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

\+ **W.P.(C) 9378/2017**

M/S HARI KIRIPA ..... Petitioner

Through: Mr Mukesh Anand, Advocate.

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr Amit Mahajan, CGSC.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **30.10.2017**

VIBHU BAKHRU,J

CM No. 38223/2017

1. Allowed, subject to all just exceptions.

W.P.(C) 9378/2017 & CM No. 38222/2017

2. Issue notice. The learned counsel for the respondents accepts notice.

3. The petitioner has filed the present petition, *inter alia,* praying as under:-

> "a. Issue a writ of certiorari for any appropriate writ /order / directions for quashing of impugned provisional attachment Order no. 01/2017 passed under Section 5(1) of the Prevention Of Money Laundering Act, 2002 by respondent No. 2 thereby declaring the action of the respondents as illegal and bad in law being not sustainable.
>
> b. Issue a writ MANDAMUS or any other appropriate writ order or Injunction directing the respondents not to

> proceed further with the proceedings against the petitioner."

4. The bank account of the petitioner maintained with the AXIS Bank, Chandni Chowk, Delhi was frozen on 01.12.2016. The petitioner objected to the same and filed a representation with respondent no.2 on 15.02.2017. On 15.02.2017/17.02.2017 respondent no. 2 issued an order directing AXIS Bank (where the petitioner's account was maintained) not to allow further operations in said account. Admittedly, the said order is still in subsisting and has not been recalled as yet.

5. According to the respondents, the said order was passed under Section 17(1A) of the Prevention of Money Laundering Act, 2002 (hereafter 'the Act'). The respondents filed an application before the Adjudicating Authority seeking an order extending the freezing of accounts "to locate the proceeds of crime under Section 17/4) of PMLA". However, the said application was rejected by the Adjudicating Authority by an order dated 14.07.2017; the Adjudicating Authority observed that the application filed by the respondents was beyond the scope of provisions of Section 17(1A) and Section 17(4) of the Act. A plain reading of the said order indicates that it was passed on the ground that no search and seizure operation as contemplated under Section 17(1) of the Act had taken place. Paragraph 11 of the said order reads as under:-

> "11. There can be no dispute as to the fact that in the present case the Application filed has not disclosed any search and seizure having been carried out in terms of section 17(1) of PMLA. No specific search is referred to. No seizure memo and/or Panchnama and/or order or freezing in terms of section 17 (1-A) is filed in the Application and produced before this Authority. The provisions of section 17 (1-A) provides that

> where it is not practicable to seize such record or property, the officer authorised under sub-section 1 (of section 17), may make an order to freeze such property, whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and copy of such order shall be served on the person concerned. It is contended by the several respondents that they have not been served with any copy of order of freezing in terms of section 17 (1-A). What is pointed out and relied upon by the Applicant are the intimations sent to the different banks, where the respective respondent have their bank accounts. Their contentions as to non-receipt/non-service of the communication regarding non-allowing of the debit in the bank account, would not survive as there is no action under section 17 (1-A). The provisions of section 17(4) indicates that the authority seizing any record or property under sub section 1 (of section 17) or freezing any record or property under sub section 1-A within a period of 30 from such seizure or freezing as the case may be, file an application requesting or retention of such record or property seized under sub section 1 or from continuation of the order of freezing served under section 17 (1-A) before the Adjudicating Authority. Thus the provision envisages and requires in the first instance a search or seizure carried out under section 17(1) or an order of freezing under section 17(1-A) of PMLA. As pointed out earlier, in the instance case there is neither a search carried out in terms of section 17(1) or freezing in terms of section 17(1-A)."

6. Notwithstanding the order dated 14.07.2017 passed by the Adjudicating Authority, the respondents continued to maintain their direction to Axis Bank to not allow operation of the petitioner's bank account. Indisputably, this act of continuing the freezing order is *ex facie*, without authority of law and contrary to provisions of the Act.

7. Respondent no.2 has now issued an order dated 18.09.2017 under Section 5(1) of the Act provisionally attaching the amount in petitioner's

account with Axis Bank. This Court is informed that a complaint to the Adjudicating Authority has also been made within the prescribed time of 30 days from the date of the said order on 16.10.2017.

8. In the aforesaid circumstances, it is seen that the petitioner has been deprived of his funds for over a period of 10 months without any adjudication. This is, plainly, unacceptable. In the aforesaid circumstances, this Court is of the view that the Adjudicating Authority should take a decision in regard to the complaint as expeditiously as possible. This Court is also informed that a hearing is fixed before the Adjudicating Authority on 06.12.2017. Thus it would be apposite if the petitioner files its reply to the show cause notice issued by the Adjudicating Authority within a period of one week from today. It is further directed that in the event, the petitioner files his reply within a period of one week from today, the Adjudicating Authority shall conclude the hearing on 06.12.2017 as scheduled or immediately thereafter, and pass a final order within a period of one week from conclusion of the said hearing(s).

9. Although, the learned counsel for the petitioner has earnestly contended that money received in his bank account was for valuable consideration - that is, for goods supplied in normal course of trade - this Court is not inclined to examine that contention in these proceedings as it would be apposite for the Adjudicating Authority to consider the same in the first instance and in accordance with law.

10. At this stage, Mr Mahajan, learned counsel for the respondents states that there are several other defendants/parties in the complaint(s) filed by respondent no.2. In this regard, it is clarified that the order passed in this petition is confined to the property/assets bank account of the petitioner that

have been attached by respondent nos. 2 and 3 and the principal question to be considered by the Adjudicating Authority is whether the petitioner had received the funds in his bank for valuable consideration as claimed by him or not.

11. The petition and the application are disposed of.

12. Order *dasti.*

VIBHU BAKHRU, J

OCTOBER 30, 2017
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