

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2008

CORAM:

THE HON'BLE MR.JUSTICE P.JYOTHIMANI

WRIT PETITION NO.14701 OF 2007

M/s. Kotak Mahindra Bank Ltd.,  
ARD, 6<sup>th</sup> Floor  
Vinay Bhawya Complex  
Kalina  
Santacruz (East)  
Mumbai 400 098.

.. Petitioner

vs.

1. Union of India  
rep. By Govt. of Pondicherry  
Additional Secretary (Revenue)  
Dept. of Revenue and Disaster Management  
Pondicherry.

2. Shri Malini Spinning Mills Ltd.,  
Sandhiyur Post, Mallur Via.,  
Salem 636 203.

3. Catholic Syrian Bank Ltd.,  
1<sup>st</sup> Floor, Pookoodai Shopping Complex  
4 Roads, Omalur Main Road, Salem 9. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus as stated therein.

सत्यमेव जयते

For petitioner : Mr.V.T.Gopalan, Sr.Counsel  
for Mrs.Radha Gopalan

For respondents : Mr.T.Murugesan  
Government Pleader (Pondy) for R.1

Mr.V.Krishnamurthi for R.3  
No appearance for R.2

ORDER

The second respondent has been operating various accounts in Catholic Syrian Bank Limited, Salem-9 and there are amounts due from the second respondent to third respondent. By letter dated 25.02.2006, the third respondent has informed the second respondent that it has assigned the financial instruments executed by the second respondent dated 13.02.2006 in its favour to the petitioner. In this regard, a sum of Rs.1250 lakhs was due from the second respondent towards principal and interest under the said financial instruments.

2. By virtue of the powers conferred under Pondicherry Protection of Interest of Depositors in Financial Establishments Act, 2004 (Act 1 of 2005), Pondicherry Government has issued G.O.Ms.No.1 dated 18.02.2006. As per Section 4(2) of the said Act and for the purpose of enforcing Sections 5(3) and 10(3) of the Act, there was an order of attachment of properties allegedly acquired by the Pondicherry Nidhi Limited including Serial Nos.13 and 14 in Schedule I of the said Government Order, which are given by the second respondent as secured assets in favour of the third respondent, which were in turn assigned to the petitioner Bank. Even though the validity of the said Act has been upheld by the Division Bench of this Court in W.A.Nos.1142 and 1143 of 2006 on 27.03.2007 by following the earlier Full Bench judgment in S.Bagavathy vs. State of Tamil Nadu and another (2007 (1) Law Weekly 892), by which the similar Tamil Nadu enactment has been upheld, the provisions of the said Act 1 of 2005 of Pondicherry cannot be applicable to the third respondent or the petitioner, since being Banking Companies registered under the Companies Act,1956 as defined under Section 5(c) of the Banking Companies Regulation Act,1949, the same has been specifically excluded from the purview of term "financial establishment". Therefore, according to the petitioner, the securities given by the second respondent which have been assigned by the third respondent cannot be attached by the first respondent. In view of the same, the petitioner, which is a Banking Company registered under the Companies Act,1956 has filed the present writ petition for direction against the first respondent to lift the attachment made pursuant to the notification dated 18.02.2006 in so far it relates to the secured assets of the second respondent, viz., Serial Nos.13 and 14 in Schedule I of the Government Order stated supra created in favour of the third respondent and assigned to the petitioner.

3. The first respondent in the counter affidavit has stated that the claim of the petitioner is totally devoid of merits. According to the first respondent, one Kothandaraman and Subhashree made a complaint on 22.11.2004, addressed to the competent authority that they have deposited some amount with one financial establishment called M/s.P N L Nidhi Limited, having their office at Pondicherry

and even after the lapse of maturity period, the amount has not been returned. Later, it was revealed that M/s. Pondicherry Nidhi Limited and M/s. P N L Nidhi Limited, which are two different Companies were functioning under the same address at No.189, Mission Street, Pondicherry. M/s. Pondicherry Nidhi Limited have been registered with the Department of Company Affairs, Pondicherry and also registered with Reserved Bank of India. It was informed by Reserve Bank of India that the certificate of registration issued to the said Company under Section 45(1)(A)(6) of the Reserve Bank of India Act, 1934 has been cancelled on 19.09.2005.

3(a). Regarding M/s. P N L Nidhi Limited, it was incorporated as Pondicherry Mutual Benefit Fund Limited and thereafter, the name of the Company was changed as Prassanna Narayanan Lakshmi Nidhi Limited and the name was once again changed as M/s. P N L Nidhi Limited on 05.04.1995. It was subsequently declared as Nidhi Company under Section 620 A of the Companies Act. The Crime Investigation Department of Pondicherry police also received a complaint from one Boothanathan of Thiruvannainallur, Tamilnadu for various offences under Indian Penal Code and Negotiable Instruments Act. Since many complaints were received against the said Companies and there was no specific Act for protecting the interest of depositors, and the matter became very serious, Government of Pondicherry, in the public interest, has enacted the Pondicherry Protection of Interests of Depositors in Financial Establishments Act, 2004 (Act 1 of 2005), to protect the interest of depositors and the said Act came into force from 15.03.2005.

3(b). Under the said Act, the District Magistrate can suo motu or on receipt of complaint, cause investigation of any fraudulent transaction. On the investigation by the Superintendent of Police with the affected depositors of the said Companies, Government of Pondicherry was satisfied that the said M/s. P N L Nidhi Limited failed to repay the deposits on demand by depositors, which attracts Section 3 of the Act and consequently, the Government of Pondicherry has passed G.O.Ms.No.12 dated 18.02.2006, attaching the properties, which had been already attached by the Chief Judicial Magistrate, Pondicherry. The Government of Pondicherry has also constituted a designated Court by a Government Order on 26.10.2005 in respect of the financial establishments.

3(c). This Court has stayed the operation of the attachment order issued in G.O.Ms.No.12 dated 18.02.2006 in WPMP.No.6961 of 2006 in W.P.No.6453 of 2006 filed by the Indian Bank, Puducherry and also the writ petition filed by M/s.EID Parry Limited, Chennai. Subsequently, the stay was vacated on 23.08.2006, however, the attachment was lifted against some of the properties alone, viz., land and building comprised in R.S.No.72 and 118 measuring 3.99 and 13.10.00 hectares in Ariyur Revenue Village, Villianur Sub-Registration District, Pondicherry and lands to an extent of 120 acres and 070 cents in

Mallapambady Village, Thiruvannamalai District and sustained the order of stay in respect of other items. Ultimately, by upholding the impugned order of attachment made by the Government of Pondicherry in G.O.Ms.No.12 dated 18.02.2006, the writ petition came to be dismissed. In the said writ petition, validity of Act 1 of 2005 was challenged and the validity of Act 1 of 2005 was also upheld.

3(d). As against the said order, W.A.No.1142 of 2006 etc., were filed. The learned single Judge upholding the validity of the Act, limited its operation to incorporated institutions. However, the Division Bench while allowing the writ appeals filed by the Government of Pondicherry and dismissing the writ appeals filed by the petitioners with modification that the order of the learned single Judge would cover both incorporated and unincorporated trading establishments. Against the said Division Bench judgment, Special Leave Petition has been filed before the Supreme Court and the same is pending.

3(e). It is also stated that the Division Bench while upholding the validity of the Act 1 of 2005, agreed with the Full Bench decision, wherein the validity of the similar Act in Tamil Nadu was upheld and held that the financial establishment referred to in Section 2(d) of the Act would cover both incorporated and unincorporated financial establishments and therefore, according to the first respondent, the claim of the writ petitioner Bank that the expression "financial establishment" does not include Banking Company, is not correct. It is also the case of the first respondent that the Pondicherry Government has attached the properties of the second respondent situated at Salem vide Item Nos.13 and 14 of Schedule I in G.O.Ms.No.12 dated 18.2.2006 in exercise of the powers conferred under Sections 4, 5(3) and 10(3) of the Act. It is also stated that even before that, the Chief Judicial Magistrate, Pondicherry has attached the second respondent Mill.

4. Mr.V.T.Gopalan, learned senior counsel appearing for the petitioner Bank would submit that while it is true that the Division Bench while upholding the validity of Pondicherry Act 1 of 2005, has modified the learned Single Judge's order, stating that the order would cover in its ambit both incorporated and unincorporated trading establishments. However, the case of the petitioner Bank is that the petitioner Bank as well as the third respondent Bank, which has assigned the securities given by the second respondent in favour of the petitioner are not financial establishments within the meaning of Act 1 of 2005 and they are banking companies.

5. On the other hand, Mr.T.Murugesan, learned Government Pleader (Pondicherry) appearing for Government of Pondicherry would fairly submit that it is true that when the validity of Act 1 of 2005 was upheld by the Division Bench of this Court, it was made clear that it

is applicable to incorporated and unincorporated trading establishments. In the event of the claim of the third respondent and that of the petitioner who has been assigned by the third respondent with the securities given by the second respondent is earlier in point of time, the petitioner can bring the said two items, viz., serial Nos.13 and 14 in Schedule I of G.O.Ms.No.12 dated 18.02.2006, while exercising the powers under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002 for sale and if the claim of the first respondent, Government of Pondicherry is earlier in point of time, the first respondent can bring the property for auction.

6. Mr.V.T.Gopalan, learned senior counsel for the petitioner would also submit that the claim of the petitioner, which is based on the securities given by the second respondent in favour of the third respondent is earlier in point of time and therefore, he accepted the suggestion made by the learned counsel for the first respondent.

7. As stated above, making it clear that after the petitioner recovers the amount as per the securities given by the second respondent to the third respondent and assigned by the third respondent to the petitioner, it is open to the first respondent to enforce its right as per Act 1 of 2005. Section 2(d) of Act 1 of 2005 defines "financial establishment" to mean,

"any person or group of individuals or a firm carrying on business of accepting deposits under any scheme or arrangement or in any other manner but does not include a cooperation or a cooperative society owned or controlled by the Government, any State Government or the Central Government, or a banking company as defined under Section 5 of the Banking Regulation Act,1949."

8. On the basis of the above said submission made by the learned senior counsel for the petitioner and first respondent and considering the fact that the petitioner and third respondent are the Banking Companies as per the Banking Regulation Act, 1949, which have been specifically exempted from the purview of financial establishment under Act 1 of 2005, the writ petition is disposed of with direction to the first respondent to lift the attachment made in respect of Serial Nos.13 and 14 in Schedule I of G.O.Ms.No.12 dated 18.02.2006, in so far as it relates to the said items of properties alone to enable the petitioner to take suitable action for recovery under the concerned Act in respect of due from the second respondent to the third respondent. It is made clear that in such an event, the first respondent would be entitled to the residuary amount in respect of said items, viz., Serial Nos.13 and 14 and to proceed with attachment and further auction in respect of other properties as per Act 1 of 2005.

The writ petition is disposed of with above direction. No costs.

Sd/-  
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

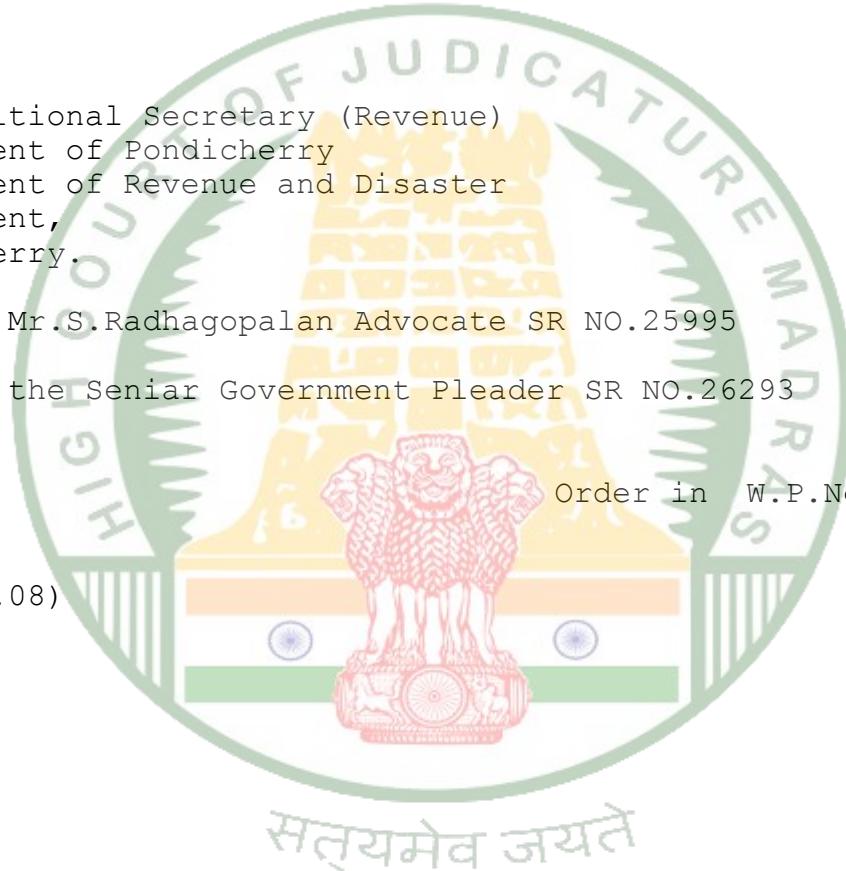
1. The Additional Secretary (Revenue)  
Government of Pondicherry  
Department of Revenue and Disaster  
Management,  
Pondicherry.

+ 1 CC to Mr.S.Radhagopalan Advocate SR NO.25995

+ 1 CC to the Senior Government Pleader SR NO.26293

Order in W.P.No.14701 of 2007

RSM(CO)  
JJM(19.05.08)



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