

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2020

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.8101 of 2020
and
W.M.P.No.9631 of 2020

Ashish Jain
S/o Late M.Ashok Kumar Nahar
No.31, 5th Cross Street, MKB Nagar,
Vyasarpadi - 600 039 ... Petitioner

Vs

1. The Assistant Director,
Directorate of Enforcement,
Chennai Zonal Office, 2nd & 3rd floor,
Murugesu Naicker Complex,
No.84, Greaves Road,
Chennai - 600 006.
2. The Manager,
M/s. Karur Vysya Bank
Chennai Main Branch,
No.46, Jeevan Marina , Armenian Street,
Chennai - 600 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying Writ of Declaration to declare that the act of the 1st respondent in continuing the seizure and attachment of the bank account of the petitioner's father, bearing No.1153135000004460 maintained with the 2nd respondent as illegal and without authority. of law.

For Petitioner : Mr.G.Derrick Sam

For Respondents : Mr.N.Ramesh for R1
No appearance for R2.

O R D E R

This matter is taken up for hearing through Video-Conferencing mode.

2. This writ petition is filed seeking for a declaration to declare that the act of the 1st respondent in continuing the seizure and attachment of the bank account of the petitioner's father, bearing No.1153135000004460 maintained with the 2nd

respondent as illegal and without authority of law.

3. The grievance of the petitioner before this Court is that the bank account mentioned in the writ petition is not allowed to be operated by the petitioner under the guise of investigating the matter under FEMA. It is the specific case of the petitioner that no order of attachment was passed by the first respondent at any point of time in respect of the said bank account and therefore, the petitioner cannot be prevented from operating the bank account.

4. It is seen that the said account was standing in the name of the petitioner's father, who earlier filed a writ petition before this Court in W.P.No.8025/2018, with the very same relief as sought for in the present writ petition. The said writ petition was disposed of on 07.03.2019 by recording the statement made by the learned counsel appearing for the first respondent herein that the said account was not frozen and on the other hand, only a communication dated 05.09.2017 was issued to the 2nd respondent requesting them not to allow any debit transaction without the knowledge of the respondent Department. It was further stated by the learned counsel for the first respondent therein that the petitioner was not correct in saying that his account was frozen. By recording the above said submission, this Court closed the said writ petition. Now, the present writ petition is filed by the petitioner, who is the son of the petitioner in the earlier writ petition on the reason that the petitioner's father died and therefore, he must be allowed to operate the bank account.

5. Counter affidavit is filed by the first respondent. It is stated therein that the investigation under FEMA is pending and the investigation conducted so far reveals that the amount inter alia lying in the subject matter bank account appears to have been involved in violation of provisions of FEMA. Though such counter affidavit is filed, when a specific question is put to the learned counsel for the first respondent by this Court as to whether any order of freezing the account has been issued by the first respondent, he submitted that no such order is issued so far. When it is stated that the first respondent has not issued any order freezing the subject matter bank account so far, I do not find any justification on the part of the first respondent in not allowing the petitioner to operate the bank account. Either the first respondent should pass an order in accordance with law to freeze the bank account or allow the petitioner to operate the bank account, in the absence of any such attachment order. Without doing either of these things, the respondents make the petitioner to stand in a position namely neither here nor there. Therefore, this Court is of the view that it is for the first respondent to take a decision and if they choose to attach the bank account, it should be done only by the manner in which law so provides to do so.

6. Accordingly, the Writ Petition is disposed of as follows:

(a) Since it is an admitted fact that the subject matter bank account is not so far issued with any order of attachment or freezing the account, it is open to the first respondent to pass any such order within a period of 30 days from the date of receipt of a copy of this order.

(b) If the first respondent has not chosen to pass any attachment order as stated supra, the petitioner shall not be prevented from operating the bank account.

7. With the above directions, the writ petition is disposed of without expressing any view on the merits of the matter which is involved in the investigation. No costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Assistant Director,
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MG (CO)

RV (08/09/2020)

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