IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.08.2021

PRONOUNCED ON : 13.09.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.Nos.2614 and 2615 of 2012
and
M.P.Nos.1 & 2of 2012

The Government of India,
Ministry of Finance,
Department of Revenue,
Directorate of Enforcement,
Represented by
The Joint Director of Enforcement,
Shastri Bhavan, 3rd floor, 3rd Block,
No.26, Haddows road,
Chennai-600 006.

... Appellant in
W.A.Nos.2614 & 2615 of 2012

-vs-

1.M/s.Indian Bank.
Represented by its Chief Manager,
Asset Recovery Management Branch I,
55, Ethiraj Salai, Egmore,
Chennai- 600 016.

2.Palpap Ichinichi Software International Ltd.,
Represented by its Managing Director,
Door No.3/17, GST Road,
St Thomas Mount,
Chennai-600 016.

... Respondents in
W.A.No.2614 of 2012

1.M/s.Palpap Ichinichi Software International Ltd.,
Represented by its Managing Director,
Door No.3/17, GST Road,
St Thomas Mount,
Chennai-600 016.

2.The Adjudicating Authority,
Prevention of Money Laundering,
4th floor, Room No.25,
Jeevan Deep building, Parliament Street,
New Delshi-110001.

3.M/s.Indian Bank,
Represented by its Chief Manager,
Asset Recovery Management Branch I,
55, Ethiraj Salai, Egmore,
Chennai-600 008.

... Respondents in
W.A.No.2615 of 2012

Common Prayer: Writs Appeals filed under Clause 15 of the Letters Patent against the order dated 11.07.2012 passed in W.P.No.4696 of 2012 and 12854 of 2012 by a learned Single Judge to allow the Writ Appeals and to set aside the order of this Court.

Prayer in W.P.No.4696 of 2012:
Writ Petition filed Under Article 226 of the Constitution of India,to issue a Writ of Certiorari Mandamus Calling for the records of the 1st respondent namely Directorate of Enforcement in files No. ECIR/06/CZO/ PMLA/2009 ECIRs 27 and 35/CZO/PMLA/2010 and quash the order dated 22.02.2012.

Prayer in W.P.No.12854 of 2012:
Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus Calling for the records of the respondent in files No. ECIR/06/CZO/PMLA/2009 ECIRs 27 and 35/CZO/PMLA/2010 including the provisional attachment order dt 22.2.2012 issued by the 1st respondent and the further confiscation proceedings in OC No. 129/2012 pending before the Second Respondent and quash the same.

For Appellant in both Writ Appeals	: M/s.Hema Babu
For R1 in W.A.No.2614 of 2012	: Mr.N.Balachandar
For R2 in W.A.No.2614 of 212	: Mr.B.Kumar senior counsel for Mr.B.Natarajan
For R1 in W.A.No.2615 of 212	: Mr.B.Kumar senior counsel for Mr.B.Natarajan
For R2 in W.A.No.2615 of 2012	: No appearance

For R3 in
W.A.No.2615 of 2012 :M/s.Aiyar & Dolia

COMMON JUDGMENT

V.SIVAGNANAM, J.

These Writ Appeals have been preferred against the common order dated 11.07.2012 passed in W.P.Nos.4696 of 2012 and 12854 of 2012 by a learned Single Judge of this Court.

For the sake of convenience, the parties are referred to by their names.

2.The facts leading to the filing of the Writ appeals are stated below:

2.1. W.P.No.4696 of 2012 was filed by the Indian Bank and W.P.No.12854 of 2012 was filed by Palpap Ichinichi Software International Limited. Both the writ petitions were allowed by the learned Single Judge of this Court. In view of the inter connectivity of the issue involved in these two Writ Appeals, they are considered and decided by this common judgment.

2.2. The Indian Bank filed W.P.No.4696 of 2012 with a prayer to issue a Writ of Certiorari calling for the records on the file of the Directorate of Enforcement, in file No.ECIR/06/CZO/PMLA/2009, ECIRs 27 and 35/CZO/PMLA/2010 and quash the order dated 22.02.2012.

2.3. Palpap Ichinichi Software International Ltd. filed W.P.No.12854 of 2012 with a prayer to issue a Writ of Certiorari calling for the records of the respondent in files No.ECIR/6/CZO/PMLA/2009, ECIRs 27 and 35/CZO/PMLA/2010 including the provisional attachment order dated 22.02.2012 issued by the Directorate of Enforcement and the further confiscation proceedings in OC.No.129/2012 pending before the adjudicating authority and quash the same.

2.4. Palpap Ichinichi Software International Limited, along with W.P.No.12854 of 2012, had filed M.P.No.1 of 2012, wherein this court granted limited stay with regard to confiscation proceedings.

2.5.The Indian Bank, along with W.P.No.4696 of 2012, had filed M.P.No.1 of 2012, wherein, this Court granted interim stay.

2.6.The learned single judge, after considering the arguments and based on records, allowed both the writ petitions vide common order dated 11.07.2012 and set aside the provisional order of attachment dated 22.02.2012 as well as all further proceedings pursuant to the appeal, including the original complaint and the order of the confirmation dated 26.06.2012. Aggrieved by the said order, the Government of India, Ministry of Finance, Department of Revenue, Director of Enforcement filed these Appeals.

3. Learned counsel appearing for the appellant-Directorate of Enforcement submitted that Palpap Ichinichi Software International Ltd. availed three Medium Term Loans and OCC (Open Cash Credit Facility) totaling to an amount of Rs.4.47 crores from Indian Bank, Anna Nagar Branch, Chennai, by giving a forged third party collateral security of an immovable property in Chennai during the period between October 2005 and January 2006. Palpap Inchinichi Software International Limited availed 161 personal loans in the names of various fictitious persons purportedly, its employees to the extent of Rs.1.66 crores from the State Bank of India, Vivekananda House Branch, Chennai, during the period between August 2005 and February 2006. Palpap Inchinichi Software International Limited. availed 148 personal loans in the names of fictitious persons purportedly, employees of his company Palpap Inchinichi Software International Limited, Chennai to the extent of Rs.2.22 crores from the Bank of India, Anna Salai, Chennai during the period between May 2007 and October 2007.

4. Learned counsel further contended that on a complaint dated 31.01.2008 lodged by the Vigilance Section of Indian Bank, Chennai and another complaint dated 11.11.2008 lodged by the Regional Manager, Region II State Bank of India, Chennai, the FIRs No.RC.1/E/2008-CBI-EOW/Chennai dated 06.02.2008 and RC.11/E/2008-CBI-EOW/Chennai dated 14.11.2008 were registered by the Central Bureau of Investigation, Economic Offences Wing, Chennai and subsequently Charge Sheet No.21/2008 dated 20.10.2008 and Charge Sheet No.09/2009, dated 11.12.2009 respectively, were filed before the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai along with relevant documents against Palpap Inchnichi Software International Limited represented by its Managing Director, Shri P.Senthil Kumar and others, inter-alia, for having defrauded various banks by way of forged documents and availed various loans under Sections 120B r/w 420, 467 & 471 of IPC which were scheduled offences in terms of Section 2(y) of the Prevention of Money Laundering Act, 2002 (in short “ The PMLA’’)

5. Further, learned counsel contended that pursuant to the above said FIRs and complaints received from the Central Bureau of Investigation, the Directorate of Enforcement registered the Enforcement Case Information Reports vide ECIR Nos.27 & 35/CZO/PMLA/2010 in File No.ECIR/06/CZO/PMLA/2009, to ascertain the proceeds of crime as defined under Section 2(u) of the PMLA, since Palpap Inchinichi Software International Limited, has been charged of having committed the offences under Sections 120B r/w 420, 467 & 471 of IPC which were scheduled offences in terms of section 2(y) of the PMLA. Further contended that in exercise of the powers conferred under sub-section (1) of Section 5 of the PMLA read with Notification No.GSR 441(E), dated 01.07.2005 and in terms of the authorization dated 07.02.2007 and Technical Circular No.3 of 2011, dated 27.09.2011 issued by the Director of Enforcement, Directorate of Enforcement, New Delhi, the Joint Director, Directorate of Enforcement has considered the facts and circumstances of the case and evidences available on record, including the materials placed before him and issued the Provisional Attachment Order dated 22.02.2012. The Joint Director has reasons to believe that the above said property which is in the form of a land with constructed building situated at No.3/17, G.S.T.Road, St. Thomas Mount, Chennai-16 (which was bought and renovated for a total cost of Rs.1.41 crores) which is held in the name of Palpap Ininicihi Software International Limited, Chennai represented by Shri P.Senthilkumar has been acquired out of proceeds of crime as defined in Section 2(u) of the PMLA and the said property is projected as untainted property by Palpap Inchinichi Software International Limited.

6.Further, learned counsel contended that the details of the immovable property (proceeds of crime) were also recorded in writing in the Provisional Attachment Order dated 22.02.2012. The Joint Director has recorded in writing in his order dated 22.02.2012 that he has reason to believe that in case such properties (proceeds of Crime) are not attached, they are likely to be concealed, converted, disposed, parted, transferred or dealt with in any manner which will result in frustrating any proceedings under the PMLA relating to confiscating of such proceeds of crime.

7. The learned counsel further submitted that the learned Single Judge failed to take into consideration the main object of the PMLA and further contended that any action that had been taken by the Directorate of Enforcement is only as per the provisions contemplated in law. In respect of number of scheduled offences, there will be many victims of crime and if for that reason, such proceeds are not attached, the very purpose of the PMLA shall be defeated and he further contended that the interim order for stay on Attachment dated 28.02.2012 given by the learned Single judge was for a limited period of

four weeks which ended on 27.03.2012. The stay with regard to Attachment was neither extended by this Court nor did the petitioner therein seek to extend the said stay. The department was under a statutory obligation to file the complaint before the Adjudicating Authority within a period of 30 days from the date of passing of the provisional attachment order, as there was no stay on the filing of the same. Further, during the period of interim stay which was only for Adjudication Proceedings, no prejudice has been caused to any of the respondents as the physical possession of the property was with them only and reiterated other grounds raised in the appeal and thus pleaded to set aside the order of the learned Single Judge and allow these appeals.

8.Learned counsel appearing for the Indian Bank submitted that the Indian Bank had sanctioned three term loans under a sanction ticket dated 02.01.2006 to Palpap Ichinichi Software International Limited. Palpap Ichinichi Software International Limited, had purchased a property at No.3/17, GST Road, St. Thomas Mount, Chennai-16 of the sale deed dated 15.02.2006, registered as document No.280 of 2006 in the office of the Joint Sub Registrar, Saidapet. Palpap Ichinichi Software International Limited, had not repaid the loan amount. Hence, the bank has taken steps to bring the property to sale in terms of the provisions of the SARFAESI Act, 2002. Meanwhile, the Indian Bank came to know about the order of provisional attachment by the appellant. Hence, the Indian Bank filed W.P.No.4696 of 2012 and further, contended that the property is under the control of the bank throughout and as such, the mortgaged property cannot be attached or confiscated. Further, there is no charge of money laundering against the bank. As far as the bank loan is concerned, the bank has to recover its outstanding dues by taking over the mortgaged properties in case the concerned borrowers are not able to pay back the credit facilities availed by them and by way of the SARFAESI Act provisions. These properties are being taken in possession by the bank so that recovery can be made. To support his argument, he relied upon the Full Bench judgment of this Court reported in [(2016) 6 CTC 769] Assistant Commissioner (CT) Anna Salai-III Assessment Circle, 'Sire Mansion' vs. Indian Overseas Bank, Rep. by its Manager, Recovery Administrative Branch Central Office and Another and thus pleaded to dismiss the appeals.

9. Learned counsel appearing for Palpap Inchinichi Software International Limited, submitted that the subject matter of the property is not 'proceeds of crime' within the meaning of Section 2(1) (u) of the PMLA Act. The entire sale consideration for the purchase of property had been given by the bank to the vendors. The sale consideration was given by the bank directly to the vendors. The property was mortgaged to the bank and the bank has a right to recover its dues by bringing the property to

sale in exercise of the power conferred under the SARFAESI Act. Palpap Inchinichi Software International Limited had not committed any offence under the PMLA and thus pleaded to dismiss these appeals.

10. Heard learned counsel for the concerned parties and perused the materials available on record.

11. The admitted facts of the case are that on 31.01.2008 the Indian Bank lodged a complaint to the Superintendent of police, Central Bureau of investigation against Palpap Ichinichi Software International Ltd., accusing that the Officers of the company had defrauded the bank. The complaint lodged by the Indian Bank was registered as RC No.1/E/2008-CBI-EOW/Chennai dated 06.02.2008. Similarly, the State Bank of India lodged a complaint against the Palpap Ichinichi Software International Limited, that complaint was registered in RC.No.11/E/2008-CBI-EOW/Chennai dated 14.11.2008. The Indian Bank lodged another complaint against Palpap Ichinichi Software International Ltd., which was registered in RC.No.9/E/2008-CBI-EOW-Chennai dated 29.09.2008. After investigation, a charge sheet was filed in No.21 of 2008 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore Chennai, and another charge sheet was also filed in No.9 of 2009 dated 11.12.2009 with respect to the complaint filed by the State Bank of India. The Directorate of Enforcement registered the Enforcement Case Information Reports vide ECIR Nos.27 & 35/CZO/PMLA/2010 in File No.ECIR/06/CZO/PMLA /2009, to ascertain the proceeds of crime as defined under Section 2(u) of the PMLA, since Palpap Inchinichi Software International Pvt. Ltd. has been charged of having committed the offences under Sections 120B r/w 420, 467 & 471 of IPC which were scheduled offences in terms of section 2(y) of the PMLA. Thereafter, the Joint Director of Enforcement passed an order bearing No.01 of 2012 on 22.02.2012 under Section 5(1) of the PMLA, 2002, provisionally attaching the property at old Door No.14, New Door No.17, Trunk Road (G.S.T.Road) St. Thomas Mount, Chennai-16. The order was passed on the premise that the said property purchased in the name of the company was acquired out of the proceeds of crime as defined in Section 2(1) (u) of the PMLA, 2005 and that therefore, it is liable for adjudication and confiscation in terms of Section of the Act.

12.After this, Palpap Ichinichi Software International Ltd., and Indian Bank have filed W.P.Nos. 4696 and 12854 of 2012. Pending disposal of the writ petitions, the Indian bank also sought an order of interim stay of all further proceedings pursuant to the provisional order of attachment. Unfortunately, the Adjudicating Authority has confirmed the attachment by its order dated 26.06.2012 passed during the pendency of the writ petitions and during the operation of the interim stay order without impleading the Indian Bank. The Adjudicating Authority, in its order, has also mentioned about the pendency of writ petitions.

13. The provisional order of attachment was passed by the Joint Director with regard to the property on 22.02.2012. Knowing this fact, immediately, the Indian Bank filed W.P.No.4696 of 2012 along with M.P.No.1 of 212 on 27.02.2012. The next day, on 28.02.2012, this Court granted an order of interim stay. The prayer in M.P.No.1 of 2012 in W.P.No.4696 of 2012 filed by the Indian Bank runs as follows:

> ''Petition praying that in the circumstances stated therein and in the affidavit filed therewith, this Court proceedings of the order dated 22.02.2012 of the first respondent viz., the Directorate of Enforcement in File No.ECIR/06/CZO/PMLA/2009, ECIRs 27 and 35/CZO/PMLA/2010.''

> On the above prayer, this Court passed an interim order on 28.02.2012 which reads as follows:
>
> ''Interim stay for a period of four weeks. Notice. Private notice is permitted.
>
> In the meantime, since it is reported by the petitioner-bank that the subject property is going to be auctioned tomorrow under SARFAESI Act, by the petitioner-Bank, the sale proceeds of the auction shall be kept in an interest bearing lien account until further'orders.''

14. On admission of the writ petition and granting an order of Interim stay, notice was given to the counsel for the Directorate of Enforcement and he entered appearance on 13.03.2012. Further, it is evident that the Directorate of Enforcement had knowledge about the interim order of stay. In spite of the stay order, the Deputy Director filed original complaint in O.C.No.129 of 2012 on the file of the Adjudicating Authority on 15.03.2012. Further, in the original complaint, the Deputy Director did not make the Indian bank as a party as interested party in the property. The Directorate of Enforcement had an obligation to implead the Indian Bank as a party interested in the property attached under Section 8(2) of the PMLA Act, which reads as follows:

> '' (2) The Adjudicating Authority shall, after--

(a) considering the reply, if any, to the notice issued under sub-section (1);

(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.''

15.The above said provision makes it obligatory on the part of the Adjudicating Authority to hear the interested party i.e., the Indian bank. Unfortunately, the Adjudicating Authority, without impleading and ordering notice to the Indian Bank, confirmed the attachment by an order 26.06.2012 during the pendency of the Writ Petitions and during the operation of the stay order.

16.The Hon'ble Apex Court has repeatedly held that any proceeding initiated, conducted or concluded in violation of an order of interim stay or injunction is non-est in the eye of law and the Adjudicating Authority should have waited till the disposal of the writ petitions or till the order of stay passed by this court is vacated. The action of the Adjudicating Authority despite having the knowledge of interim order of stay is clearly in defiance of the said interim order of stay. Therefore, the whole proceedings are vitiated and even the order dated 26.06.2012 passed during the pendency of the writ petitions shall be illegal and liable to be set aside as null and void.

17. Learned Single Judge having considered all the facts of the case allowed the Writ Petitions. Therefore, we find no reason to interfere with the order of the learned Single Judge. Therefore, we confirmed the order of the learned Single Judge.

18. In the result, these Writ Appeals stand dismissed. No Costs. consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vsn
To

1.The Government of India,
Ministry of Finance,
Department of Revenue,
Directorate of Enforcement,
Represented by
The Joint Director of Enforcement,
Shastri Bhavan, 3rd floor, 3rd Block,
No.26, Haddows road,
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2.The Adjudicating Authority,
Prevention of Money Laundering,
4th floor, Room No.25,
Jeevan Deep building, Parliament Street,
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3.M/s.Indian Bank,
Represented by its Chief Manager,
Asset Recovery Management Branch I,
55, Ethiraj Salai, Egmore,
Chennai-600 008.

+1 cc to Mr.N.Balachandar, Advocate Sr.NO.46264
+1 cc to M/s.Hema Babu, Advocate Sr.NO. 46278

W.A.Nos.2614 and 2615 of 2012
and M.P.Nos.1& 2 of 2012

pa(CO)
A.SK(26.10.2021)