R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 675 OF 2019

Darius Sammotashaw .. Petitioner

Versus

Dy. Director of Income Tax (Inv) Unit 2(4), Mumbai & Ors. .. Respondents

....

- Mr. Firoze Andhyarujina, Sr. Counsel a/w Mr. Maneck Andhyarujina i/by Sameer Dalal for the Petitioner
- Mr. Suresh Kumar for the Respondents

....

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.

DATE : APRIL 4, 2019.

P.C.:

1. The petitioner, an individual has challenged the provisional attachment orders passed by Respondent No. 1 - Dy. Director of Income Tax (Inv) on 7.2.2009, copies of which are produced at Exh. H, H1, H2 and H3. Under these orders, the said Authority in exercise of powers under Section 132(9B) of the Income Tax Act, 1961 (“the Act” for short) has provisionally attached the petitioner’s two immovable properties as well as certain bank accounts in Kotak Mahindra Bank, Central Bank of India and Yes Bank. The details of immovable properties attached are as under:-

1. Residential Flat at 10-A, Jivan, 11, L.D. Ruparel Marg, Malabar Hill, Mumbai – 400 006;
2. Residential Flat at 8-C, Somerset Palace, 61 D, Bhulabai Desai Marg, Mumbai – 400 026.

2. This action the said Authority has taken pursuant to search conducted under Section 132 of the Act at the premises of the petitioner during which the department collected material to prima facie suggest that the petitioner has sizable interest income as well as dividend income despite which the petitioner filed no income tax return. The Department has material to suggest that the petitioner is a joint account holder in three bank accounts in Barclays Bank in England. The petitioner has not disclosed these bank accounts to the Income Tax Authorities. As per the information of the Department, currently a sum of Rs. 4.97 Crores (approximately) is shown as a balance in the said three accounts. The respondent also points out that during the financial years 2011-12 to 2015-16, the petitioner has executed high value transactions in buying and selling shares. Total turnover of the petitioner for these years comes to Rs. 266.26 Crores.

3. On the basis of such information collected by the department, the respondents hold a belief that the petitioner has sizable undisclosed income as well as substantial undisclosed foreign income / investment. In order to protect the interest of the Revenue, therefore, respondent No. 1 has placed the petitioner's above noted immovable properties and bank accounts under attachment.

4. The case of the petitioner is that he does not have any taxable income. He is a second account holder in bank accounts maintained at U.K. His son is a permanent resident of U.K. who earns sizable income. The balance in the accounts does not belong to the petitioner. The petitioner has inherited sizable funds and properties from which he makes investments. In any case, the value of the two immovable properties attached by the Income Tax Department is more than enough to cover for all possible tax, interest and penalty which may eventually arise even if all the defences of the petitioner are negatived. Learned counsel for the petitioner, therefore, argued that continuing the attachment on these immovable properties, the attachment of the bank accounts be lifted. He submitted that the petitioner himself is aged about 65 years, needs funds for his day to day expenses as well as medical treatment. The petitioner's mother is aged about 94 years and she is a heart patient. Her medical treatment requires constant expenses. It is pointed out that the total balance attached in the bank accounts comes to approximately Rs. 3 Crores.

5. On the other hand, the Department strongly opposes any interference with the attachment orders. It was argued that the Authorities have exercised the discretionary powers after taking into account all relevant facts. The petitioner has sizable income, foreign investments despite which the petitioner had not filed any return of income, thereby withholding such information from the Department. Learned counsel for the Department relied on the affidavit in reply dated 3.4.2019 filed by one Mr. Gaurav Sanjay to contend that the possible tax, interest and penalty demand arise against the petitioner is close to Rs. 23.28 Crores.

6. On 28.3.2019, the Court had passed the following order:-

> "1. Learned counsel for the petitioner stated that the petitioner has two immovable properties situated at Mumbai, valuation of which far exceeds any possible income tax liability which may arise even if the petitioner's all legal contentions were to be negatived. He, therefore, submitted that keeping such properties under attachment, the petitioner's bank accounts may be released.
>
> 2. Learned counsel for the department may file reply before the next date of hearing. He may also indicate the possible approximate liability of the tax which may arise in case of the petitioner. The petitioner shall file an affidavit declaring that the two immovable properties exclusively belong to him and that the same carry no encumbrances.

7. Material on record would suggest that the Department proceeded on material collected during the search and has formulated a prima facie belief that the petitioner has undisclosed income as well as undisclosed foreign investment. In order to protect the interest of the Revenue, therefore, the petitioner's bank accounts and two immovable properties have been put under provisional attachment. By such action, the Department has virtually prevented the petitioner for accessing his own funds in the bank accounts which would undisputedly cause great difficulty to the petitioner in meeting his day to day expenses, to meet with special requirements for medical attention for himself and his aged mother. While, therefore, without harming the interest of the Revenue, we would like to give limited relief to the petitioner against such action of the Department. While doing so, we must bear in mind that the approximate tax, interest and penalty liability which the Department has computed, firstly even the basis of maximum penalty which is impossible, secondly the same is in realm of possibilities. The petitioner has filed an additional affidavit dated 2.4.2019 pursuant to our order dated 28.3.2019. In such affidavit, he has stated two things, firstly, that both the flats placed under attachment belong to him. In support of the statement, the petitioner has produced copies of the share certificates issued by the respective housing societies. The second declaration that the petitioner has made is that the value of the flat at Jivan Building as per the Government ready reckoner is Rs. 9.43 Crores and the Somerset flat is Rs. 6.79 Crores. The combined value of these two flats thus exceeds Rs. 16 Crores. The petitioner has also produced valuation report of the Government registered valuer showing the approximate value of these flats at Rs. 10.81 Crores and 6.34 Crores respectively. Going by this valuation, combined value of the flats would be in excess of Rs. 17 Crores. We have also required the petitioner to state that the said immovable properties are unencumbered. In the said affidavit, he has declared as under :-

> "5. I say that both the flats, that is, Jivan and Somerset are un-encumbered and I have not crated any encumbrances, mortgage, charge or lien or any kind nor, created any third-party rights. I say that both the flats are in my sole and exclusive possession till date."

8. In totality of the above noted facts and circumstances, in our opinion, while maintaining the attachment of the two immovable properties of the petitioner, his bank accounts can be released from attachment. Even if the Department were to succeed substantially in its present stand, the petitioner's tax, interest and possible penalty liabilities are unlikely to exceed the valuation of the two immovable properties.

9. Under these circumstances, the attachment of the petitioner's two immovable properties is not disturbed. The petitioner is prevented from selling, transferring, creating any charge or encumbrances on the said two immovable properties till the present litigation is over or without leave of the Court.

10. Subject to above directions, the provisional attachment on the petitioner’s bank accounts are set aside. Orders at annexures H1, H2 and H3 are quashed.

11. The petition is disposed of accordingly.

[SARANG V. KOTWAL, J.] **[AKIL KURESHI, J]**