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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3642 OF 2016

Adarsh Co-op. Housing Society Ltd. ... Petitioner

vs.

Central Bureau of Investigation ... Respondent

Mr. Saket Mone a/w Subit Chakrabarti i/b. Vidhi Partners for the Petitioner.

Mr. Vinod S. Chate, APP, for the Respondent-State.

Mr. H. S. Venegaonkar for CBI.

CORAM : A.K. MENON, J.

DATE : 7th JUNE, 2017

P.C.

1. By this writ petition, the petitioner society seeks to challenge the order dated 16th September, 2016 passed by CBI Special Judge in Special Case no.42 of 2012 seeking release of two bank accounts viz. (i) Current account no.10136576009 maintained with the State Bank of India, Wodehouse Road Branch of SBI and (ii) Savings Bank Account no.30130444478 maintained with the State Bank of India operations of which were prohibited.
2. At the outset, Mr. Mone submits that although in the present petition the prayer clause in effect contains several reliefs including handing over of “various documents pertaining to bank accounts as also other original documents” and as prayed in Exhibit 73, he is restricting the relief sought

in the petition only to release of the two bank accounts referred to above.

3. The impugned order makes reference to the fact that the petitioners have filed Criminal Writ Petition no.570 of 2011 which came to be rejected. Perusal of the order in the said Writ Petition reveals that in paragraph 20 of its order dated 27th July, 2011 the Division Bench observed that if the accounts were allowed to be operated, the monies could be frittered away. The Division Bench then observed that seizure of the bank accounts was justified since the monies lying in the said account could not be allowed to be dissipated or depleted as the said amount may be most relevant at the trial. The said order of the Division Bench was carried to the Supreme Court in Criminal Appeal no.2300 of 2011 which came to be disposed of on 9th December, 2011. At the hearing of the said Criminal Appeal, the first respondent conveyed to the Court in an affidavit filed before the Supreme Court that it had no objection if the petitioner opened a fresh bank account provided monthly statements of the transactions were furnished to the CBI.
4. Mr. Mone appearing in support of the petition today states that the order of the Division Bench and the Supreme Court came to be passed prior to the filing of the charge-sheet dated 1st July, 2012 and supplementary charge-sheet dated 27th March, 2014 and in the changed circumstances, it is open for the petitioner to seek reliefs in the present petition. In support

of his contention, he submits that in paragraph 20 of the order of the Division Bench it had observed that if at the crucial stage of investigation, the investigating agency has any suspicion as to the dealings has reflected in the bank accounts, the seizure cannot be faulted. He further submits that in view of the charge-sheet having been filed, the aforesaid view expressed by the Division Bench would not now apply and therefore, the reliefs sought can be granted.

5. The application is opposed by Mr. Venegaonkar, the learned counsel for the respondent no.1. He submits that very same contention was urged earlier before the trial Court and relief has been denied. He relied upon the observations of the trial Court in the impugned order in paragraph 6 where the contents of the charge-sheet have been dealt with. The impugned order relies upon the observations of the order of the Division Bench and considering all facts the trial Court has observed that respondent no.1 had even suggested that all statutory dues of the petitioner society can be paid from the accounts seized provided details were furnished, however, the petitioner society declined to accept this offer which clearly demonstrates lack of bonafides on the part of the petitioner society. Since the question involved is whether the amounts lying in the account are benami, the accounts could not be released from seizure.

6. In the circumstances, I find substantial merit in the contention of Mr. Venegaonkar. The amounts have admittedly been invested and are admittedly lying invested in fixed deposit with a nationalised bank. The funds are thus not idle. If the petitioner succeeds the amounts may enure to its benefit subject to orders passed upon that.

7. I also find and as conceded by Mr. Mone that the society has opened a fresh bank account which it is operating and it has been providing particulars of account operation to respondent no.1. On considering the amounts said to be invested as aforesaid, the quantum is not very large, however, what is of concern is not the quantum involved but the evidentiary value of the transactions leading to the accumulation of the funds in these two accounts. This evidence may be crucial and hence the funds must remain invested as ordered. In the circumstances, the present petition does not merit any consideration. I therefore pass the following order:-

(i) Writ Petition is rejected.

(ii) No costs.

(A. K. MENON, J.)