would clearly indicate that there is no express exclusion of Indian Limitation Act to the proceedings initiated under this Act. The learned Special Judge under TNPID Act has exercised its discretionary powers conferred under the Act in the interest of justice and such exercise of discretionary powers to condone the delay in filing the original applications cannot be said to be arbitrary or perverse.

12. In this connection, I am fortified by the decision of this Court reported in (Antony and others vs. Competent Authority and Additional Commissioner (Cinema & Irrigation) Land Administrative Department, Chennai - 5 and another) 2008 (2) MLJ (Cri) 582 wherein the learned single Judge of this Court held that under the provisions of TNPID Act, even though the word "shall" was used in Section 4(3) of the Act, such provision is directory in nature and not mandatory. It was further held that the provisions of the Act should be given a literal interpretation otherwise, public interest would be affected. It was further held that considering the beneficial special statute and the injustice that may be occasioned to the innocent depositors, who lost their hard earned money, the time frame prescribed u/s 4(3) of the Act will have to be construed only as directory in nature and not mandatory. In Para Nos. 32 and 35 of the said judgment, it was held as follows:

32. It is very pertinent to refer to the following observation of the Supreme Court in Union of India Vs. M/s Popular Construction Co., :-

Had the proviso to Section 34 merely provided for a period within which the Court could exercise its discretion, that would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act because "mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5.

35. To sum up, the word "shall" in all occasions does not mean a mandatory direction. Likewise, the word "may" does not imply a directory direction alone. It may mean a mandatory direction also. If an extended period of limitation is found in the Special Act, or by implication the provision of Section 5 of the Limitation Act is excluded, the said provision cannot be applied to the Special Act. To arrive at a conclusion whether the provision u/s 5 of the Limitation Act is applicable to the Special Act, the entire object and scheme of the Special Act will have to be looked into to find whether non-applicability of Section 5 of the Limitation Act would cause great hardship and injustice to the party concerned.

In this case, considering the beneficial special statute and the injustice that may be occasioned to the innocent depositors, who lost their hard earned money, the time frame prescribed u/s 4(3) of the Act will have to be construed only as directory in nature and not mandatory.

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.

14. As far as CMA No. 1120 of 2011 is concerned, it was contended on behalf of the petitioners that the case was listed before the learned Special Judge for TNPID Act for bringing the legal heirs of the 18th respondent, but on that day even in the absence of any steps taken by the competent authority, the learned Special Judge for TNPID Act proceeded with the enquiry and condoned the delay. It is seen from the records that on the day when the impugned order was passed, on behalf of the petitioners herein time was sought for filing a counter, but the learned Special Judge refused to grant time and passed the order condoning the delay. It was also mentioned in the impugned order that the case was posted to 18.05.2010, on that date, time was extended for filing counters by the parties and it was again posted on 10.06.2010 for filing counter but they did not file the counter. Therefore, merely because an adjournment was sought and it was refused, it will not be a ground for setting aside the impugned order. The learned Special Judge under TNPID Act afforded sufficient opportunity to the petitioners to defend the proceedings, but they failed to do so by filing the counter. Therefore, the contention of the petitioners cannot be accepted and consequently, the learned Special Judge under TNPID Act is right in rejecting the claim of the petitioners for grant of time to file counter. I do not find any reason to interfere with the same.

15. With these observations, both the appeals are dismissed. There shall be no order as to costs.