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M.A.T. 241 of 2018
With
I.A. CAN 1 of 2018 (Old CAN 1907 of 2018)
With
I.A. CAN 2 of 2018 (Old CAN 1908 of 2018)

Haridas Kundu.
Vs.
Union of India & ors.

Mr. Vikas Singh ... for the appellant.

Mr. N. C. Bihani,
Ms. Papiya Banerjee Bihani ... for the State.

Re: I.A. CAN 1 of 2018 (Old CAN 1907 of 2018)

This application has been filed to condone the delay of 129 days in filing the instant appeal.

We have heard Mr. Vikash Singh, learned counsel for the appellant and Mr. N. C. Bihani, learned counsel appearing for the respondents / State.

We are satisfied with the reasons assigned in the affidavit filed in support of the application. The delay in filing the instant appeal is condoned.

The application being I.A. CAN 1 of 2018 (Old CAN 1907 of 2018) is allowed.

Re: MAT 241 of 2018

This appeal has been filed by the writ petitioner being aggrieved by the judgment and order 13th September, 2017 passed in W.P. No.23127(W) of 2017. The Division Bench on hearing the appeal under Section 5 of the Limitation Act, 1963 directed the application to be taken up along with this appeal vide order dated 24th May, 2021.

We have elaborately heard Mr. Vikash Singh, learned counsel for the appellant and Mr. N. C. Bihani, learned counsel appearing on behalf of the State / respondent no.8. The appellant is a retired officer from the Alloy Steel Plant, Durgapur. After his retirement in April, 2007, he is said to have deposited his retiral benefits in the State Bank of India, Mejhia Power Station Branch. In May, 2007, he appears to have opened another savings bank account with State Bank of India, Nandanpur Branch and deposited a sum of Rs.1,50,000/- in a term deposit with the said bank. Thereafter, in 2016, he appears to have deposited Rs.5,00,000/- in the said bank account. The bank account has been attached pursuant to a certificate issued by the Securities and Exchange Board of India, Eastern Regional Officer, Kolkata (hereinafter referred to the "SEBI") vide a certificate bearing no.1189 of 2017. Admittedly, the name of the appellant does not find place in the said certificate which has been issued under Section 28A of Securities and Exchange Board of India Act, 1992 read with Section 222 of the Income Tax Act, 1961 (hereinafter referred to as the "IT Act"). It is not in dispute that the name of the appellant's son, namely, Mr. Budhan Chandra Kundu, finds place in the certificate at serial no.10. The appellant prayed for quashing the order of attachment and freezing the bank accounts both, savings and term deposits, which have been passed by the SEBI. The appellant approached the writ Court contending that the bank has fraudulently freezed the savings bank and term deposits account of the appellant. Further, the appellant would contend that no notice was issued to the appellant before issuing the order of attachment of the bank accounts. Contending that the action of the SEBI is illegal, the writ petition was filed. The Learned Single Bench by order dated 13th September, 2017 dismissed the writ petition directing the appellant to avail the alternative remedy. Aggrieved by such order, the appellant is before us.

We have elaborately heard Mr. Singh, learned counsel for the appellant. We have also heard Mr. N. C. Bihani, learned counsel for the State of West Bengal. The learned counsel for the appellant submitted that the power under Article 226 of the Constitution of India can be exercised by this Court for issuing various categories of writs and mere existence of an alternative remedy cannot operate as a bar for entertaining the writ petition. The contention advanced by the learned counsel for the appellant is that in terms of sub-Section (3) (iii) of Section 226 of the IT Act, no copy of the notice ought to have been forwarded to the appellant whose name admittedly did not feature in the order passed by the SEBI freezing the bank account. It is further submitted that in somewhat identical circumstances, a learned Single Bench of the High Court of Karnataka in the case of **Mrs. Beena Muralidhar Vs. Tax Recovery Officer and Anr.** in **W.P. No.16100/2019 (T-IT)** dated **18th July, 2019** had allowed a writ petition. We have carefully considered the submissions made by the learned counsel for the appellant. The legal position as to the jurisdiction of this Court under Article 226 of the Constitution of India is well-settled and no longer res integra. It is no doubt true that mere existence of an alternative remedy will not be an absolute bar for entertaining a writ petition. Nevertheless, no universal rule can be laid down as to under what circumstances, the Court will exercise jurisdiction under Article 226 of the Constitution of India or refuse to do so. The learned counsel for the appellant in support of his contention placed reliance on the celebrated decision of the Hon'ble Supreme Court in **Whirlpool Corporation – Vs. Registrar of Trade Marks, Mumbai & Ors.** reported in **(1998) 8 SCC 1**. In fact, in a recent decision, the Hon'ble Supreme Court has pointed out that alternative remedy cannot operate as a bar in at least three contingencies where the writ petition has been filed for enforcement of any fundamental right or where there has been violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction and/or where vires of the Act is challenged. The appellant seeks to bring his case within the ambit of the exception which has been drawn by the Hon'ble Supreme Court to show that the order of attachment is in violation of principles of natural justice and this argument is sought to be buttressed by referring to Section 226(3)(iii) of the IT Act. Be it noted that Section 226 of the IT Act deals with other modes of recovery. Sub-Section (1) of Section 226 states that where no certificate has been drawn up under Section 222, the assessing officer may recover the tax by one mode or modes provided in Section 226. From the recovery certificate placed before us by the learned counsel appearing for the appellant, we find that the certificate has been issued under Section 28A of the SEBI Act of 1992 read with Section 222 of the IT Act. Therefore, the provisions of Section 226 of the IT Act cannot be resorted to by the appellant as it deals with cases where no certificate has been drawn under Section 222 of the IT Act. In any event, the certificate of recovery and the consequential attachment and freezing of the bank account and the term deposits is in exercise of the powers conferred under the SEBI Act of 1992. The said enactment is a special statute and it is a self-contained code as that of the IT Act. Therefore, on the facts set out by the appellant, we are not inclined to exercise our jurisdiction under Article 226 of the Constitution of India and we agree with the conclusion arrived at by the learned Single Bench.

Insofar as the reliance placed by the learned counsel for the appellant on the decision of the High Court of Karnataka in **Mrs. Beena Muralidhar (supra)** is concerned, we are of the view that the said decision may not render assistance to the case of the appellant as that was a case where no certificate was drawn up under Section 222 of the IT Act. Therefore, the said decision is distinguishable on facts.

For such reasons, the order impugned does not call for interference and the appeal stands dismissed.

We restore the liberty granted to the appellant by the learned Single Bench and we permit the appellant to file appropriate application before the competent authority with a prayer for lifting the order of attachment and de-freezing the bank account and term deposit account under the relevant statute and while entertaining such an application, the concerned authority shall endeavour to consider the application on merits by excluding the period during which the writ petition was pending before this Court and till receipt of the certified copy of this judgment and order while computing limitation.

Re: I.A. CAN 2 of 2018 (Old CAN 1908 of 2018)

In view of the dismissal of the appeal itself, nothing survives in the stay application and therefore, the stay application is also dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties expeditiously upon compliance of all legal formalities.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)