IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.785 OF 2015
WITH
CIVIL APPLICATION NO.372 OF 2016 IN F.A.NO.785 OF 2015
ALONG WITH
FIRST APPEAL (ST.) NO.24401 OF 2015
WITH
CIVIL APPLICATION NO.3873 OF 2015 IN F.A.(ST.) NO.24401/15

Rahul Radheshyam Bhomavat .. Appellant / Applicant
Vs.
Union of India through the Secretary,
Department of Revenue and others .. Respondents

Mr. Advait M. Sethna a/w. Mr. D. P. Singh and Ms Ruju R. Thakkar i/b. Udaipuri & Co. for Appellant / Applicant.
Mr. Vijay Kantharia a/w. Mr. Dhanesh Shah a/w. Mr. Dushyant Kumar for Respondents No.1 to 4 (UOI).
Mr. Aditya Chitale a/w. Mr. Prathamesh Bhosle a/w. Mr. Avinash Belge i/b. MNSQ Legal for Respondent No.5 in F.A.No.785 of 2015 and C.A.No.3873 of 2015 in F.A.(St.) No.24401 of 2015.

CORAM : NARESH H. PATIL &
R.G. KETKAR, JJ.

Reserved on : DECEMBER 7, 2017.
Pronounced on : JANUARY 12, 2018.

<u>JUDGMENT</u>: [Per R.G. KETKAR, J.]

Heard Mr. Sethna, learned Counsel for the appellant / applicant, Mr. Kantharia, learned Counsel for respondents No.1 to 4, Mr. Chitale, learned Counsel for respondent No.5 in both the Appeals at length. Admit. By consent of parties, heard finally.

2. First Appeal No.785 of 2015 is filed by the appellant / original

defendant No.3 challenging -

(i) Provisional Attachment Order : 24/2013 dated 20.12.2013 passed by the Deputy Director, Directorate of Enforcement, Prevention of Money Laundering Act, Mumbai;

(ii) Adjudication Order dated 22.05.2014 passed by the Adjudicating Authority; and

(iii) Judgment and order dated 10.03.2015 passed by the Appellate Tribunal.

3. By order dated 20.12.2013, the Deputy Director in exercise of powers under Section 5(1) of the Prevention of Money Laundering Act, 2002 (for short 'Act') provisionally attached Rs.2.5 crores being balance proceeds of crime lying in Current A/c. No.01105021947 of M/s. Skylark Buildcon Pvt. Ltd. maintained with ICICI Bank, S.V.Road, Andheri (W), Mumbai Branch. By order dated 22.05.2014, the Adjudicating Authority confirmed the provisional attachment order. Aggrieved by this decision, defendant No.3 preferred appeal under Section 26 of the Act before the Appellate Tribunal, which was dismissed on 10.03.2015. It is against these orders, defendant No.3 has instituted the appeal under Section 42 of the Act. Civil Application No.372 of 2016 is taken out by the defendant No.3 for adding M/s. Metal & Scrap Trading Corporation Limited (M.S.T.C.) as respondent No.5 in the Appeal.

4. First Appeal (St.) No.24401 of 2015 is preferred by the appellant / original defendant No.3 challenging -

(i) Provisional Attachment Order : 17/2014 dated 19.09.2014 passed by the Deputy Director, Directorate of Enforcement, Prevention of Money Laundering Act, Mumbai;

(ii) Adjudication Order dated 01.01.2015 passed by the Adjudicating

Authority; and

(iii) Judgment and order dated 15.06.2015 passed by the Appellate Tribunal.

5. By order dated 19.09.2014, the Deputy Director in exercise of powers under Section 5(1) of the Act provisionally attached the properties mentioned in the Schedule of Property to that order. By order dated 01.01.2015, the Adjudicating Authority confirmed the Provisional Attachment Order. Aggrieved by this decision, defendant No.3 preferred appeal under Section 26 of the Act before the Appellate Tribunal, which was dismissed on 15.06.2015. It is against these orders, defendant No.3 has instituted First Appeal (St.) No.24401 of 2015 under Section 42 of the Act. Civil Application No.3873 of 2015 is taken out by the defendant No.3 for adding M/s. Metal & Scrap Trading Corporation Limited (M.S.T.C.) as respondent No.5 in the Appeal.

6. As these Appeals involve common questions of law and facts, the same can conveniently be disposed of by this common order. For appreciating the controversy raised between the parties, facts from First Appeal No.785 of 2015 are taken into consideration.

7. CBI:ACB, Mumbai had registered F.I.R. on 26.10.2010 against Shishir Dharkar, Ex-Director, M/s. Space Mercantile Co. Pvt. Ltd. (for short 'Space') and Director, Pen Co-operative Urban Bank Ltd. (for short 'Bank') and his wife Gulraihna Oomer and Asif Sayeed, Ex-Directors of Space, Rakesh Kumar Gupta, Ex-Director of Space, Rahul Bhomavat (defendant No.3), Ex-additional Director of Space and others and unknown officials of the M.S.T.C. and unknown officials of Bank under Section 120-B read with 420, 467, 468 and 471 Indian Penal Code, 1860

(for short 'I.P.C.) and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988. After carrying out investigation, CBI:ACB filed charge-sheet bearing CBI Special Case No.22 of 2013 dated 08.03.2013 before the CBI Special Court at Mumbai against Shishir P. Dharkar (Ex-Director of Space and then President of the Bank); Gulraihna Oomer (wife of Shishir P. Dharkar); Prem Kumar Sharma, Ex-Director of Bank, Rahul Bhomavat (defendant No.3), Ex-Additional Director of Space and others under Section 420 read with Section 120-B I.P.C. for offence of criminal conspiracy to cheat M.S.T.C.in business of export of gold jewellery during 2008-09.

8. M.S.T.C. (a Government of India Enterprise under the Ministry of Steel, New Delhi is a trading Corporation involved in Imports and Exports and is also a nominated agency for Gold Exports under Foreign Trade Policy) entered into Memorandum of Agreement (MoA) on 16.10.2007 with six associate suppliers (exporters) namely,

A) M/s. Ushma Jewellery and Packaging Exports Pvt. Ltd.,

B) M/s. Space Mercantile Co. Pvt. Ltd.,

C) M/s. K. A. Malle Pharmaceutical Pvt. Ltd.,

D) M/s. Joshi Bullion and Gems & Jewellery Pvt. Ltd.,

E) M/s. Bond Gems Pvt. Ltd.

F) M/s. Indo Bonito Multinational.

9. MOA provided that the associate suppliers were required to procure gold jewellery like gold chains from local suppliers and arrange for their exports, to identify buyers of gold jewellery in United Arab Emirates (U.A.E.) and the foreign buyers were required to be approved by Export Credit Guarantee Corporation, a Government of India Enterprises (ECGC). During the financial year 2007-08, M.S.T.C.

exported gold jewellery to various buyers in U.A.E. worth Rs.300 crores. In the financial year 2008-09, M.S.T.C. exported gold jewellery worth Rs.600 crores. For exports affected in the year 2007-08, M.S.T.C. received the total remittance of Rs.300 crores. As regards, exports made in the year 2008-09, totally valued at Rs.600 crores, M.S.T.C. received the Bill of Exchange confirmed and duly accepted by the U.A.E. buyers along with the other relevant export documents, as per MoA. In terms of MoA, M.S.T.C. released the payment towards 80% of export value totally amounting to Rs.480 crores to the six associate suppliers (exporters). The payments were made by RTGS in the nominated bank accounts of six associate suppliers (exporters). However, M.S.T.C. did not receive remittances from the U.A.E. buyers. Thus, M.S.T.C. has been cheated to the extent of post shipment advance of Rs.480 crores by the six associate suppliers (exporters). Accordingly, CBI:ACB charged the six associate suppliers and its directors and officials of M.S.T.C. on charges of cheating under Section 120-B read with Section 420 IPC, which is scheduled offence under paragraph 1nd paragraph 5 of Part-A of the Schedule of Offences under the Act. The officials of M.S.T.C. have also been charged under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 for aiding and abetting criminal intent to cheat M.S.T.C. thereby causing huge loss to the M.S.T.C. in the business of jewelery export. Before the Special Court for C.B.I. Cases, Greater Mumbai, statements were recorded under Section 50 of the Act as also documents were produced.

10. On the basis of the material placed on record, including the charge-sheet, by order dated 20.12.2013, the Deputy Director, in exercise of powers under Section 5(1) of the Act, passed the Provisional Attachment Order attaching Rs.2.50 crores lying in the Current Account of Skylark

Buildcon Pvt. Ltd. maintained with ICICI Bank. The Adjudicating Authority, after hearing the parties, confirmed the Provisional Attachment Order on 22.05.2014. Defendant No.3 preferred appeal under Section 26 of the Act before the Appellate Tribunal. The Tribunal dismissed the appeal mainly on the ground that defendant No.3 has no locus to challenge the orders of attaching Rs.2.50 crores. It is against these orders, defendant No.3 has instituted the present Appeal.

11. In support of this Appeal, Mr. Sethna strenuously contended that the impugned orders are perverse. He submitted that the impugned orders did not consider the fact that the relevant date for the purpose of the commission of offence under the Act is the date on which the alleged act of money laundering took place. In the present case, the alleged act of money laundering took place in the year 2007-08, which is admittedly prior to 01.06.2009 that is the date of introduction of Schedule of Offences under the Act. In other words, the offences punishable under Section 120-B read with Section 420 I.P.C. were not included in the Schedule of Offences under the Act and they were introduced after 01.06.2009. As the alleged act of money laundering took place in the year 2007-08, defendant No.3 cannot be prosecuted for commission of these alleged offences.

12. Mr. Sethna submitted that the Appellate Tribunal dismissed the appeal mainly on the ground that defendant No.3 admitted that none of his properties was attached. Defendant No.3 has no interest in any of the properties, which were provisionally attached and that the order of confirmation of the attachment is not in respect of any of the properties of defendant No.3. Mr. Sethna has taken us through the Provisional Attachment Order dated 20.12.2013, Adjudication Order dated

22.05.2014 and the order dated 10.03.2015 passed by the Appellate Tribunal to contend that the guilt of the defendant No.3 is a foregone conclusion. The impugned orders in no uncertain terms hold that defendant No.3 is guilty of committing scheduled offences. He submitted that the impugned orders did not consider the decision of Jharkhand High Court in ***Hari Narayan Rai Vs. Union of India*****, MANU/JH/0726/**2010. He relied upon this decision to contend that the Appellate Tribunal committed serious error in holding that defendant No.3 has no locus to maintain the appeal. He also relied upon the decision of Karnataka High Court in ***Obulapuram Mining Company Pvt. Ltd. Vs. Joint Director, Directorate of Enforcement Government of India***, **2017 (3) Kar.L.J. 179** to contend that the offences allegedly committed by the defendant No.3 under Section 420 read with Section 120-B of the Act were earlier to the insertion of provision in the Schedule of Prevention of Money Laundering (Amendment) Act, 2009 and as such, they have no application. These offences were included in the Act declaring them as scheduled offences only with effect from 01.06.2009. The Enforcement Directorate could not have invoked provisions of the Act with retrospective effect.

13. On the other hand, Mr. Kantharia supported the impugned orders. He submitted that Section 3 of the Act deals with the offence of money laundering. Section 5 deals with attachment of property involved in money laundering. Section 8 provides for adjudication. He submitted that a perusal of the impugned orders shows that the Provisional Attachment Order dated 20.12.2013 was confirmed on 22.05.2014 by the Adjudicating Authority. The attachment order is to remain in force during the pendency of proceedings relating to any offence under the Act before Court or under the corresponding law of any other country, before

the competent court of criminal jurisdiction outside India as the case may be and become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of Section 8 or Section 58-B or sub-section 2A or Section 60 by the Adjudicating Authority. He has also taken us through the order passed by the Appellate Tribunal and in particular paragraph 8 onwards and submitted that the Appellate Tribunal has observed that defendant No.3 has preferred appeal against the observations made by the Adjudicating Authority. The Appellate Tribunal has abundantly made it clear that these prima facie observations will not impact the criminal trial in criminal cases. He submitted that basically, defendant No.3's property is not attached. By the impugned orders, Rs.2.50 crores in the Current Account of M/s. Skylark Buildcon Private Limited is attached. The said entity has not challenged the impugned orders. He, therefore, submitted that the Authorities rightly came to the conclusion that the defendant No.3 has no locus to maintain the appeal. He, therefore, submitted that no case is made out for interfering with the impugned orders.

14. Mr. Chitale submitted that the applications taken out by the defendant No.3 in both the appeals for impleading M.S.T.C. as respondent No.5 are wholly misconceived. He submitted that M.S.T.C. was not before the Deputy Director of Enforcement as also before the Adjudicating Authority and the Appellate Tribunal. Defendant No.3 cannot, for the first time, file Civil Applications for impleadment of M.S.T.C. in these Appeals. He, therefore, submitted that the applications deserve to be dismissed.

15. We have considered the rival submissions advanced by the learned Counsel appearing for the parties. We have also perused the material on

record. Section 2(u) of the Act defines the expression “proceeds of crime”. Section 2(y) defines the expression “scheduled offence”. These provisions read thus,

> “2. Definitions.- (1) In this Act, unless the context otherwise requires,-
>
> (u) “proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country;
>
> (y) “scheduled offence” means-
>
> (i) the offences specified under Part A of the Schedule; or
>
> (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or
>
> (iii) the offences specified under Part C of the Schedule;”

16. Sections 3 and 5 read thus,

> “3. Offence of money-laundering.- Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.
>
> 5. Attachment of property involved in money-laundering.-- (1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that-
>
> (a) any person is in possession of any proceeds of crime; and
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> (b) 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 under this Chapter, he may, by

order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in first proviso, any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.]

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (2) of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person

interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.--For the purposes of this sub-section, "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority."

17. Section 8 deals with adjudication. Section 8 (1), (2), (3), (5) and (6) read thus,

8. Adjudication.-- (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.
(2) The Adjudicating Authority shall, after--

(a) considering the reply, if any, to the notice issued under sub-section (1);

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

(c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall--

(a) continue during the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court;

(4) …

(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of

> money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.
>
> (6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.”

18. A perusal of Section 5(3) shows that every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (2) of section 8, whichever is earlier. Sub-section (4) thereof lays down that nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment. Explanation thereto lays down that for the purposes of this sub-section, "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

19. A perusal of Section 8(6) shows that where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it. In the present case, amount of Rs.2.50 crores lying in the Current Account of M/s. Skylark Buildcon Pvt. Ltd. is attached.

20. By order dated 20.12.2013, the Deputy Director, in exercise of powers under Section 5(1) attached Rs.2.50 crores lying in the Current

Account of Skylark Buildcon Pvt. Ltd. It is admitted position that M/s. Skylark or its Directors have not challenged the order of attachment. During the course of hearing, Mr. Sethna could not point out that any of the properties of defendant No.3 have been attached. It is an admitted position that properties of the defendant No.3 so far have not been attached. It is in that context one has to find out whether defendant No.3 has locus to challenge the impugned orders. The Tribunal has considered this aspect, in detail, from paragraph 8 onwards. The Tribunal observed that the prima facie observations made by the Adjudicating Authority cannot be challenged by the defendant No.3 under Section 26 of the Act. The orders passed under Chapter III are interlocutory in nature and such orders do not decide finally whether an offence has been committed under Section 3 of the Act. These orders also do not decide what punishment is to be imposed for money-laundering. The observations made while passing orders under Chapter III are not findings for the purpose of alleged offence committed under Section 3.

21. Mr. Sethna submitted that in paragraphs 17 and 18, the Tribunal has recorded a finding that defendant No.3 was not able to successfully establish that the payments made to Skylark Buildcon Pvt. Ltd. was made from very lawful sources. He submitted that thus against these findings, defendant No.3 certainly has locus to maintain the appeal and also challenge the findings recorded in paragraphs 17 and 18 of the order passed by the Appellate Tribunal. We do not find any merit in this submission.

22. In the case of ***Banarsi Das Vs. Ram Phal***, **2003 (9) SCC 606**, the Apex Court considered the provisions of Order XLI, Rules 22 and 33 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'). In that case,

respondent - Ram Phal and others had instituted a Suit for specific performance of an agreement for sale dated 03.11.1988, which was later on novated by an agreement dated 15.07.1991. The appellants - Banarsi Das and others also instituted Suit seeking cancellation of the agreement dated 03.11.1988. Both the Suits were tried together. The learned trial Judge declined to pass decree for specific performance and directed the appellants to return the amount. The appellants preferred appeals before the High Court, which were transmitted to the District Court in view of the enhancement of pecuniary jurisdiction. The respondents did not prefer any appeal or file any cross-objections. The appellate Court, while dismissing the appeal, modified the decree passed by the trial Court. The learned District Judge decreed the Suit filed by the respondent for specific performance and dismissed the Suit filed by the appellants. The appellants preferred second appeals before the High Court. The second appeals came to be dismissed as they did not involve substantial questions of law. In paragraph 9, the Apex Court observed that a party who has succeeded in the Suit can and needs to neither prefer an appeal nor take any cross-objection though certain finding may be against him. Appeal and cross-objections, both are filed against decree and not against the judgmentand certainly not against any finding recorded in the judgment. That was the well-settled position of law under the unamended C.P.C.

23. In paragraph 10, the Apex Court observed that the C.P.C. Amendment of 1976 has not materially or substantially altered the law except for a marginal difference. In paragraphs 10 and 12, it was observed thus,

> “10. CPC Amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the

amended Order 41 Rule 22 sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross objection against a finding. The difference which has resulted we will shortly state. A respondent may defend himself without filing any cross objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree he must take cross objection. The amendment inserted by 1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:-

(i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent;

(ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent;

(iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.

12. The fact remains that to the extent to which the decree is against the respondent and he wishes to get rid of it he should have either filed an appeal of his own or taken cross objection failing which the decree to that extent cannot be insisted on by the respondent for being interfered, set aside or modified to his advantage. The law continues to remain so post-1976 amendment. In a suit seeking specific performance of an agreement to sell governed by the provisions of the Specific Relief Act, 1963 the Court has a discretion to decree specific performance of the agreement. The plaintiff may also claim compensation under Section 21 or any other relief to which he may be entitled including the refund of money or deposit paid or made by him in case his claim for specific performance is refused. No compensation or any other relief including the relief of refund shall be granted by the Court unless it has been specifically claimed in the plaint by the plaintiff. Certainly the relief of specific performance is a larger relief for the plaintiff and more onerous to the defendant compared with the relief for compensation or refund of money. The relief of compensation or refund of money is a relief smaller than the relief of specific performance. A plaintiff who files a suit for specific performance claiming compensation in lieu of or in addition to the relief of specific performance or any other relief including the refund of

> any money has a right to file an appeal against the original decree if the relief of specific performance is refused and other relief is granted. The plaintiff would be a person aggrieved by the decree in spite of one of the alternative reliefs having been allowed to him because what has been allowed to him is the smaller relief and the larger relief has been denied to him. A defendant against whom a suit for specific performance has been decreed may file an appeal seeking relief of specific performance being denied to the plaintiff and instead a decree of smaller relief such as that of compensation or refund of money or any other relief being granted to the plaintiff for the former is larger relief and the latter is smaller relief. The defendant would be the person aggrieved to that extent. It follows as a necessary corollary from the abovesaid statement of law that in an appeal filed by the defendant laying challenge to the relief of compensation or refund of money or any other relief while decree for specific performance was denied to the plaintiff, the plaintiff as a respondent cannot seek the relief of specific performance of contract or modification of the impugned decree except by filing an appeal of his own or by taking cross-objection."

24. In view thereof, the Appellate Tribunal rightly came to the conclusion that defendant No.3 has no locus to maintain the appeal and that defendant No.3 has preferred appeal against the observations. In the light of the decision in **Banarsi Das** (supra), defendant No.3 cannot institute appeal only against the observations.

25. It is also not in dispute that charge-sheet has been filed by CBI:ACB, Mumbai against the defendant No.3 among others. It would be open to the defendant No.3 to consider filing discharge application, if so advised. However, at this stage, no case is made out for interfering with the impugned orders by which the authorities have attached the property of M/s. Skylark Buildcon Pvt. Ltd.

26. Mr. Sethna relied upon the decision in the case of ***Ayaaubkhan***

***Noorkhan Pathan Vs. The State of Maharashtra*, (2013) 4 SCC 465**. In that case, Caste Certificate dated 19.10.1989 was issued after following due procedure in favour of the appellant to the effect that he belonged to Bhil Tadvi, which is a Scheduled Tribe. On that basis, appellant was appointed as a senior clerk in the Municipal Corporation of Aurangabad against the vacancies reserved for persons of Scheduled Tribes Category. The said Certificate was verified by the Caste Certificate Scrutiny Committee. The Committee accepted the claim made by the appellant and issued a validity certificate on 23.05.2000. After the lapse of 9 years, respondent No.5 filed complaint dated 09.01.2009 through an Advocate before the Scrutiny Committee for the purpose of recalling the said Validity Certificate on the ground that the appellant had obtained employment by way of misrepresentation and that he did not actually belong to the Scheduled Tribes Category. The Scrutiny Committee rejected the application on 13.03.2009. Aggrieved by that decision, respondent No.5 instituted Writ Petition No.3129 of 2009 before the High Court of Bombay (Aurangabad Bench). By order dated 22.09.2009, High Court set aside the order dated 13.03.2009 and remitted the matter to the Scrutiny Committee with direction to hear all the parties concerned in accordance with law, as regards the complaint made by the 5th respondent. It is against that order, appellant had approached the Apex Court. From paragraph 7 onwards, the Apex Court considered whether respondent No.5 was “person aggrieved”. After considering various decisions, in paragraph 15, the law on the said point was summarized by observing that a person who raises a grievance must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others.

27. From paragraph 16 onwards, the Apex Court dealt with the locus standi of the 5th respondent. After considering various decisions, in paragraph 22, it was observed that under ordinary circumstances, a third person, having no concern with the case at hand, cannot claim to have an locus standi to raise any grievance whatsoever. However, in the exceptional circumstances if the actual persons aggrieved, because of ignorance, illiteracy, inarticulation or poverty, are unable to approach the court, and a person, who has no personal agenda, or object, in relation to which, he can grind his own axe, approaches the court, then the court may examine the issue and in exceptional circumstances, even if his bonafides are doubted, but the issue raised by him, in the opinion of such court, requires consideration, the court may proceed suo motu in such respect. In our opinion, the said decision is really against defendant No.3. Defendant No.3 has not suffered any legal injury as his property is not attached. He has no right whatsoever to the property of Skylark Buildcon Pvt. Ltd., which is attached.

28. Mr. Sethna also relied upon the decision in **Obulapuram Mining Company Pvt. Ltd.** *(supra).* In that case, Writ Petition was instituted challenging the action of the authorities in lodging and enforcing of an Enforcement Case Information Report dated 22.09.2010 as also the attachment order, both provisional and final, under the provisions of the Act. The Division Bench of Karnataka High Court held that the petitioner cannot be prosecuted for the offences under Sections 120-B, 420 and 471 I.P.C. as they were not the scheduled offences prior to 01.06.2009. These offences were included as scheduled offences only with effect from 01.06.2009.

29. In the present case, defendant No.3 has challenged the order of

attachment passed by the authorities in respect of the property which does not belong to him. The subject matter of the present appeal is not the prosecution launched against the defendant No.3. As we have already indicated that it will be open to the defendant No.3 to consider for applying for discharge, in case so advised. We make it clear that the learned Judge seized of the criminal case will decide the same on the basis of evidence on record and in accordance with law, uninfluenced made in the impugned orders and this order. All contentions of the parties on merits in that regard are expressly kept open.

30. In the result, we find merit in the submission of the respondents that defendant No.3 has no locus to challenge the orders of attachment. In view thereof, Appeals fail and the same are dismissed. Civil Applications also stand rejected as M.S.T.C. was not party before the authorities below. Order accordingly.

(R. G. KETKAR, J.) **(NARESH H. PATIL, J.)**

Minal Parab