

3 31.03.2022
to
5 PA(RB)

FMA 290 of 2022
(IA No. CAN 1 of 2022)

ENFORCEMENT DIRECTORATE
Vs.

MAGMA HDI GENERAL INSURANCE
COMPANY LTD. AND ORS.

With

MAT 252 of 2022
(IA No. CAN 1 of 2022)

ENFORCEMENT DIRECTORATE
Vs.

MAYANK PODDAR AND ORS.

With

MAT 255 of 2022
(IA No. CAN 1 of 2022)

ENFORCEMENT DIRECTORATE
Vs.

SANJAY CHAMRIA AND ORS.

Mr. Ranjay Kumar Roy, Advocate
...for the Appellant

Mr. Ratnanko Banerji, Sr. Advocate
Ms. Iram Hassan, Advocate
...for the respondent no. 3

Ms. Mahima Cholera,
Mr. Soumabho Ghosh, Advocates
... for the respondent No. 4

Mr. P. Chidambaram, Sr. Advocate
Mr. Abhrajit Mitra, Sr. Advocate
Mr. Debanjan Mandal,
Mr. Sourabh Bagelia,
Mr. Amar Gandhi,
Mr. Sanket Sarangi
Ms. Nidhi Jha, Advocates
... for the respondent no. 5

This order will govern disposal of FMA 190 of 2022, MAT 252 of 2022 and MAT 255 of 2022 since it is pointed out that in all these appeals, similar orders of the learned Single Judge are under challenge. FMA 290 of 2022 is directed against the order dated 17th January, 2022 in WPA 20930 of 2021, MAT 252 of 2022 against the order dated 17th January, 2022 in WPA 21014 of 2021 and MAT 255 of 2022 against the order dated 17th January, 2022 in WPA 21011 of 2021.

The writ petitioners had approached the Writ Court challenging the order dated 24th November, 2021 as also the show-cause notice dated 21st January, 2020 issued by the appellant. It is undisputed that the writ petitioner, after filing an appeal under Section 19 of Foreign Exchange Management Act, 1999 (for short, 'the FEMA, 1999') before the Appellate Tribunal, had raised the grievance before the Writ Court. In view of this, objection was raised by the appellant about the maintainability of the petition. Having regard to the fact that the order impugned in the writ petition was questioned on the ground of violation of natural justice, lack of jurisdiction, failure to provide appropriate reasons and perversity, learned Single Judge has permitted the appellant to file affidavit even on the question of jurisdiction and natural justice and has stayed the operation of the impugned order for two

months. Subsequently, by order dated 14th March, 2022, learned Single Judge has extended the interim order till 12th April, 2022.

Submission of learned Counsel for the appellant is that the writ petitioner (respondent no. 1, herein) cannot be permitted to avail parallel remedy by filing a writ petition before the High Court, and appeal against the impugned order before the Tribunal. He has submitted that since the Tribunal is not functioning, therefore, the writ petition should be disposed of by staying the order impugned in the petition till the Tribunal becomes functional, as has been directed in other matters by the learned Single Judge by the order dated 01st December, 2021 in WPA 17534 of 2021 and by the Hon'ble Division Bench in FMAT 146 of 2021 by order dated 09th September, 2021. In support of his submission that parallel remedies cannot be adopted, he has placed reliance upon judgments of the Hon'ble Supreme Court in the matter of **Karuna Singh vs. State of NCT of Delhi and Anr.** reported in **AIR 2012 SC 2814** and in the matter of **Bombay Metropolitan Region Development Authority, Bombay vs. Gokak Patel Volkart Ltd. and Others** reported in **1995 AIR SCW 808**.

Learned Counsel for the respondent (writ petitioner) has submitted that this appeal is not

maintainable as it is directed against the interlocutory order of the Writ Court. In support of his submission, he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Shyam Sel and Power Limited and Another vs. Shyam Steel Industries Limited** dated **14th March, 2022** passed in **Civil Appeal No. 1984 of 2022**. He has also submitted that the Tribunal is not functioning, therefore, the writ petitioners are compelled to approach the Writ Court and that the appeal before the Tribunal has been filed and kept pending, only as protective measure, in case, if the respondent (writ petitioner) is required to approach the Tribunal. He submits that issue needs to be decided early as by virtue of the impugned order, the writ petitioner is not permitted to raise the capital, therefore, interim order by the learned Single Judge is not an adequate protection.

Having heard learned Counsel for the parties and on the perusal of the record, it is noticed that the issue of maintainability of the writ petition is yet to be decided by the learned Single Judge. Appellant has an option to file the affidavit before the learned Single Judge confining to a preliminary objection at the first instance, questioning the maintainability of the petition, reserving his right to file the subsequent affidavit to contest the issue on merit, if the need so arises. If the appellant feels

that any modification in the impugned order is required, then also he has the option to apply for the same before the learned Single Judge. Issues which are raised before this Court need not be gone into at this stage by this Court as none of these issues have been finally decided by the learned Single Judge. Hence, the parties are at liberty to raise all legally permissible issues before the learned Single Judge. It is pointed out that the matter is listed before the learned Single Judge on 04th April, 2022.

Hence, considering the aforesaid judgment of the Hon'ble Supreme Court in the matter of **Shyam Sel (Supra)** we dispose of the present appeal without interfering in the impugned order but permitting the parties to file appropriate application/affidavit and raise all legally permissible issues before the learned Single Judge and we hope that the application/affidavit, so filed and issue raised, therein, will be duly considered by the learned Single Judge in accordance with law.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)