

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

HON'BLE SRI JUSTICE S.V. BHATT

WRIT APPEAL No. 989 OF 2015

06-11-2015

Between:

M/s. Penna Cement Industries Ltd., a company incorporated under the provisions of the Indian Companies Act, 1956, having registered office at Lakshmi Nivas, 705, Road No.3, Banjara Hills, Hyderabad, rep., by its Company Secretary Sri Raj Kumar Singh and another

... Appellants

And

The Directorate of Enforcement, Government of India, Ministry of Finance, Department of Revenue, 3rd Floor, Shakkar Bhavan, Basheer Bagh, Hyderabad, rep., by its Joint Director and others

... Respondents

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

HON'BLE SRI JUSTICE S.V. BHATT

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WRIT APPEAL No. 989 OF 2015

PC: (per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

Heard Sri D.V. Sitha Ram Murthy, learned Senior Counsel for the appellants; Sri P.S.P. Suresh Kumar, learned counsel for respondent Nos.1 and 2 and Sri B. Narayana Reddy, learned Assistant Solicitor General for respondent No.3.

This writ appeal is directed against the order dated 28-10-2015 passed in WPMP No.45858 of 2015 in Writ Petition No. 35693 of 2015, whereby the appellants prayer for stay of further proceedings before the Adjudicating Authority has been dismissed. The impugned order reads thus:

“So far as the interim relief against the 3rd respondent is concerned, the learned Senior counsel for the petitioners would contend that the order of provisional attachment is contrary to Section 5 of the Act, as the ingredients therein particularly under 5(B) are not satisfied, as there is no material to hold that the petitioners either concealed or transferred or dealt with in any manner so as to prosecute the proceedings under the Act. He also submits that the Adjudicating Authority has issued notices proposing to hear the matter fixing the date of hearing on 29-10-2015 and the learned Senior counsel seeks stay of further proceedings before the adjudicating Authority on the ground that if the petitioners succeed on the main issue, as mentioned above, the entire proceedings under the Act would be rendered infructuous and there is no useful purpose in approaching the Adjudicating Authority on the date fixed.

I do not see any reason to accede to the said request inasmuch as under Section 5(5) of the Act, the Director or any other officer, who provisionally attaches any property is bound to file a complaint stating the facts of such attachment before the Adjudicating authority within thirty days and therefore, the Scheme of the Act under Section 6 of the Act operates and the attachment is subject to adjudication by the Adjudicating Authority under Section 8 of the Act.

Since the notices fixing the date of hearing as 29-10-2015 were served on the petitioners as early as on 31-08-2015 as is evident from page Nos.160 and 161 of the writ paper book, I see no reason to stay the proceedings before the adjudicating authority at the last minute, when the petitioner has approached one day before. Even otherwise, the proceedings before the Adjudicating Authority are only intended to examine as to whether the order of provisional attachment was justified or warranted and in fact, it is an opportunity for the petitioners to seek vacation of the said attachment order. I therefore do not see any reason to grant stay of adjudication proceedings, as mentioned above.

Hence, the W.P.M.P. is dismissed.”

We are informed that the next date of hearing before the Adjudicating Authority, at the request of the appellants, is now fixed on 09-11-2015. It is submitted that on 29-10-2015, the appellants sought adjournment on the ground that they have carried the impugned order in writ appeal.

We have heard learned Senior Counsel for the appellant. The basic contentions raised by the appellant is that the Adjudicating Authority has no jurisdiction to adjudicate the claim and that the procedure contemplated by Section 5 of the Prevention of Money-Laundering Act, 2002 (for short 'the Act') has not been followed. In support of the second contention, learned Senior Counsel invited our attention to the provisions of Section 5 and submitted that there is absolutely nothing on record to show that the appellants are likely to either conceal or transfer or deal with the property in their possession frustrating the proceedings relating to confiscation or any proceeds of the alleged crime. He, therefore, submits that no prejudice will be caused to respondent Nos.1 and 2 if the proceedings before the Adjudicating Authority are stayed, pending the hearing and final disposal of Writ Petition No.35693 of 2015.

We are not inclined to grant any relief as prayed not only for the reasons recorded by learned Judge in the impugned order but we are also satisfied that the appellants do not deserve any interim relief at this stage. All the contentions, as raised before us including as to jurisdiction of the Adjudicating Authority and whether the procedure as contemplated by Section 5 was followed, can be raised before the Adjudicating Authority. We are sure and confident that if any such contentions are raised before the Adjudicating Authority, those will be considered on merits in accordance with law. It is also made clear that the order that will be passed by the Adjudicating Authority would be subject to outcome of the writ petition, apart from the fact that the appellants have right to challenge the said order in appropriate proceedings. All contentions on merits are kept open.

With these observations, the writ appeal is disposed of.

Miscellaneous petitions, if any, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V. BHATT, J

06-11-2015

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