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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(C) 3170/2014

M/S AJANTA MERCHANTS PVT. LTD. .... Petitioner

Through: Mr. Amit Sibal, Senior Advocate with  
Mr. Gurpreet Singh and Mr. Shakhir  
Husein, Advocates.

versus

DIRECTORATE OF ENFORCEMENT AND ANR ..... Respondents

Through: Mr. Udit Gupta and Mr. Prasouk Jain,  
Advocates for Mr. B.V. Niren, Advocate  
for respondent No.1/UOI.

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Date of Decision : 19<sup>th</sup> May, 2014

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**J U D G M E N T**

**MANMOHAN, J: (Oral)**

**CM Appl. 6601/2014 (exemption) in W.P.(C) 3170/2014**

Allowed, subject to just exceptions.

Accordingly, present application stands disposed of.

**W.P.(C) 3170/2014 & CM Appl. 6600/2014**

1. Present writ petition has been filed seeking a direction to respondent No.1 to release the property bearing No.11, Prithvi Raj Road and hand over possession of the same to respondent No.2-tenant.

2. Mr. Amit Sibal, learned senior counsel for petitioner submits that taking over of possession by respondent No.1 was contrary to Rule 5(3) of the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules, 2013, (for short 'Rules, 2013') formulated by the Central Government in exercise of its power conferred by Sub-section (1) read with Clause (ee) of Sub-section (2) of Section 73 of the Prevention of Money-Laundering Act, 2002 (for short 'Act, 2002'). Rule 5(3) of the Rules, 2013 reads as under:-

**“5. Manner of taking possession of immovable property—**

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*"(3) Where the immovable property confirmed by the Adjudicating Authority is in the form of a land, building, house, flat etc. and is given on lease or rent to a third party which is registered in accordance with the provisions of Section 17 of the Registration Act, 1908, the authorized officer shall issue direction to the occupant to pay the lease amount or rent in the form of Demand Draft payable to the Directorate of Enforcement."*

3. Mr. Sibal, further submits that as the property was let out to Ms. Amrita Rai, Advocate, who is enjoying the status of statutory tenant by virtue of duly registered lease deed dated 26<sup>th</sup> December, 2013, respondent No.1 could not have taken over possession without issuing notice to respondent No.2.

4. Upon a perusal of the paper book, the facts that are relevant to the present case are that on 30<sup>th</sup> August, 2013, a provisional attachment order under Section 5(1) of the Act, 2002 was passed by respondent No.1. The relevant portion of the said order reads as under:-

*“17. NOW THEREFORE, having reasons to believe that the immoveable properties, as mentioned below, which are Proceeds of Crime, and which are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of the said Proceeds of Crime, I, hereby order Provisional Attachment of the said immoveable properties and further order that the same shall not be transferred, disposed, parted with or otherwise dealt with in any manner, whatsoever, until or unless specially permitted to do so by the undersigned. Relied upon documents are mentioned in Annexure ‘A’.”*

5. On 24<sup>th</sup> September, 2013, respondent No.1 filed a complaint under Section 5(5) of the Act, 2002.

6. On 26<sup>th</sup> December, 2013, according to petitioner, registered lease deed was executed between the petitioner and respondent No.2. The relevant provisions of the lease deed are reproduced hereinbelow:-

*“1. That the LESSOR hereby demises unto the LESSEE all that the Demises Premises, for a total period of 3 (Three) years commencing from 01.06.2013. The LESSOR has delivered the vacant possession of the Demises Premises to the LESSEE and the LESSEE paying therefore unto the LESSOR during the said period a monthly rent as provided herein below to the LESSOR in respect of the Demised Premises payable in advance by the 7<sup>th</sup> day of each and every month after getting this deed registered.*

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4. *PROVIDED AND IT IS HEREBY AGREED BY AND BETWEEN THE LESSOR AND THE LESSEE AS FOLLOWS:*

i. *That the LESSEE shall pay to the LESSOR a Security Deposit of a sum of Rs.1,60,000/- (Rupees One Lac Sixty*

*Thousand Only), equivalent to two months rent, vide Cheque bearing No.068733, dated 26.12.2013, Drawn on IDBI Bank, Allahabad and the LESSEE has also paid the LESSOR a sum of Rs.1,40,000/- (Rupees One Lac Forty Thousand Only), till now @ Rs.4,20,000/- (Rupees Four Lacs and Twenty Thousand Only) is being paid vide Cheque bearing No.068732 dated 26.12.2013, Drawn on IDBI Bank, Allahabad, the receipt of which the LESSOR hereby acknowledge. The security amount shall be retained by the LESSOR as interest free deposit and will be refundable at the time of termination of the said LEASE against handing over the vacant physical possession of the Demised Premises to the LESSOR. However, the LESSEE shall clear all outstanding electricity, water, before handing over possession to the LESSOR, failing which such amounts shall be deducted from the security deposit.”*

(emphasis supplied)

7. On 26<sup>th</sup> February, 2014, the provisional attachment order was confirmed by respondent No.1. The relevant portion of the provisional attachment order reads as under:-

*“16. Therefore, I order for confirmation of the attachment of the properties made under sub-section (1) of Section 5 of the PML Act and this order shall*

*(a) continue during the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and*

*(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of Section 8 or Section 58B or sub-section (2A) of Section 60 by the Adjudicating Authority.*

8. On 14<sup>th</sup> March, 2014, a notice of eviction was issued by respondent No.1 and possession of the property in question was taken over.

9. The intent and object of the Act, 2002 is to prevent money-laundering and to provide for confiscation of property derived from, or involved in.

10. Having regard to the intent and scheme of the Act, 2002 as well as the Rules, 2013, this Court is of the opinion that the Adjudicating Authority has the power to issue a provisional attachment order so that during the pendency of the proceedings, the property is neither transferred nor disposed of or parted with or dealt with in any manner. Subsequently, if upon a complaint being filed by respondent No.1, the provisional attachment order is confirmed, then the authority has the power to take over possession. However, only if a tenant prior to passing of the provisional attachment order is in possession of the same, respondent No.1 by virtue of Rule 5(3) cannot take over possession of the property. According to the said Rule, on such a circumstance, respondent No.1 has the power only to attach the rent that means, issue a direction to the occupant to pay the lease amount or rent in the form of demand draft to respondent No.1.

11. This Court is further of the view that after a provisional attachment order has been passed, no noticee-owner can create a tenancy or transfer possession or create third party rights to defeat an ultimate order of taking over possession under the Act, 2002 and Rules, 2013. It is pertinent to mention that the expression 'attachment' is defined under Section 2(d) of Act, 2002 to mean prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III.

12. Though in the present case, it has been averred that the tenancy had been orally created on 01<sup>st</sup> June, 2013, yet this Court is of the view that the alleged oral tenancy would create no right either in favour of the petitioner or respondent No.2 as the lease deed in question was compulsorily registerable under Section 17 of the Registration Act, 1908. In ***Santosh Jayaswal and Anr. Vs. State of M.P. and Ors., (1995) 6 SCC 520*** the Supreme Court has held that “*since the duration of lease is more than a year, it is an instrument and compulsorily registrable by operation of Section 18(1)(c) of the Registration Act and liable to stamp duty under the Indian Stamp Act. Therefore, it cannot be acted upon unless it is duly engrossed with stamp duty and registered.*”

13. Further, the covenant in the lease deed that security deposit shall be paid not at the time of handing over of possession or at the time of registration throws doubt upon the genuineness of the oral tenancy and the handing over of possession in June, 2013.

14. This Court also takes judicial notice of the fact that Pririthvi Raj Road is one of the most prime and posh areas of the city and it is inconceivable that a property ad measuring 6796.50 sq. ft. would have been leased out in an arms length transaction at Rs.80,000/-.

15. This Court may mention that the Apex Court and different High Courts have consistently taken the view that execution of any deed including a sale deed in disobedience of an interim order of the Court is a nullity. Some of the relevant judgments are reproduced hereinbelow:-

- (i) In ***Krishna Kumar Khemka vs. Grindlays Bank P.L.C. (1990) 3 SCC 669***, it has been held as under:-

“16. ....Therefore the tenancy created in favour of the

*Tatas was in breach of the order of the Court and consequently the Tatas cannot claim any protection under the provisions of the Act and they are liable to be evicted. ....In any event as observed above, the new tenancy created in their favour contrary to the orders of the Court does not create a right and is liable to be cancelled.....”*

- (ii) In **Satyabrata Biswas vs. Kalyan Kumar Kisku, (1994) 2 SCC 266**, it has been held as under:-

*“29. .... Hence, the grant of sub-lease is contrary to the order of status quo. Any act done on the teeth of the order of status quo is clearly illegal. All actions including the grant of sub-lease are clearly illegal....*

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*31. The parties are relegated to the position as on 15-9-1988. Somani Builders are hereby directed to deliver vacant possession to the Special Officer within one month from today....”*

- (iii) In **Surjit Singh vs. Harbans Singh, (1995) 6 SCC 50**, it has been held as under:-

*“4. ....In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes.....”*

16. Consequently, as the lease deed in question had been executed only after the Provisional Attachment order had been passed by the statutory authority, this Court is of the view Rule 5(3) of the Rules, 2013 would not enure to the benefit of either the petitioner or respondent No.2-tenant.

17. Accordingly, the present writ petition and application, being bereft of merits, are dismissed.

**MANMOHAN, J**

**MAY 19, 2014**

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