

27.06.2022
sayandeep
Sl. No. 06
Ct. No. 05

WPA 9699 of 2022

Hiren Panchal & Anr.
Vs.
Union of India & Ors.

Mr. Sudip Deb
Mr. Riju Ghosh
Mr. Sumitava Chakraborty
Ms. Sayantika De
Mr. Aranyak Saha

..... for the petitioners

Mr. Sailendra Kumar Tiwari

.... for the respondent Nos. 1 & 3

Mr. Loknath Chatterjee

..... for the respondent Nos. 3 to 6

The short point before the Court is whether the statutory window for provisional attachment of the property under Section 5(1)(b) of The Prevention of Money-Laundering Act, 2002 (PMLA) would be available to the Authority under Section 5 taking recourse to the orders passed by the Supreme Court in *Suo Motu Writ Petition (Civil) No.(S) 3/2020*. By the said series of orders, the Supreme Court extended the period of limitation prescribed under the general and special laws with effect from 15th March, 2020 till further orders.

The facts in the present case relate to a provisional order of attachment dated 30th September, 2021 relating to immovable properties belonging to M/s. K.P. Garments Private Limited represented by its directors who are the petitioners before this Court. The

petitioner no. 1 replied to the impugned order on 3rd January, 2022. There is no other subsequent factual development on record after the petitioner's reply. The Enforcement Directorate (ED) has now called the petitioners for a hearing on 27th June, 2022 in continuation of the ECIR case of 2020 dated 17th February, 2020.

The petitioners are before this Court for contending that the ED cannot travel beyond the statutory limit of 180 days or take the benefit of the orders passed by the Supreme Court for the benefit of litigants during the Covid period. Learned counsel appearing for the petitioners submits that the question of life and liberty of the petitioners would override all other conditions in the present case. It is also submitted that the 180 days expired on 31st March, 2022; taken from the provisional order of attachment dated 30th September, 2021.

Learned counsel appearing for the Directorate of Enforcement, relies on the Supreme Court orders passed in *Suo Motu* Writ Petition (Civil) No.(S) 3/2020 to urge that by the said orders the limitation period provided in the PMLA also stood extended. Counsel submits that the petitioners, having participated in the process, cannot now seek reliance on the statutory time-limit under the PMLA. Counsel places the object of

the PMLA to contend that the Authorities must be at liberty to take all steps with regard to proceeds of crime.

After hearing learned counsel, the main issue for adjudication is whether the Enforcement Directorate (ED) can seek refuge under the orders passed by the Supreme Court extending the period of limitation in all general and special laws. The very stand of the ED, as also supported by the material on record, is that the ED has admittedly over-shot the statutory time-limit of 180 days under the PMLA. The provisional order of attachment is of 30th September, 2021 and the notice of hearing now allegedly received by the petitioners is of June, 2022. The 180 days expired on 31st March, 2022.

The writ petition was filed on 26th May, 2022 and seeks setting aside of the provisional order of attachment dated 30th September, 2021 relying on the 180 days window available to the ED.

The decisions placed before this Court in support of and against the statutory time-limit can be divided into two groups. In *Rajendra Kumar Murarka vs Mohsina Tabassum; W.P.A. 10728 of 2021*, a learned Single Judge of this Court held that the Supreme Court extended the time for all pending proceedings and hence the time-limit for adjudication of 180 days may be deemed to have been extended. The Division Bench in *M.A.T. 627 of 2021* declined to interfere with the view

of the learned Single Judge. A Division Bench of this Court interfered with the Single Bench order in *Adjudicating Authority (PMLA) vs. Sh. Gobinda Das; M.A.T. 1168 of 2021* holding that the Adjudicating Authority cannot be seen as a “non-litigant” with reference to the Supreme Court orders. The order of the learned Single Judge (which the petitioners have relied upon in the present writ petition before this Court) was accordingly vacated on that basis. *Prakash Corporates vs Dee Vee Projects Limited; (2022) 5 SCC 112*, restricted the application of *S. Kasi v. State; (2021) 12 SCC 1* (also relied upon by the petitioners in the present case) and declined to apply the ratio of *S. Kasi* to the matter of filing a written statement by the defendant in a civil suit.

Knight Riders Sports Private Limited vs Adjudicating Authority (PMLA); W.P.A. No. 4845 of 2021 – is a decision of a learned Single Judge construing Section 5(3) of the PMLA as restricting the orders of attachment to a period of 180 days. The respondents were restrained from taking any other action on the basis of the provisional order of attachment on that basis. *Gobindo Das vs Union of India; AIR 2021 CAL 344*, was also a decision of a learned Single Judge of this Court where, relying on *S. Kasi*, the orders of the Supreme Court were interpreted to benefit litigants who

have to avail of the remedy under the applicable statute. As stated above, this order was vacated by the Division Bench in *MAT 1168 of 2021*. In *S. Kasi vs State*, a 3-Judge Bench of the Supreme Court held that the order passed by the Supreme Court on 23rd March, 2020 in the *Suo Motu* writ petition was to protect litigants/lawyers whose petitions/applications/suits/appeals and all other proceedings would become time barred by reason of not being able to physically file such proceedings. The Supreme Court held that the order was for the benefit of the litigants who have to take remedy in law as per the applicable statute. As stated above, *Prakash Corporates* restricted *S. Kasi* to the facts in that particular case.

Therefore, the present position of Judicial precedents is (a) one order of a Co-ordinate Bench holding in favour of the petitioner; (b) one order of Co-ordinate Bench construing the 180 window in favour of the ED with reference to the Supreme Court order and undisturbed in appeal; (c) one order of a Co-ordinate Bench holding in favour of the petitioner but vacated in appeal and (d) two decisions of the Supreme Court one in favour of the petitioner before the Court and the other decision restricting the application of the former decision.

The starting point however remains the order passed by a 3-Judge Bench of the Supreme Court on 23rd March, 2020 in *Suo Motu* Writ Petition (C) 3/2020. Since the whole matter relates to interpretation of this order and its effect on the respondents before this Court, the relevant part of the order is set out-

“This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/ applications/ suits/ appeals/ all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March, 2020 till further order/s to be passed by this Court in present proceedings.”

It is clear from the above that the order was intended as a special measure in the wake of the pandemic to address the restrictions on movement and the consequential difficulties faced by litigants in approaching Courts/Tribunals for instituting proceedings. This would be evident from the words *“difficulties that may be faced by litigants across the country in filing their petitions/applications..... within the period of limitation prescribed....”* read with *“.... to*

ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country.....". The intention of the Supreme Court would be reinforced by the subsequent order dated 8th March, 2021 passed in the *Suo Motu* writ petition. In paragraph 2 of the said order, the intention is expressed in the following manner.

"2.....

3. *The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of The Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."*

The order dated 10th January, 2022 (relied on by the respondents before this Court) also refers to the object of the first order, i.e. of 23rd March, 2020, in the very first line. The order starts with

"In March, 2020, this Court took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing petitions/ applications/ suits/appeals/all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the Covid-19 pandemic."

Paragraph 5 of the said order taking into consideration, the arguments advanced on behalf

of the Supreme Court Advocates on Record Association (SCAORA) coupled with the impact of the surge of the pandemic and the adversities faced by litigants in the prevailing conditions (words used by the Supreme Court), the following direction was issued.

“5.....

(1) The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.”

Hence, the Supreme Court on 10th January, 2022 restored the order of 23rd March, 2020 to meet the on-going crisis caused by Covid-19 and to ensure that litigants do not lose their right of approaching the Courts for filing petitions and other proceedings by reason of the prescribed limitation period under the general or special laws. The orders passed by the Supreme Court must hence be read together and the order of 10th January, 2022 must be seen in the context of merely extending the benefit given to litigants on and from 15th March, 2020 (the order of 23rd March, 2020 was given effect from 15th March, 2020).

It is further relevant to state that the orders passed by the Supreme Court in the *Suo Motu* writ petition mention specific provisions in specific statutes such as Sections 23(4) and Section 29A of The Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and Section 138 *provisos* (b) and (c) of the Negotiable Instrument Act, 1881. On an examination of the specific statutes mentioned by the Supreme Court, it will be seen that all these statutes prescribed provide for specific time frame for instituting a suit, filing a claim/counter claim or an application in furtherance of a remedy provided under the statute. The intention was hence to preserve the right of a litigant to seek a remedy under the Act and not to deprive a litigant of such right of remedy where the litigant has not been able to physically come to the Court or to the Tribunal to file the proceeding in aid of the right.

The right thus conferred by the Supreme Court is in relation to the prescribed period of limitation in instituting a proceeding.

The statutory time frame of 180 days has been prescribed under Section 5(1)(b) of the PMLA where the designated Authority may by order in writing, provisionally attach a property being

proceeds of crime for a period not exceeding 180 days from the date of the order. The third *proviso* to Section 5(1) of the PMLA is an aid to the computation of the 180 days window. Section 5(3) is set out below-

“5. Attachment of property involved in money-laundering. – (1).....

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (3) of section 8, whichever is earlier.”

Section 5(3) is a clear embargo on the order of attachment continuing to have effect after the expiry of 180 days. Section 5(1) designates the authority and the steps to be taken for proceeding against any person who is in possession of any proceeds of crime. The section is hence concerned with the procedure to be undertaken for provisional attachment of a property subject to the fulfillment of the other conditions in Section 5. A prescribed procedure after the same has been initiated cannot be equated to institution of a suit or filing of a petition/application which is a starting point of litigation for a person who seeks relief under a statute. The 180 days window in Section 5 contemplates an end-point whereas the Supreme Court in the *Suo Motu* writ petition sought to protect the starting-point, which was at

the risk of being defeated by reason of the pandemic.

In other words, what was being protected by the orders of the Supreme Court was the right to remedy, not the right to take away a remedy under a given statute. The respondents before this Court seek to do the latter. The only step taken by the ED is the order of the provisional attachment dated 30th September, 2021. No other steps were taken by the ED before the petitioners reply on 3rd January, 2022 or before the expiry of 180 days period on 31st March, 2022. By its inaction and failure to act in terms of Section 5(1)(b) or the other conditions of the said section, the ED has made itself vulnerable to Section 5(3) of the PMLA. The petitioner in turn has been given the breather of exhaustion of the 180 days window from 1st April, 2022 and the ED cannot now revive the proceedings after more than 80 days have passed from the end point of the 180 days period.

In *Rajendra Kumar Murarka*, the Court noted that the writ petitioner had not only participated in the adjudication but the hearing had also been concluded and final orders were awaited. In the appeal from this order, the Division Bench declined to interfere taking into

account that the Single Bench had expressed its wish to finally adjudicate the issue on the strength of affidavits directed to be exchanged by the parties. The Division Bench also took note of the fact that the Single Bench had directed that any decision taken by the Adjudicating Authority would abide by the result of the writ petition. In the present facts, the petitioner has only replied to the ECIR case, which cannot be equated to participating in the proceedings. In *Rajendra Kumar Murarka*, the hearing was complete and final orders remained to be passed.

In *Gobindo Das*, the Appeal Court disagreed with the view of the Adjudicating Authority being a “non-litigant”. The Division Bench was also disturbed by the fact that the bank accounts of the writ petitioners have been debited leaving the balance at zero despite the order of attachment. *Prakash Corporates* dealt with the prescribed statutory time period for filing of the written statement under Order VIII Rule 1 of The Code of Civil Procedure, as amended by the Commercial Courts Act. *Prakash Corporates* also recognised the fact that the decision in *S. Kasi* was concerned with filing of the chargesheet under Section 167(2) of The Code of Criminal Procedure (Cr.P.C.) and

hence would not apply to filing of written statements beyond the prescribed time-limit.

The reasoning in *S. Kasi* would apply to the present case. The Supreme Court recognised that the 23rd March, 2020 order in the *Suo Motu* writ petition was for the benefit of those whose remedy may be barred by time because of not being able to physically come to Court to file proceedings. The Supreme Court made a distinction between the benefit given to litigants and extension of time for filing of a chargesheet by the police as contemplated under Section 167(2) of the Cr.P.C. The Court also noted the element of personal liberty of a person which was required to be protected. Although, the right of the petitioners before the Court is more to do with the right not to be deprived of property save by authority of law - Article 300A, the petitioners have established a case where such right is under threat by the action of the ED. The litigants have been conferred a benefit under Section 5(1)(b) and 5(3) of the PMLA on the failure of the Authority to take action within the specified time frame. If the Authority does fail to take requisite steps, the right to relief arises immediately after exhaustion of the 180

days window and once such right is given to a litigant, it cannot be taken away.

This Court is therefore of the considered view that the petitioners are entitled to the relief claimed. WPA 9699 of 2022 is hence allowed by setting aside the provisional attachment order dated 30th September, 2021 and allowing all consequential benefit of the same to the petitioners.

WPA 9699 of 2022 is accordingly disposed of.

Urgent Photostat certified copies of this order, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)