THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Writ Appeal No.1779 of 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

Heard Sri P.Udaya Bhaskara Rao, learned Standing Counsel for ACB appearing on behalf of the appellants, Sri N.Subba Rao, learned counsel for the respondent-writ petitioners, and Sri B.S.Prasad, learned Standing Counsel for the 3rd respondent-Bank and, with their consent, the writ appeal is disposed of at the stage of admission. Respondents 1 and 2 herein filed W.P.No.22563 of 2017 seeking a mandamus to declare the action of respondents 1 to 6 therein, in issuing letter dated 26.06.2017 to the respondent-Banks therein under Section 18 of the Prevention of Corruption Act, as illegal, arbitrary and a colourful exercise of power; and to direct the respondent-Banks therein to permit them to operate their bank accounts with the respective Banks.

At the stage of admission of the Writ Petition, the Learned Single Judge expressed his, *prima facie*, view that the 1st respondent-writ petitioner was carrying on business in the infrastructural field; a sum of Rs.17.00 lakhs was payable as salaries for the key employees, apart from payment of Rs.21.53 lakhs towards instalment for various loans borrowed by way of EMIs; the EMIs were in relation to vehicles and equipment which were used in the execution of works; the account, which was frozen, was a cash credit account whereas the 1st respondent-writ petitioner had a facility of overdraft to the extent of Rs.5 crores; for the past three months they were not able to draw any amount and, in the process, the salaries of the personnel remained unpaid, apart from the 1st respondent-writ petitioner committing default in payment of EMIs to the banks; non-payment of EMIs for a continuous period of three months was likely to result in the account of the 1st respondent-writ petitioner company being declared a 'non-performing asset', and action being taken by the banks under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; non-payment of salaries would also result in key personnel leaving the organisation; and, even assuming that loans were borrowed on the security of the properties offered by the accused-Government servant, the interim arrangement proposed to be made would not affect either the properties or the case. Pending further orders in the WPMP, the Learned Single Judge directed the banks (respondents 7 and 8 therein) to allow the respondent-writ petitioners to draw the money, to the extent of Rs.17.5 lakhs per month, to pay salary and miscellaneous expenses from the date of freezing of the account till September, 2017; and the banks were directed to issue necessary credit towards the EMIs payable to AXIS Bank, HDFC Bank, Corporation Bank and ICICI Bank towards loan accounts of equipment and vehicle.

Sri Udaya Bhaskara Rao, learned Standing Counsel for the ACB, would submit that the ACB intends to continue freezing the respondent-writ petitioners cash credit account and their current account with the State Bank of India, Seethammapet Branch, Visakhapatnam; the appellants would intimate the concerned banks that the remaining accounts shall cease to remain frozen, and can be operated by the respondent-writ petitioners; the seven properties, (which the appellants believe to have been purchased by the respondent-writ petitioners from the amounts illegally funded by Sri Pamu Panduranga Rao, the then Engineer-in-chief, Public Health Department, Andhra Pradesh), have been furnished as underlying security for the cash credit facility extended to the respondent-writ petitioners for a sum of Rs.5.00 crores, and for the bank guarantee furnished at their behest for Rs.9.25 crores; permitting the respondent-writ petitioners to avail this facility may well result in the banks seeking to put these seven properties to sale for recovery of the amounts due from the respondent-writ petitioners with respect to the cash credit facility and the bank guarantees; and, as a result, the very purpose and object of attaching these seven assets would become redundant.

Sri N.Subba Rao, learned counsel for the respondent-writ petitioners, would submit that the allegation that the said seven properties (which the respondent-writ petitioners have furnished as security for availing the cash credit facility and bank guarantees from the State Bank of India, Seethammapet Branch, Visakhapatnam) were funded by Sri Pamu Pandu Ranga Rao is without any basis as these properties do not belong to him at all; the respondent-writ petitioners are nonetheless ready and willing, till writ petition is finally heard, to furnish alternative security to the satisfaction of State Bank of India, Seethammapet Branch, Visakhapatnam for both the cash credit facility and the bank guarantee facility extended by them to the respondent-writ petitioners; on their furnishing such security to the satisfaction of the Bank, these mortgaged seven properties can, then, be released by the State Bank of India, Seethammapet Branch, Visakhapatnam, in which event the order of attachment of these seven properties by the appellants would not be subject to any other charge.

Sri B.S.Prasad, learned Standing Counsel for the 3rd respondent-Bank, would submit that, as long as the interests of the Bank are safeguarded and the Bank is permitted to satisfy itself (by conducting a due diligence test) that the alternative security offered by the 1st respondent-writ petitioner is sufficient to cover both the cash credit facility and the bank guarantees extended by the Bank, the Bank has no objection for an order to be passed as requested on behalf of the respondent-writ petitioners.

We consider it appropriate, in such circumstances, to modify the order of the Learned Single Judge, and permit the respondent-writ petitioners to provide alternative security to the satisfaction of the State Bank of India, Seethammapet Branch, Visakhapatnam for the cash credit and the bank guarantee facilities extended to them by the Bank. On the respondent-writ petitioners furnishing details of the property, which they are willing to offer as alternative security, the 3rd respondent-Bank shall conduct a due diligence test and satisfy itself that the security, so furnished, would suffice to secure the amounts due in terms of the cash credit and bank guarantee facilities extended by them to the respondent-writ petitioners; and, thereafter, release the seven properties mortgaged as security for the cash credit and bank guarantee facilities extended by the Bank to the respondent-writ petitioners. The 3rd respondent-Bank shall, thereafter, inform the appellants that these properties are no longer mortgaged with their Bank, so that the appellants would have sole charge over the seven properties which they believe have been purchased from the illegal funds of Sri Pamu Pandu Ranga Rao.

As the 1st respondent-writ petitioner is disabled from operating the cash credit facility, in the light of the order passed by the appellants, we consider it appropriate to direct the 3rd respondent-Bank to complete the due diligence test within two weeks from the date on which they receive details of the alternative security furnished by the respondent-writ petitioners, and pass necessary orders regarding release of these seven properties as security for the cash credit facility and the bank guarantees. Till the entire exercise, culminating in the seven properties being released in favour of the appellants, is completed, the respondent-writ petitioners shall not be permitted to avail the balance amount which they are entitled to avail under the cash credit and the bank guarantee facilities extended to them by the 3rd respondent-bank. On the properties being released as aforementioned, the 3rd respondent-bank shall consider extending the cash credit and bank guarantee facilities to the respondent-writ petitioners in accordance with law. The order now passed by us shall be the interim order in the writ petition, and shall be subject to the final orders to be passed therein. It is made clear that this order shall not disable the appellants from proceeding and completing the investigation in accordance with law.

The Writ Appeal is disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(GUDISEVA SHYAM PRASAD, J)

06th December, 2017
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Date: 06.12.2017

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