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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 1324 OF 2017
IN
CRIMINAL APPEAL No. 987 OF 2017

The Dy. Director, Directorate of Enforcement	...	Applicant (Orig. Appellant)
Vs.		
Phonographic Performance Ltd. & Ors.	...	Respondents

Ms. Manisha Jagtap, for the Applicant / Appellant.

Mr. Pragyan Sharma a/w Gajanan Shinde, for Respondent No. 1.

**CORAM : INDRAJIT MAHANTY, &
A. M. BADAR, JJ.**

DATE : APRIL 2, 2019

PC :

1. This application has been filed by the Dy. Director of Directorate of Enforcement alongwith criminal appeal, challenging the order dated 28th June, 2017 passed by the Appellate Tribunal. The said appeal has been filed by the Enforcement Directorate against the order of Adjudicating Authority releasing the order of attachment in favour of the Respondent-Society. The said appeal at the behest of the Enforcement Directorate came to be dismissed

for the reasons recorded in the said judgment and the original order passed by the Adjudicating Authority, dated 22nd June, 2016, vacating the order of attachment came to affirmed.

2. The learned counsel appearing for the Applicant-appellant strenuously urged that the order of the adjudicating authority ought to be stayed and the attachment order ought to be continued pending consideration of this appeal. We are of the considered view that no good ground is made out for the purpose of interfering the order passed by the Adjudicating Authority, especially when it is re-affirmed by the Appellate Tribunal. Consequently, we affirm the order passed by the Appellate Tribunal and direct that the attachment of the Respondent's bank account be released.

3. The learned counsel for the Applicant-appellant submits that the Respondent-Society has entered into an agreement with the Indian Performing Rights Society Ltd. (for short the "IPR") and certain amounts were due and payable by the Respondent-Society to the IPR. Hence, the order of attachment be continued. While

considering the said submission, we are of the considered view that since certain amounts were attached from the Respondent-Society's bank account and by the orders of the Adjudicating Authority the attachments so made were directed to be vacated. We are also of the considered view that the said order ought to be given effect. We further direct that the Respondent-Society shall have free access to its own deposits and shall settle its dues vis-a-vis with the IPR, as well as the dues outstanding with their members. We make it clear that this order shall not be interpreted to mean that the Adjudicating Authority has resolved the issue between the two Societies.

4. We are made to understand that in spite of there being no orders by this Court, only due to the fact that criminal applications were pending for consideration by the Court, it appears that various investments made by the concerned Society have not been released. We consequently direct that such investments made shall stand released and the Appellant shall issue necessary communications to all the banks / NBFCs (Non Banking Financial Institutions) indicating that vide this order we have

affirmed the order of the Appellate Tribunal and consequently, the Respondents have an unfettered right to access said investment and deal with the same.

5. We also further direct the Respondent-Society shall provide details of the amounts, expenses out of the attached amount to the Appellant and the said direction shall remain in force and shall be subject to the outcome of Writ Petition No. 1643 of 2018, which remains pending as on the date. With these directions / observations, the criminal application shall stand rejected and is accordingly disposed of.

Sd/-
[A. M. BADAR, J.]

Sd/-
[INDRAJIT MAHANTY, J.]

Vinayak Halemath