IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19092-2016
DATE OF DECISION:21.02.2017

SATISH ESTATE PVT. LTD. … Petitioner

V.

UNION OF INDIA AND ANR. ... Respondents

CORAM:HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Jagmohan Bansal, Advocate
for the petitioner.

Mr. Parveen Chander Goyal, Advocate
for the respondents.

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S.J. VAZIFDAR, C.J. (ORAL)

The petitioner seeks an order for the return of a fixed deposit of the HDFC Bank in the sum of ₹ 25 lacs which stands attached by the respondent No.2-Directorate of Enforcement in exercise of powers under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'the Act').

2. Three parties must be noticed namely, the petitioner, Thapar Infrastructure Limited (hereinafter referred to as 'TI Limited') and Chandana Developers Private Limited (hereinafter referred to as 'CDP Limited').

3. The petitioner owns a piece of land. By an agreement dated 02.01.2006, the petitioner agreed to sell the same to TI Limited. TI Limited advanced a sum of ₹ 25 lacs towards earnest money by two cheques dated 02.01.2006 and 19.01.2006. Disputes and differences arose between the petitioner and TI Limited. TI Limited filed an FIR against the petitioner for offences *inter alia* under section 420 of the Indian Penal Code. The Chief

Judicial Magistrate, Amritsar by an order dated 18.04.2009 accepted the untraced report of the Police dated 23.12.2006. No further proceedings pursuant to the FIR were taken.

4. TI Limited filed a suit before the Civil Judge (Senior Division), Amritsar bearing Civil Suit No.62/17.06.06 for a permanent injunction restraining the petitioner from alienating, selling or transferring the said land to any person except the TI Lmited. By an order dated 01.02.2008, the learned Civil Judge (Senior Division) dismissed the suit for default. Therefore, the transaction between the petitioner and TI Limited which commenced with the agreement dated 02.01.2006 ended with the dismissal of the suit on 01.02.2008. The suit and the FIR filed by TI Limited thus came to an end and the petitioner forfeited the earnest money of ₹ 25 lacs.

5. This brings us to the facts on the basis of which the respondents have taken action *inter alia* under the Act.

6. TI Limited entered into an agreement in March, 2006 for the sale of an entirely different property to Chandana Developers Private limited (CDP Limited) for a total consideration of ₹ 3.61 crores and advance/earnest money was paid by CDP Limited on 27.03.2006 and 06.04.2006 of a sum of ₹ 11 lacs and ₹ 3.50 crores, respectively. Disputes and differences apparently had arisen between TI Limited and CDP Limited. On 28.02.2007, CDP Limited filed an FIR versus TI Limited. On 31.07.2009, charges were framed pursuant to that FIR against the TI Limited under Section 420, 467, 468 and 471 of the Indian Penal Code.

7. There is, therefore, no connection between the land which was a subject matter of the agreement dated 02.01.2006 between the petitioner and TI

Limited on the one hand and the land that was a subject matter of the agreement between TI Limited and CDP Limited entered into in March, 2006. Secondly, the amounts of ₹ 11 lacs and ₹ 3.50 crores were received by the TI Limited from CDP Limited in March, 2006 i.e. after the amount of ₹ 25 lacs was received by the petitioner by the two cheques dated 02.01.2006 and 19.01.2006. Thus, the amounts of ₹ 11 lacs and ₹ 3.50 crores received by the TI Limited was not utilized for the payment of ₹ 25 lacs by the TI Limited to the petitioner on 02.01.2006 and 19.01.2006.

8. In the year 2014, the Enforcement Directorate registered a case under the Act in respect of the transaction between the TI Limited and CDP Limited. The petitioner is not a party to that case. An ECIR was also registered on 27.10.2010 against TI Limited under the Act. The petitioner is not a party to the ECIR either. This brings us to the facts leading to the attachment of the said sum of ₹ 25 lacs forfeited by the petitioner in respect of the said agreement dated 02.01.2006 with TI Limited.

The respondents issued a summons on 22.04.2014 upon one Satish Kumar Jindal, a Director of the petitioner company. It must be noted at this stage itself that the agreement dated 02.01.2006 was entered into not by Satish Kumar Jindal in his individual capacity but by the petitioner company. Satish Kumar Jindal by his letter answered the summons and by a letter dated 01.05.2014 set out some of the above facts. By a further letter dated 25.08.2014, he stated that if the amount was earned by TI Limited as proceeds of crime, the Enforcement Directorate may confiscate the same. But otherwise he was the lawful owner of the said sum of ₹ 25 lacs.

9. A provisional attachment order was issued by the respondents on 31.12.2014 under Section 5(1) of the Act. The attachment order does not contain any allegation against the petitioner's involvement in any illegal transaction relating to TI Limited. However, the said sum of ₹ 25 lacs was also provisionally attached for a period of 180 days. This attachment order is also addressed not to the petitioner but to its Director, Satish Kumar Jindal.

10. A complaint was filed before the adjudicating authority under Section 5(5) of the Act against one Hardip Singh Thaper, TI Limited, one Riazuddin, one Smt. Pritam Kaur and the said Satish Kumar Jindal. This complaint also does not contain any allegations against the petitioner as such. It, however, confirms the provisional attachment order dated 31.12.2014. The adjudicating authority by an order dated 12.05.2015 disposed of the complaint. As regards the said Satish Kumar Jindal this is all that the complaint states:-

> *"Following written submissions have been made by Complainant in respect of Defendant No.5*
>
> 1. *Denied that Shri Satish Jindal has been falsely implicated under the PMLA Act. The fact that Rupees 25 lacs was given by Sh. Hardeep Singh Thaper to Sh. Satish Jindal has been admitted by both of them. It is true that the amount of Rs.25 lacs was given to Sh. Satish Jindal by Sh. Hardeep Singh Thaper much before he (Hardeep Singh) received Rs.3 crore 61 lacs from Sh. Narendra Singh Chandna. However, as per the provisions of section 2(u) which reads as under:-*
>   *"proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a schedule offence or the value of any such property;*
>
>   *The other property of the accused can be attached in lieu of the value of the proceeds of crime,*

> *therefore the fact mentioned by the respondent no.5 is based on the wrong interpretation of law, which cannot be accepted.*
>
> *6. Defendants has not denied having received the money from D-1/2 but they are claiming that these are not proceeds of crime. But once the money is in the nature of proceeds of crime and it passes to other Defendants, they cannot claim that they are not in the possession of proceeds of crime."*

11. Mr. Goyal, learned counsel appearing on behalf of the respondents was unable to invite our attention to any material which indicates even prima facie that the said sum of ₹ 25 lacs had been derived or obtained directly or indirectly by the petitioner or by Hardip Singh Thaper or by TI Limited as a result of criminal activity whether relating to a scheduled offence or otherwise. The only contention was that this sum of ₹ 25 lacs may have been obtained by TI Limited from CDP Limited. There is, however, nothing that indicates the same. At the cost of repetition, TI Limited paid the sum of ₹ 25 lacs to the petitioner on 02.01.2006 whereas TI Limited was paid the amount of ₹ 3.61 crores by CDP Limited only on 27.03.2006 and 06.04.2006. Mr. Goyal was unable to furnish any link between the said sum of ₹ 25 lacs received by the petitioner and the said sum of ₹ 3.61 crores received by TI Limited.

12. Mr. Goyal did not suggest any other fact which would taint the sum of ₹ 25 lacs either in the hands of the petitioner or in the hands of TI Limited. If evidence to that effect is ever found, the respondents are always at liberty to take the necessary action in accordance with law.

13. As far as the present matter is concerned, there is yet another difficulty. The agreement dated 02.01.2006 was entered into between TI

Limited on the one hand and the petitioner on the other. Satish Kumar Jindal was not a party to the transaction in his personal capacity but only as a Director of the petitioner. On the one hand, the summons were issued by the respondents to Satish Kumar Jindal and Satish Kumar Jindal deposited the amount of ₹ 25 lacs but on the other, the appeal filed by Satish Kumar Jindal against the order of the adjudicating authority dated 12.05.2015 was dismissed on the ground that he was not claiming any right in the sum of ₹ 25 lacs in his personal capacity. His contention that he was aggrieved by the order dated 12.05.2015 as he was made a defendant in the complaint was not accepted as being sufficient ground for maintaining the appeal. That may well be correct. However, he deposited the amount of ₹ 25 lacs. Faced with this, the company made an application for impleading itself before the adjudicating authority but that application was dismissed on the ground that the adjudicating authority had no power to review the order. The petitioner, therefore, finds itself in a predicament. It finds itself with no remedy.

14. For more than one reason, we are inclined to exercise our jurisdiction under Article 226. The respondents adopted proceedings against the Director instead of doing so against the petitioner company. The petitioner's Director fairly deposited the amount of ₹ 25 lacs with the respondents. The proceedings were initiated by the respondents against the Director and not against the company. The maintainability of such proceedings itself is doubtful. However, when the Director sought to appeal against the order, the appeal was dismissed on the ground that it was not maintainable. The petitioner's application for being impleaded before the adjudicating authority was also dismissed on the ground that it was not maintainable as the adjudicating authority held that it had no power of review. Most important, there is no link

between the said sum of ₹ 25 lacs and the alleged proceeds of crime namely the sum of ₹ 3.61 crores received by TI Limited from CDP Limited.

15. In the circumstances, the petition is allowed in terms of prayer (i). The FDR shall be returned together with the accretions thereto, if any. It is clarified that in the event of any evidence being obtained by the respondents in respect of the said sum of ₹ 25 lacs, they are always at liberty to take necessary action in accordance with law.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

21.02.2017.
SwarnjitS

Whether speaking/reasoned	Yes / No
Whether reportable	Yes / No