**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.1407 OF 2018**

**Sh. Vijay Vittal Mallya,**
**S/o Late Sh. Vittal Mallya : Appellant.**
**Versus**
**State of Maharashtra and anr. : Respondents.**

**Mr. Amit Desai, Senior Advocate a/w Mr. Ravi Gandhi, Mr. M A Kamdar and Mr. Rashmin Jain I/by Kanga & Co. for the Appellant.**
**Mr. Deepak Thakare, PP a/w Mrs. P P Shinde, APP for the Respondent No.1.**
**Mr. D P Singh Spl. PP for the Respondent No.2.**

**CORAM : R. M. SAVANT &**
**V. K. JADHAV, JJ.**
**DATE : 22nd NOVEMBER 2018**

**P.C.**

1 The above Appeal has been filed against the order dated 30/10/2018 passed by the learned Special Judge, Greater Mumbai in Application (Exhibit-90, 91, 92 and 93) in Misc. Application No.854 of 2018.

2 In so far as the Appellant herein is concerned, he has filed the Application (Exhibit 90), the prayer in which Application we would refer to a bit later.

3 In so far as the Misc. Application No.854 of 2018 is concerned, the same has been filed by the Directorate of Enforcement i.e. the Respondent No.2 herein under Section 4 of the Fugitive Economic Offenders Act, 2018 (for

short "FEO Act"). By the said Misc. Application a declaration is sought in terms of the said provision which provision reads thus :-

> "DECLARATION OF FUGITIVE ECONOMIC OFFENDERS AND CONFISCATION OF PROPERTY
>
> **4.** (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 reasons for such belief to be recorded in writing), on the basis of material in his possession, that any individual is a fugitive economic offender, he may file an application in such form and manner as may be prescribed in the Special Court that such individual may be declared as a fugitive economic offender.
>
> (2) The application referred to in sub-section (1) shall contain—
>
> (a) reasons for the belief that an individual is a fugitive economic offender
>
> (b) any information available as to the whereabouts of the fugitive economic offender;
>
> (c) a list of properties or the value of such properties believed to be the proceeds of crime,
> including any such property outside India for which confiscation is sought;
>
> (d) a list of properties or benami properties owned by the individual in India or abroad for which confiscation is sought; and
>
> (e) a list of persons who may have an interest in any of the properties listed under clauses (c) and (d).
>
> (3) The Authorities appointed for the purposes of the Prevention of Money-laundering Act, 2002 shall be the Authorities for the purposes of this Act"

The said Misc. Application is admittedly pending consideration of the learned Special Judge exercising powers under the said Act.*

4 In so far as the Application (Exhibit-90) filed by the Appellant is concerned, the same has been filed in the background of the order dated 10/10/2018 passed by the Appellate Tribunal exercising powers under the Provisions of the Prevention of Money Laundering Act (for short "PMLA). The said order has been passed in Appeals filed by the State Bank of India and the 11 other Banks (Consortium of Banks) being Appeal No.2538 of 2018 and Appeal No.2539 of 2018). The said Appeals are directed against the order dated 22/02/2017 in O.C. No.639 of 2016 thereby confirming Provisional Attachment Order dated 03/09/2016 and the order dated 01/12/2016 in O.C. No.612 of 2016 confirming Provisional Attachment Order dated 11/06/2016. The relevant excerpt of the order passed by the Appellate Tribunal is reproduced herein under for the sake or ready reference :-

> "Thus till the next date of hearing, Vijay Mallya is restrained not to dealt with and alter the status of the movable and immovable properties as per Scheduled A to C in Appeal No.2538/2018 and Scheduled-A in Appeal No.2539 /2018 and shall not create third party interest in any manner directly or indirectly till the next date. The respondent No.1 shall also maintain the status quo with regard to the properties, the details of which are mentioned in the impugned orders in both appeals till the next date."

5 In so far as the Application (Exhibit-90) filed by the Appellant

herein is concerned, the said Application runs into about 2 pages and paragraph 4 thereof contains the relief sought by the Appellant herein vide the said Application. The said paragraph 4 is therefore reproduced herein under for the sake of ready reference.

> "In the circumstances, Non-Applicant No.1 is respectfully submits that the present Application under Section 4 of the FEO Act is liable to be stayed till further orders of the Hon'ble Appellate Tribunal under PMLA in the aforesaid two Appeals."

Hence by the said Application (Exhibit 90) the Appellant herein had sought the relief that the proceedings under Section 4 of the FEO Act be stayed till further orders of the Appellate Tribunal under the PMLA in the said two Appeals. It is in the context of the relief sought vide the said Application (Exhibit 90) and the submissions that were made before the Special Court, that the Special Court has adverted to the provisions of the FEO Act and the Scheme thereunder and on such consideration and especially having regard to Section 12 has come to the conclusion that there is no impediment for the Special Court to proceed with the Application under Section 4 filed by the Respondent No.2 herein.

6 The question that is posed before us is therefore whether the impugned order dated 30/10/2018 can be said to be an appealable order under Section 17 of the FEO Act. In the said context, Section 17 of the FEO Act would have to be referred to. The said provision reads thus :-

17. **Appeal**

(1) An appeal shall lie from any judgment or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:

Provided further that no appeal shall be entertained after the expiry of period of ninety days."

A reading of the said provision therefore discloses that an Appeal shall lie from any judgment or order, not being an interlocutory order, of a Special Court and such Appeal would lie in the High Court. Hence for an Appeal to lie against an order, the said order would have to determine some right or issue.

7 In the instant case the Application (Exhibit 90) it seems has been filed at the threshold of the proceedings before the Special Court. The said aspect is clear from a reading of the impugned order. The observations of the Special Judge based on the Scheme of the Act can be said to have been made in view of the submissions that were made by the learned Senior Counsel for the Appellant in the proceedings before the Special Court. The Special Court as can be seen from the reading of paragraph 9 of the said order has impliedly

held that the Application is misconceived in view of the fact that the declaration under Section 4 is as yet to be issued and it would only thereafter that the question of confiscation of properties of the Applicant would arise.

8 In our view, having regard to the nature of the order that has been passed, it cannot be said that any right or issue has been decided by the Special Court. The Special Court has only rejected the Application filed by the Appellant to stay the proceedings pending the proceedings before the Appellate Tribunal under the PMLA. The order at the highest can be said to be an interlocutory order. On behalf of the Appellant, reliance was sought to be placed on the judgment of the Apex Court reported in ***2018 SCC OnLine SC 310*** in the matter of ***Asian Resurfacing of Road Agency Pvt. Ltd. V/s. Central Bureau of Investigation***. The Apex Court in the said case was dealing with the question whether the order framing charge could be said to be an interlocutory order or final order which is susceptible to a challenge by way of Revision under Section 397 of the Criminal Procedure Code or under Section 482 of the Criminal Procedure Code or under Article 226 of the Constitution of India. It is in the said context that the Apex Court has made the observations. However, it is pertinent to note that the Apex Court has observed that the interference with such an order would have to be in the rarest of rare cases.

9 In the instant case as indicated above, the Application (Exhibit 90)

filed for the stay of the proceedings under the FEO Act, pending the proceedings before the Appellate Tribunal under the PMLA has been rejected and no right or issue has been decided. In our view, therefore the impugned order cannot be said to be an appealable order within the meaning of Section 17 of the FEO Act. Hence the above Appeal is not maintainable. The same is accordingly dismissed. Needless to state that the proceedings under the FEO Act before the Special Court would be tried on their own merits and in accordance with law.

10 Whilst concluding the learned Senior Counsel appearing for the Appellant herein as a last ditch effort contended that the instant Appeal be treated as a proceeding under Section 482 of the Criminal Procedure Code or Article 227 of the Constitution of India in the interest of justice, we decline to do so having regard to the facts of the present case and especially having regard to the fact that the Appellant has not appeared before the investigating agencies, and has also kept himself away from the country.

**[V. K. JAHDAV, J]** **[R. M. SAVANT, J]**