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

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Date of Judgment: 08.05.2019

+ LPA 117/2019 & CM APPL. 7787-7788 & 20677-20678/2019

JOINT DIRECTOR , DIRECTORATE OF
ENFORCEMENT & ANR

..... Appellants

Through: Ms. Maninder Acharya, ASG with
Mr. Anurag Ahluwalia, Ms. Nidhi
Mohan Parashar & Mr. Umang Kumar
Singh, Advocates

versus

RITU KHAITAN & ANR

..... Respondents

Through: Mr. P.V. Kapur, Sr. Advocate with
Ms. A.T. Patara & Mr. Aditya,
Advocates

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. Challenge in this appeal is to the order dated 10.12.2018 passed by the learned Single Judge of this Court. Some necessary facts which are required to be noticed for disposal of this appeal are that the respondents herein had challenged an order passed by the Appellate Tribunal constituted under the provisions of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA' in short). Another important factor to be noticed is that one of the parties to the proceedings being the husband/father of the respondent (petitioner in writ petition) filed a review petition before the Appellate Tribunal, which is still pending.

2. The petitioners in the writ petition had filed an application seeking a direction to the appellants herein to release the jewellery, which was seized during the search operation of 22.09.2014 conducted on the respondents herein. The petitioners/respondents herein sought the release of the jewellery in lieu of security by way of a Fixed Deposit of Rs. 1,23,22,317/- in the case of respondent No. 1 and Rs. 29,64,387/- in the case of respondent No.2. This amount was as per the valuation of the jewellery given by the appellants herein. Mrs. Acharya, learned Additional Solicitor General submits that the filing of a writ petition by two parties and filing of a review petition and getting the matter adjourned sine die is part of a larger device of the parties to delay the matter and even otherwise a single order cannot be split and the parties cannot be permitted to take advantage in the manner which is being sought. Additionally, it is contended before us that there is no provision under the PMLA for return of seized articles, even on furnishing of a security.

3. Mr. Kapur, learned Senior Counsel appearing for the respondents submits that no prejudice would be caused to the rights of the appellant and all legal issues sought to be raised in the writ petition as also in the review petition as well as rights and contentions of the parties may be kept open. Mr. Kapur also submits that the petitioners (respondents herein) have not sought release of the jewellery unconditionally, but have agreed to protect the rights of the Department by furnishing a Fixed Deposit receipt as per the valuation of the Department. He also relies on Section 9 and 10 of the PMLA in support of his contention that should the appellant succeed, they would be well within their rights to liquidate the amount. It is also contended by Mr. Kapur that since no notice was issued to the respondents

after considering the reply, if any, submitted by such a person.

13. In the present case, it is not disputed that no notice in respect of the subject jewellery (seized jewellery belonging to the petitioners) has been issued to them.

14. However, at this stage, it is not necessary for this Court to dwell further into the said issue as the prayers made by the petitioner are of a limited import. The petitioners merely seek conditional return of the jewelleries seized by the respondents on them furnishing security for full value of the same. Considering above, this Court finds no reason to reject this present application, while ensuring that the interest of the respondents are duly protected.

15. Accordingly, the respondents are directed to return the jewellery of the value belonging to petitioner nos. 1 and 2 (jewellery valued at Rs. 1,23,22,317/- in case of petitioner no. 1 and Rs. 29,64,387/- in case of petitioner no. 2). This shall be released to petitioners on them furnishing (a) fixed deposit of the aforesaid amount to the respondents; and (b) an undertaking to this Court that they shall not transfer, part with, encumber or in any manner alienate the jewellery so returned. It is clarified that the attachment with regard to the jewellery shall continue and although, the petitioners may be placed in possession of the said jewellery the same would be considered as *custodia legis*.”

5. We do not find any force in the submissions made by the learned ASG in view of the fact that admittedly the respondents herein are not party to the proceedings initiated against the husband/father of the respondents herein respectively. We are also of the view that the appellants have not sought any extension under Section 20(3) of the PMLA for further retention of the jewellery. Learned ASG submits that a notice was issued subsequently and the effect of which would be decided by the Single Judge.

6. We are prima facie satisfied that no prejudice in any manner will be caused to the appellant if the jewellery is released, for the reason that before the Single Judge, the respondents have volunteered to furnish a fixed deposit

receipts in the amount Rs. 1,23,22,317/- and Rs. 29,64,387/- respectively and also furnish an undertaking that they would not transfer, part with or encumber in any manner or alienate jewellery returned to them and this undertaking has been accepted by the Court. We are informed that the undertaking has been furnished. Additionally, we direct the Department to take pictures of the jewellery in the presence of the respondents herein and the pictures would be duly signed by both the parties for the purposes of proper identification. The jewellery would be returned to the respondents against a proper receipt to be issued by the appellants.

7. We find no grounds to entertain this appeal.
8. The appeal is accordingly dismissed.
9. The order be complied within 10 days.

G.S.SISTANI, J

JYOTI SINGH, J

MAY 08, 2019

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