

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.02.2017

Coram:

The Hon'ble Mr.Justice **NOOTY. RAMAMOHANA RAO**
AND

The Hon'ble Mr.Justice **S.M.SUBRAMANIAM**

Writ Appeal No.152 of 2017

P.Karuppusamy

.. Appellant

Versus

1. The Joint Director,
Enforcement Directorate,
Chennai Zonal Office,
2nd & 3rd Floor, Murugesu
Naicker Complex,
No.84, Greaves Road,
Chennai – 600 006.

2. The Assistant Director,
Directorate of Enforcement,
Shastri Bhavan, 3rd Floor,
3rd Block, No.26, Haddows Road,
Chennai – 600 006.

.. Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 25.01.2017 made in W.P.No.1857 of 2017 by the learned single Judge.

For Appellant

: Mr.C.Prakasam

JUDGMENT

(Judgment of the Court was delivered by Nooty.Ramamohana Rao,J)

This Writ Appeal is preferred by an individual, challenging the correctness of the orders passed by the learned single Judge in W.P.No.1857 of 2017 on

25.01.2017. The said Writ Petition was instituted by him seeking modification of the order of attachment dated 01.06.2015. The Joint Director, Enforcement Directorate, Chennai Zonal Office and the Assistant Director, Directorate of Enforcement, Chennai, are the only Respondents to this Writ Petition. An order of interim attachment has been passed by the Enforcement Directorate as there is a serious allegation of Money Laundering indulged in by an individual by name Sri. Srinivasan. As part of the investigation carried on with regard to the said crime, the premises of the said Srinivasan has been searched and some incriminating material has been retrieved therefrom. Based upon such material a provisional attachment order has been passed on 22.09.2014 which was in fact confirmed by the Appellate Tribunal at New Delhi, later on.

2. The provisions of the Prevention of Money-Laundering Act, 2002, is a special piece of legislation made by the Parliament to prevent money-laundering and providing for confiscation of property derived there from or involved in money-laundering. Under Section 5 of the Act, the Director or any other officer not below the rank of Deputy Director authorised by the Director, if has reason to believe on the basis of material in his possession that any person is in possession of any proceeds of crime and 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, he may, by order in writing, provisionally attach such property for a period of not exceeding 180 days from the date of the order so made. Thereafter, under sub-section (2) of Section 5 of the said Act, the officer

passing the provisional attachment order shall forward a copy of the order mentioning the material in his possession to the Adjudicating Authority, and under sub-section (3) every provisional attachment order shall cease to be effective after the expiry of 180 days unless an order under Section 8 of the Act is passed in the meantime. Under Section 8, the adjudicating authority shall pass an order recording a finding whether all or any of the properties referred to in the notice issued in sub-section (1) of the said Section are involved for money-laundering and where the provisional order of attachment is brought to his notice, the same was required to be confirmed by an order in writing and such attachment shall continue during the pendency of the proceedings relating to any offence under the Act. When once an order of confirmation can be passed by the Adjudicating Authority, it goes without saying that any modification order can also be passed later on by that very Authority. (See Section 21 of the General Clauses Act, 1897).

3. Thus, when Sections 5 and 8 of the Prevention of Money-Laundering Act are read together, it becomes crystal clear that it is the Adjudicating Authority who is competent to pass an order confirming the provisional order of attachment initially passed under sub-section (1) of Section 5 and thereafter such an attachment shall continue during the pendency of the proceedings relating to the offence and hence the jurisdiction lies with the Adjudicating Authority to pass orders varying or modifying the said order confirming the order

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of provisional attachment. Instead of approaching the Adjudicating Authority, the writ petitioner has instituted the writ petition.

4. We are of the opinion that when a special piece of legislation has provided for specific remedy before an Adjudicating Authority and when the Adjudicating Authority is ceased of the matter as well, it is wholly appropriate that very particular authority should be moved for modification of any order passed by the said authority, including the order confirming the provisional attachment passed under sub-section (3) of Section 8.

5. We, therefore, do not see any justification whatsoever for us to entertain this writ appeal as we are of the opinion that the jurisdiction for modification of any order passed under sub-section (3) of Section 8 would lie with the Adjudicating Authority alone. The writ appeal therefore stands dismissed at the admission stage. No costs.

(N.R.R., J) (S.M.S.,J)
15.02.2017

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