IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2020

C O R A M
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE
W.P.No.2495 of 2013
&
MP.No. 2 of 2013

ICICI Bank Limited,
Represented by its
Authorised Signatory
At No.246, Pollachi Road,
Udumalpet - 642 126. ... Petitioner

Vs.

1.The Joint Director,
Directorate of Enforcement ,
(Prevention of Money Laundering Act and
Foreign Exchange Management Act),
Ministry of Finance,
Department of Revenue,
Government of India,
Shastri Bhawan, 3rd Floor,
3rd Block No.26, Haddows Road,
Chennai - 600 006.

2.The Assistant Director,
Directorate of Enforcement ,
(Prevention of Money Laundering Act and
Foreign Exchange Management Act),
Ministry of Finance,
Department of Revenue,
Government of India,
Shastri Bhawan, 3rd Floor,
3rd Block No.26, Haddows Road,
Chennai - 600 006.

3.The Adjudicating Authority,
(Prevention of Money Laundering Act, 2002),
4th Floor, Jeevan Deep Building,
Parliament Street, New Delhi - 110 001.

4.G.Srinivasan ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to call for the records before the Third Respondent related to Original Complaint No.131 of 2012 including order dated 13.06.2012 and issue a writ of certiorari quashing the same.

For Petitioner : Mr.V.Suresh, for M/s.Shivakumar and Suresh

For Respondents 1 & 2 : Mr.V.Parivallal

For Respondents 3 & 4 : No appearance

O R D E R

This writ petition has been filed challenging the order dated 13.06.2012 passed by the third respondent under Section 8 (1) of the Prevention of Money Laundering Act, 2002.

2. It is the case of the petitioner that they granted loan to the fourth respondent, based on the security of fixed deposit created by him and that the fourth respondent committed default in the repayment of the loan and therefore, they exercised lien over the fixed deposit created by the fourth respondent in their favour towards repayment of the loan. According to them, the third respondent without any notice to the petitioner has passed the impugned order confirming the provisional attachment of fixed deposit created by the fourth respondent in the petitioner's favour under Section 8(1) of the Prevention of Money Laundering Act, 2002. It is the case of the petitioner that the third respondent has not followed the procedure contemplated under proviso to Section 8(1) of the Prevention of Money Laundering Act, 2002 by giving notice to the petitioner bank before passing the final orders confirming the provisional attachment. In such circumstances, this writ petition has been filed.

3. A counter affidavit has been filed by the respondents 1 and 2 wherein they have stated that the third respondent has followed the due procedure as contemplated under Section 8(1) of the Prevention of Money Laundering Act, 2002 and it is also their case that earlier, the petitioner had filed a writ petition W.P.No.30806 of 2012 challenging the summons issued by the second respondent calling upon the petitioner to hand over the fixed deposit created by the fourth respondent to the department. According to them, the said writ petition was withdrawn only at the instance of the petitioner. According to

them, during the pendency of W.P.No.30806 of 2012, the petitioner is not entitled to file the present writ petition which was filed in the year 2013. They have also stated in their counter that the fourth respondent is a money lender and hence, they are entitled for attachment of fixed deposit created by him, even though it is lying with the petitioner bank. They have also narrated the money laundering offence committed by the fourth respondent in their detailed counter affidavit.

4. Heard Mr.V.Suresh, leared counsel for the petitioner and Mr.V.Parivallal, learned standing cunsel for the respondents.

5. Section 8(1) of the Prevention of Money Laundering Act, 2002 reads as follows:

> 8. Adjudication.- (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under subsection (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, he may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:
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> Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:
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> Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

As seen from the first proviso to section 8(1) of the Prevention of Money Laundering Act, 2002, it is clear that before passing final orders of attachment under Section 8(1), a notice shall be sent not only to the offender, but also to a person in whose custody the property of the offender is being held.

6. In the case on hand, the fixed deposit is alleged to have been created by the fourth respondent with the petitioner bank. In fact, a copy of the provisional order of attachment dated 15.03.2012 was also communicated by the Director of Enforcement to the petitioner bank as seen from the names found in the last page of the said provisional order of attachment. Even though the provisional order of attachment was communicated to the petitioner, even without hearing the petitioner and without giving any opportunity to the petitioner, the final adjudication order of attachment has been passed by the third respondent under the impugned order.

7. It is the case of the petitioner that the fixed deposit was created by the fourth respondent only to secure the loan availed by him from the petitioner bank. According to them, under the loan documents executed by the fourth respondent, the petitioner is having a right to exercise lien over the fixed deposit for non-payment of the dues by the fourth respondent. It is their case that the fourth respondent is a defaulter to them and he owes substantial sums of money in respect of the loan availed by him from the petitioner bank. A reply dated 21.03.2012 was also sent by the petitioner to the second respondent on receipt of the provisional order of attachment dated 15.03.2012 wherein they have reiterated that the fixed deposit created by the fourth respondent is only to secure the loan which was availed by him from the petitioner bank and hence, the first respondent ... to have power to attach the fixed deposit. Despite the receipt of the reply dated 21.03.2012, the third respondent has passed the impugned order without affording any opportunity to the petitioner to raise all objections available to them with regard to the provisional order of attachment of the fixed deposit standing in the name of the fourth respondent.

8. From the above, it is clear that the third respondent has not followed the procedure as contemplated under first proviso to section 8(1) of the Prevention of Money Laundering Act, 2002 by not issuing notice to the petitioner who is having custody of the said fixed deposit standing in the name of the fourth respondent before passing final orders of attachment under section 8(1) of the Prevention of Money Laundering Act, 2002. It is clear that the respondents have also violated the principles of natural justice by not affording any opportunity to the petitioner to place all their objections with regard to the attachment of fixed deposit standing in the name of the fourth respondent.

9. In an identical matter, cited by the learned counsel for the petitioner in the case of Indian Bank vs. Government of India reported in 2012 (4) CTC 225, this Court has observed that there is an obligation on the part of the adjudicating authority to hear the bank, when it is pointed out to the adjudicating authority that the bank had already laid a claim. The relevant paragraphs of the said judgment are extracted hereunder:

> "29. The Proviso to sub-section (2) of Section 8 enables any person who claims the property to be his own, also to be given an opportunity of being heard to prove that the property is not involved in money laundering. This proviso makes it clear that the leverage given to the Adjudicating Authority to release the property is limited to instances where the property is proved to be not involved in money laundering. This is only a very same leverage given to the Adjudicating Authority. None of the sub-sections of Section 8 enable the Adjudicating Authority to release a property to a third party even after the property is proved to be involved in money laundering.
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> 30. In other words, if a property is proved to be involved in money laundering, the Adjudicating Authority has only one choice viz., to make the attachment absolute, wait for the final adjudication by the Criminal Court and either release the property to the accused if he is acquitted in the Criminal Court or confiscate the property to the Central Government if the accused is convicted by the Criminal Court. Therefore, Section 8 in its entirety is accused-centric and Central Government-centric. It does not take into account the plight of victims of crime.
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> 41.today, the First Respondent takes a stand that the Bank could have got impleaded by virtue of the proviso to Section 8(2). But unfortunately, for the First Respondent, the obligation is not on the part of the Bank to get impleaded. The obligation is actually on the part of the Adjudicating Authority as could be seen from the language of Section 8(2). It reads as follows:
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> "(2) The Adjudicating Authority shall, after-
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> (a) considering the reply, if any, to the notice issued under sub-section (1);
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> (b) hearing the aggrieved person and the

Director or any other officer authorised by him in this behalf; and

(c) taking into account all relevant materials placed on record before him,

by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering."

42. Therefore, there is an obligation on the part of the Adjudicating Authority to hear the Bank, when it is pointed out to the Adjudicating Authority that the Bank had already laid a claim and that they also have obtained an interim stay of all further proceedings."

10. In the case on hand also, despite the third respondent having knowledge that the fixed deposit standing in the name of the fourth respondent is lying with the petitioner bank, the third respondent before passing of the impugned orders has not issued notice to the petitioner bank and hence, this Court is of the considered view that the procedure contemplated under the first proviso to section 8(1) of the Prevention of Money Laundering Act, 2002 has been violated by the third respondent. In view of the non-compliance of the first proviso of Section 8(1) of the Act, 2002, the petitioner has not been given any opportunity to explain as to how the fixed deposit receipt standing in the name of the fourth respondent cannot be attached.

11. For the foregoing reasons, the impugned order dated 13.06.2012 of the third respondent is hereby quashed and the matter is remanded back to the third respondent for fresh consideration and the third respondent after giving sufficient opportunity to the petitioner to raise all objections available to them under law with regard to the attachment of the fixed deposit standing in the name of the fourth respondent shall pass final orders within a period of eight weeks from the date of receipt of a copy of this Order, after affording personal hearing to the petitioner. It is made clear that the provisional order of attachment dated 15.03.2012 shall continue, subject to the outcome of the final orders passed by the third respondent under Section 8(1) of the Prevention of Money Laundering Act, 2002.

12. With the aforesaid direction , this writ petition is disposed of. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To
1.The Joint Director,
Directorate of Enforcement ,
(Prevention of Money Laundering Act and
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+1 cc to M/s.Shivakumar & Suresh Advocate sr8658
+2 ccs to M/s.V.Parivallal Advocate sr8711

W.P.No.2495 of 2013

bp(co)
aa29/07/2020