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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.58 OF 2020

PICO Capital Private Limited
(formerly Pinkhem Investments Company Pvt. Ltd.)
Having its address at Block No.22(1),
Bombay Cotton Mills Compound,
Dattaram Lad Path,
Kalachowki, Mumbai – 400 033.
Through its Authorized Representative
Shri Dilip Mavale ...Petitioner

Versus

1) Central Bureau of Investigation (CBI)
Banking Security & Fraud Cell,
New Hind House, N. M. Marg,
Ballard Estate,
Mumbai – 400 001.

2) The State of Maharashtra ...Respondents

Mr. Niranjan S. Mundargi a/w Mr. Sukesh Shah, for the Petitioner.

Mr. H. S. Venegavkar, for the Respondent No.1 – CBI.

Ms. S. V. Sonawane, A.P.P for the Respondent No.2– State.

CORAM : REVATI MOHITE DERE, J.

DATE : 2nd NOVEMBER, 2020

(THROUGH VIDEO CONFERENCING)

ORAL ORDER:-

1. Heard learned counsel for the parties.

2. Rule. Rule is made returnable forthwith, by consent. Mr. Venegavkar waives notice for Respondent No. 1. Learned APP waives notice for Respondent No. 2 – State.

3. By this petition, the petitioner has sought the following substantive prayers :-

> “(a) That this Hon’ble Court be pleased to issue an appropriate writ or direction under the provisions of Section 482 of the Criminal Procedure Code calling for the records and proceedings relating to the Misc. Application No.625 of 2018 and Misc Application No.1502 of 2018 in Criminal Case No. RC.06/E/2014/CBI/BS&FC/Mumbai and the Impugned Order and on examining the legality, propriety and validity thereof be pleased to quash and set aside the Impugned Order dated 26.10.2018 and 21.06.2019 to the extent it directed the Petitioners to furnish a Bank Guarantee in the sum of Rs.1,02,49,178/- and file an undertaking that it will not withdraw any amount from the subject Bank Account till final outcome of the matter OR in the alternate the said condition be suitably modified.
>
> (b) ….
>
> (c) The remark/observation that the Petitioner intended to dodging lawful machinery to seize wrongful amount, they would not have deposited be expunged.”

4. Mr. Mundargi, learned counsel for the petitioner relied on several orders passed by this Court and the lower Courts in connection with the petitioner – companies bank account frozen by the respondent No.1 – CBI in 2014. He submits that admittedly the petitioner – company has not been cited as an accused by the respondent No.1 – CBI in Special Case Nos.64 of 2015 and 47 of 2016. He submits that the allegation of the respondent No.1 – CBI, is that the petitioner – company received an amount on maturity of their Fixed Deposit Receipt from a wrong source i.e. from the account of a fake company – M/s. Jyoti Enterprises and that the bank officer of the concerned bank was responsible for the same. He submits that admittedly, the petitioner – company was not involved in the said transfer of money, inasmuch as, the allegations are as against a bank officer, who is alleged to have transferred the amount on maturity of the petitioner – company's Fixed Deposit from a wrong source. He submits that the petitioner – company's account was frozen pursuant to the registration of the case against the bank employee of Dena Bank and others. He submits that the petitioner – company is unable to operate its own bank account since 2014 and that the same is causing tremendous hardship to the petitioner – company, for no fault of theirs. He submits that the petitioner – company is ready to give a bond as directed by the trial Court for the entire amount of Rs.1,02,49,178/- instead of only

Rs.93,50,414.07 ps.

5. Learned Counsel for the respondent No.1 – CBI has filed an affidavit-in-reply of Pinaki Saha, Inspector of Police, Central Bureau of Investigation, Bank Securities Fraud Branch, Mumbai.

6. Perused the papers. A few facts as are necessary to decide the aforesaid petition are set out hereinunder :-

The petitioner is a private limited company, engaged primarily in the business of investing in shares/stocks and other financial products. It appears that the petitioner – company for several years was operating a Current Account with Dena Bank, Lalbaug Branch, Mumbai, bearing Account No.063611000677. It appears that on 12th February, 2013, the petitioner – company had applied to Dhanalaxmi Bank, Goregaon Branch for placing a Term Deposit of Rs. 1 crore with the Bank, for a period of one year at an interest @ 9.25% per annum. It appears that the petitioner – company, in its application instructed the bank to pay the interest on the said Term Deposit on quarterly basis and had specified the mode of payment through banker's cheque. The petitioner – company also appears to have instructed the bank not to renew the Fixed Deposit upon maturity. It appears that the payment for the said Term Deposit was made by the petitioner through Real Time Gross Settlement System (RTGS), the receipt of which was also confirmed by the bank. Pursuant to the said application and upon receipt of the payment, Dhanalaxmi Bank issued a Term Deposit Receipt dated 13th February, 2013 for an amount of Rs.1 crore bearing Account No.019942100000022 for a period of 375 days i.e. the maturity date was 23rd February, 2014. It appears that the petitioner – company also obtained a letter from the bank confirming that no lien had been marked against the said Term Deposit Receipt and had also confirmed that no lien would be created against the said Term Deposit without a request in writing. It appears that Dhanalaxmi Bank had deducted tax at source towards the interest paid by the bank on the said Term Deposit. It appears that the petitioner – company vide letter dated 21st February, 2014 instructed the Dhanalaxmi Bank to close the said Fixed Deposit and returned the Term Deposit receipt to Dhanalaxmi Bank for redemption. As per the petitioner’s instructions, the bank issued a bankers cheque for an amount of Rs.1,02,49,178/- dated 20th February, 2014, towards the refund of the Term Deposits of Rs.1 crore and balance interest due thereon, of Rs.2,49,178/-. It appears that the amount received by the petitioner under the said Term Deposit was deposited by the petitioner in its account with Dena Bank and Bank of Maharashtra, Overseas Branch.

According to the petitioner, the amounts so received and deposited in the accounts, intermingled with other amounts of the petitioner and were used by the petitioner for its day-to-day operation and business activities. According to the petitioner, Dena Bank vide their letter No.DB/LALBAUG/CBI/2014 dated 4th September, 2014 informed them that their account was frozen pursuant to a notice dated 2nd September, 2014 issued by the investigating officer of CBI under Section 102 Cr. P. C., in Criminal Case No. RC.06/E/2014/CBI/BS&FC/Mumbai registered on 14th July, 2014. Admittedly, in the said criminal case registered by the CBI, the petitioner – company is not an accused. It appears that the only allegation as against the petitioner – company is that the Branch Manager of Dena Bank, an accused in the said case had transferred the Fixed Deposit amount on maturity, to the petitioner – company from the account of one M/s. Jyoti Enterprises. The petitioner – company neither has any connection or dealing with any of the accused or the officers of the Malabar Hill Branch of Dena Bank nor with M/s. Jyoti Enterprises. The same is also not the case of the CBI. After the petitioner – company's account was frozen, the petitioner – company filed an application in the trial Court for defreezing its Current Bank Account with Dena Bank, Lalbaug Branch, Mumbai, bearing Account No.063611000677. The learned Special Judge (CBI), Gr. Bombay, vide order dated 18th December, 2014, partly allowed the said application. The operative part of the said order, reads as under:-

"ORDER

1. *Application is partly allowed;*

2. *Opponent/CBI to issue a necessary direction to defreeze the aforesaid current bank account maintained by applicant/company with Dena Bank, Lalbaug Branch, Mumbai subject to filing an undertaking by the applicant/company with Opponent/CBI as well as the bank concern that it will not withdraw any amount from the aforesaid bank account which was lying on the date of freezing, i.e. on 2.9.2014 as well as on executing a bond by the applicant/company that it will deposit the amount of Rs.5,83,16,864/- in future if it reveals that so much amount wrongfully gained by it in the matter;*

3. *Inform the Opponent/CBI for compliance;*

4. *Thus, the application stands disposed off accordingly."*

The learned Special Judge (CBI) passed the aforesaid order dated 18th December, 2014 after observing in para 8 that the investigation is going on and is in its initial stage and that it was too early to say anything in respect of the allegations so made against the petitioner – Company. The learned Judge without observing anything in favour of either the petitioner or the CBI, as investigation was on, passed the aforesaid conditional order.

Being aggrieved by the said order directing the petitioner – company to execute a bond for an amount of Rs.5,83,16,864/-, the petitioner – company filed a writ petition in this Court being Writ Petition No.387 of 2015. This Court (Coram : Smt. R. P.SondurBaldota, J.) vide order dated 7th February, 2017, passed the following order:-

> *"After the matter is partly argued, Mr. Raheja, the learned advocate for the petitioner restricts the petition to the direction contained in the impugned order to the petitioner to execute a bond that it will deposit amount of Rs.5,83,16,864/- in future if it is revealed that this amount had been wrongfully gained by it in the matter. He points out that according to the prosecution the only amount which has allegedly come to the account of the petitioner is of Rs.1,02,49,178/-. Therefore, the Special Court could not have directed for execution of the bond for an amount higher than that amount. He also points out that on 2nd September, 2014 the amount lying in his account which has been freezed is of Rs.8,98,763.93 ps. The impugned order directs that the petitioner shall not withdraw that amount from it's account. On giving credit to the amount lying in the Bank account upon which a restriction has been put upon the petitioner from it's withdrawal of the balance amount that may have to be recovered from the petitioner would be of Rs.93,50,414.07 ps. Mr. Shinde, the learned advocate appearing for respondent no.1 in fairness concedes that the direction to the petitioner to execute bond in the sum of Rs.5,83,16,864 cannot be justified. In the circumstances, the petition is disposed off by modifying the quantum of the bond to be executed by the petitioner. The amount of the bond to be executed by it is reduced to Rs.93,50,414.07 ps."*

The petitioner - company again filed another application in this Court being Criminal Application No.172 of 2017 in the disposed of Writ Petition No.387 of 2015, seeking permission to operate the petitioner –

companies Current Bank Account as well as to execute a bond for the entire amount i. e. Rs.1,02,49,178/-.This Court (Coram : Nitin W. Sambre, J.) vide order dated 9th March, 2018, passed the following order:-

> *"As the writ petition is already disposed of by order dated February 7, 2017, the petitioner / applicant moves an application for withdrawal of the application with liberty to take such steps for redressal of the grievance which are sought to be canvassed in the present application, as is permissible in law. The application is dismissed as withdrawn with liberty as prayed.*
>
> *2. Liberty is also granted to the petitioner to bring to the notice of the learned trial Court that the amount which is lying in the bank account be converted into fixed deposits. The petitioner can also bring to the notice of the learned trial Court about the subsequent changes qua existence of the earlier company and amalgamation thereof in the present applicant company, which scheme is already approved by this Court."*

Pursuant to the liberty granted by this Court, the petitioner – company filed an application being Miscellaneous Application No.625 of 2018 in the Bombay City Civil and Sessions Court (Special Court for CBI) and prayed for the following reliefs:-

> *"14. …*
>
> *(a) This Hon'ble Court be pleased to pass necessary order and directions removing the restrictions imposed on the Applicants for operating the Applicant's Current Account bearing No.063611000677 and this Hon'ble Court be pleased to give necessary order and directions to permit the Applicant to use the money lying in the Applicant's Current Account bearing No. 063611000677 with the Dena Bank, Lalbaug branch without any restrictions;*

(b) *In the alternative, if this Hon'ble Court is of the view that the reliefs as prayed for in prayer clause (a) above cannot be passed at the present stage, this Hon'ble Court be pleased to pass necessary Orders and directions permitting the Applicants to operate the said account and withdraw the sum of Rs. 8,98,763.93 ps with a condition that the Applicant furnish a bond of Rs. 1,02,49,178/-;*

(c) *In the further alternative, if this Hon'ble Court is of the view that the reliefs as prayed for in prayer clause (a) or (b) cannot be passed at the present stage, this Hon'ble Court be pleased to pass necessary Orders and directions for investing the sum of Rs. 8,98,763.93 ps lying in the said account in Fixed Deposits subject to the final outcome of the matter."*

The learned Special Judge for CBI, City Civil & Sessions Court, Gr. Bombay, vide order dated 26th October, 2018, partly allowed the said application. The operative order of the said order reads thus:-

"ORDER

1. *CBI Misc. Application No.625/2018 in CBI Special Case No.64/2015 & 47/2016 arising out of R.C. No.06/E/2014/BS & FC/CBI/Mumbai, is hereby partly allowed;*

2. *CBI, BS & FC, Mumbai is hereby directed to de-freeze the applicant's current account bearing no. 0063611000677 and permit the applicant to convert the sum of Rs. 8,98,763.93 lying in the said account with Dena Bank, Lalbaug Branch into Fixed Deposits with highest rate of interest subject to filing of an undertaking by the applicant that it will not withdraw any amount from the aforesaid bank account till final outcome of the matter. CBI authorities are directed to obtain receipt of delivery of said amount from the applicant and directed to deposit said receipt with the Registrar of this Court;*

3. *Rest of the reliefs claimed by applicant are hereby rejected;*

4. *The applicant is directed to produce the copy of said receipt as and when required by the prosecution or Court during trial till disposal of the case;*

5. *The applicant is directed to furnish Bank Guarantee of the said amount;*

6. *CBI Misc. Application No. 625/2018 in CBI Special Case No.64/2015 & 47/2016 stands disposed of accordingly."*

The petitioner – company again filed an application and sought review of the said order dated 26th October, 2018, however, the said application was rejected by the learned Special Judge for CBI, City Civil & Sessions Court, Gr. Bombay vide order dated 21st June, 2019. Hence, this petition.

7. As noted earlier, pursuant to the earlier order passed by this Court on 7th February, 2017, the amount of bond was reduced from Rs.5,83,16,864/- to Rs.93,50,414.07 ps. Admittedly, the order dated 18th December, 2014 passed by the learned Special Judge (CBI) was when investigation was at its initial stage, when the role of the petitioner – Company was not clear. As noted above, the petitioner – company is not an accused in the case registered by the respondent No.1 – CBI. Infact, the CBI after investigation filed a charge-sheet as against the Bank officer of Dena Bank and others. According to the CBI the alleged amount i.e.

Rs. 1,02,49,178/- received by the petitioner – company in its account had come from a tainted source i.e. the account of M/s. Jyoti Enterprises, on maturity of the petitioner – company's fixed deposit and that the Bank official of Dena Bank was responsible for the same. The direction given by the trial Court on 26th October, 2018, as per clause - 5 of the operative order, directing the petitioner – company to furnish Bank Guarantee of the said amount, is not clear. This Court has already permitted the petitioner – company to give a bond of Rs.93,50,414.07 ps. The petitioner – company is willing to give a bond for the additional amount of Rs.8,98,763.93 ps i.e. a bond for the entire amount of Rs.1,02,49,178/-. As noted earlier, the conditional order dated 18th December, 2014 was passed by the learned Special Judge (CBI), when the role of the petitioner was not clear and when investigation was in progress. Admittedly, the petitioner is not an accused in the case. Considering the peculiar facts, there is no impediment if the petitioner is permitted to give a bond even for the additional amount of Rs.8,98,763.93 ps i.e. now a bond for the entire amount of Rs.1,02,49,178/-.

8. As far as prayer clause (c) is concerned, learned counsel for the petitioner seeks expunging of the remark/observation made in the order dated 21st June, 2019. The said remark reads thus:-

" dodging lawful machinery to seize wrongful amount."

The aforesaid remark/observation, in the facts, was unwarranted and hence, are expunged.

9. Having regard to the facts, there is no impediment in allowing the petition, on the following terms and conditions:-

ORDER

(i) The petitioner – company is permitted to operate its Current Account with Dena Bank, Lalbaug Branch, Mumbai, bearing Account No.063611000677. However, prior thereto the petitioner – company shall execute a bond for the entire amount of Rs.1,02,49,178/- before the learned Special Judge for CBI, on such terms and conditions, as the trial Court may deem fit and proper;

(ii) The remark / observation made in the order dated 21^{st} June, 2019 is hereby expunged.

10. Rule is made absolute on the aforesaid terms. Petition is accordingly disposed of.

11. All concerned to act on the copy of this order, digitally signed by the Private Secretary of this Court.

REVATI MOHITE DERE, J.