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

\+ W.P.(CRL) 100/2015

Decided on 20th February, 2015

RAI FOUNDATION THR. ITS
TRUSTEE SURESH SACHDEV ..... Petitioner

Through :Mr. Ramesh Gupta, Sr. Advocate with Mr. Pawan Sharma and Mr. Anuj Shah, Advs.

versus

THE DIRECTOR DIRECTORATE
OF ENFORCEMENT & ORS ..... Respondents

Through :Mr. Sanjeev Narula and Mr. Ajay Kalra, Advs. for respondent nos. 1 and 2

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.(ORAL)

Crl. M.A. No. 566/2015 (exemption)

1. Allowed, subject to all just exceptions.

2. Application is disposed of.

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3. Joint Director, Enforcement Directorate, Government of India, Kolkata has passed a provisional attachment order dated 28th October, 2014 under sub-section 1 of Section 5 of the Prevention of Money Laundering Act, 2002 ("the Act", for short) whereby has attached certain properties, as

detailed in the said order, including that of petitioner. Adjudication proceedings have started and are pending before the Adjudicating Authority at Delhi, pursuant to the complaint filed by the Directorate of Enforcement, Kolkata. Adjudicating Authority has issued a show cause notice dated 26th November, 2014 to the petitioner calling upon it to indicate the source of income, earning or assets out of which or by means of which it had acquired the properties attached under sub-section (1) of Section 5 of the Act. Petitioner has been called upon to furnish the evidence in this regard.

4. By way of present writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), petitioner has prayed for quashing of the complaint, show cause notice dated 26th November, 2014 and the provisional attachment order dated 28th October, 2014.

5. At the outset counsel for the respondent has raised objections regarding maintainability of writ petition, in view of the alternative remedies available to the petitioner under the Act.

6. Section 5 of the Act reads as under:-

> "**5. Attachment of property involved in money-laundering.-**

1. Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that-

a. any person is in possession of any proceeds of crime; and

b. such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 or a complaint has been filed by a person authorized to investigate the offence mentioned in that schedule, before a

Magistrate or court for taking cognizance of scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in Clause (b), any property of any person may be attached under this Section if the Director or any other office not below the rank of Deputy Director authorized by him for the purposes of this Section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

2. The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, the manner as may be prescribed and such

Adjudicating Authority shall keep such order and material for such period as may be prescribed.

3. Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (2) of section 8, whichever is earlier.

4. Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment. Explanation.-For the purposes of this sub-section, "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

5. The Director or any other officer who provisionally attaches any property under sub-section (1), shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority."

7. Section 8 of the Act reads as under:-

“8. Adjudication.-

1. On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, he may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

   Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person: Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

2. The Adjudicating Authority shall, after-

a. considering the reply, if any, to the notice issued under sub-section (1);

b. hearing the aggrieved person and the Director or any other officer authorized by him in this behalf; and

c. taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

3. Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property

or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record 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 58 B or sub-Section (2A) of Section 60 by the Adjudicating Authority.

4. Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorized by him in this behalf shall forthwith take the possession of the property attached under Section 5 or frozen under sub-section (1A) of Section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section

(1A) of Section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.

5. Where on conclusion of a trial of an offence under this Act the special court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

6. Where on conclusion of a trial under this Act, the special court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

7. Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but cound not be concluded, the special court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of Section 8, pass appropriate

> orders regarding confiscation or release of property, as the case may be, involved in the offence of money-laundering after having regard to the material before it".

8. Section 26 of the Act provides remedy of appeal before the Appellate Tribunal to any person aggrieved by the order made by the Adjudicating Authority. Section 42 of the Act further envisages that any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order.

9. In view of the availability of alternative remedies available to the petitioner under the this Act, I am not inclined to entertain this writ petition under Article 226 of the Constitution of India at this nascent stage, more so when complete mechanism has been provided under the Act to safeguard the interest of aggrieved person. The petitioner has effective and efficacious statutory remedies to prove the nature of acquisition of assets and to ventilate their grievances. Furthermore, at the stage of provisional attachment, the person concerned is not divested of the property, but is only prevented from dealing with the same till orders are passed by the

adjudicating authority under Section 8(2). Against order of adjudicating authority appeal shall lie to the Appellate Tribunal under Section 26 and further appeal to High Court under Section 42, the statute has provided enough safeguards and redressal mechanism. The writ court cannot go into the merits of the issue at this stage even before attachment order has become final, investigation is completed, trial concluded and issue of attachment is considered by Adjudicating Authority, Appellate Authority and second Appellate Authority.

10. Learned Senior Counsel has vehemently contended that even if alternative remedies are available, jurisdiction of the High Court under Article 226 of the Constitution of India is not curtailed and the writ petition is maintainable against the provisional attachment order. It is contended that provisional attachment order has been passed without any jurisdiction. There was no material available to indicate that money in the bank and the properties attached was generated from the crime money. Thus, it is necessary for the High Court to intervene in exercise of powers under Article 226 of the Constitution of India, and quash the provisional attachment order and the consequential proceedings. Reliance has been placed on Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and

Ors. (1998) 8 SCC 1 and Calcutta Discount Co. Ltd. vs. Income-Tax Officer, Companies District I, Calcutta and Another, AIR 1961 Supreme Court 372, which are in the context of different facts and of no help to the petitioner in this case. Per contra, counsel for respondent nos. 1 and 2 has contended that facts have to be ascertained by the Adjudicating Authority on the evidence to be produced by the parties. Complete mechanism has been envisaged under the Act of adjudication of disputed facts. It is further contended that High Court would refrain from interfering with the Provisional Attachment order as the petitioner has full opportunity to place all the material evidence before the Adjudicating Authority to oppose the confirmation of provisional attachment order.

11. A perusal of Section 5 of the Act makes it clear that the order passed under sub-section 1 is a provisional measure and valid for maximum period of 180 days. The provisional attachment has to be approved by the Adjudicating Authority after proper adjudication within 180 days. The act envisages three layers of the grievance redressal in addition to safeguards incorporated in Section 5(1) of the Act. The Adjudicating Authority may confirm or set aside the provisional attachment order on the basis of material produced by the parties before it. If Adjudicating Authority confirms the

order of provisional attachment, the Act envisages appeal before the Appellate Tribunal. Section 42 of the Act provides further appeal to the High Court. Thus, it is clear that petitioner has an effective alternative remedy upto the High Court by way of adjudicating proceedings, appeal to the Appellate Tribunal and finally, appeal to the High Court. Petitioner can raise all the pleas including that of the jurisdiction before the Adjudicating Authority.

12. It is trite law that Article 226 of the Constitution of India vests wide discretion in the Writ Court to entertain the writ petition on any grievance and to grant appropriate relief. It is an extraordinary jurisdiction vested in the writ Court. The Writ Courts observe self-imposed restraint in exercising the jurisdiction under Article 226. Availability of alternative remedy is not a bar to entertain a writ petition. However, ordinarily, the writ petition is not entertained under Article 226 if the aggrieved person has an efficacious and effective remedy provided by concerned statute whereunder an adverse decision is taken against the person, which he seeks to assail in the writ petition. Notwithstanding, availability of alternative remedy in a case of exceptional nature or a case of glaring injustice, Writ Court can entertain a writ petition. However, that would not mean that writ jurisdiction can be

exercised in every case, where alternative remedies are available to safeguard the interest of the aggrieved person. It is one thing to say that in exercise of power vested in it under Article 226 of the Constitution, this High Court entertain a writ petition against any order passed by or action taken by the State and/or its agency or any public authority or order passed by quasi-judicial authority and it is altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

13. For the foregoing reasons, I am not inclined to entertain the writ petition and the same is dismissed.

Crl.M.A.565/2015 (stay)

14. Application is disposed of as infructuous.

A.K. PATHAK, J.

FEBRUARY 20, 2015/rb