

Item No.3.

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 29.11.2022

DELIVERED ON:29.11.2022

CORAM:

**THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**FMA 1156 of 2022
With
I.A. No.CAN 1 of 2022**

**Renu Devi Banka & Ors.
Vs.
Union of India & ors.**

Appearance:-

**Mr. Sudhasatta Banerjee,
Mr. Aditya Garodia,
Mr. Pintu Ghosh,
Mr. Shaswat Nayak,
Mr. Ushm Garodia**

...

for the appellant.

Mr. Arijit Chakraborty

....

for the E.D.

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)

1. This intra-Court appeal filed by the writ petitioners against the order dated 12th July, 2022 in W.P.A. No.8539 of 2022. The said writ petition was filed for issuance of a writ of certiorari to quash the show cause notice dated 3rd February, 2022 and complaint case dated 21st October, 2021 insofar as it relates to seizure of a sum of Rs.11.50 lakhs; for issuance of a writ of mandamus to rescind the show cause notice and the said complaint insofar as it relates to seizure of the said sum of Rs.11.50 lakhs and for issuance of a writ of mandamus to direct the official respondents to return the sum of Rs.11.50 lakhs to the appellants / writ petitioners, which according to them, were illegally seized.

2. The learned Single Bench dismissed the writ petition holding that the challenge to the show cause notice is not maintainable at the instance of the appellants / writ petitioners as they are not noticees to the show cause notice. Secondly, the learned Writ Court held that in exercise of the jurisdiction of the Court under Article 226 of the Constitution of India, dispute regarding ownership of the cash could not be decided. Thirdly, the learned Writ Court was of the view that the writ petition before this Court is not maintainable on

account of lack of territorial jurisdiction as the respondents were all situated outside the State of West Bengal. Challenging the correctness of the order, the appellants are before us by way of this appeal.

3. We have heard Mr. Sudhasatta Banerjee, learned Advocate appearing for the appellants and Mr. Arijit Chakraborty, learned Advocate appearing for the Enforcement Directorate.

4. So far as the first ground on which the writ petition was dismissed, in our considered view, the decision of the learned Writ Court cannot be faulted. The appellants being not noticees to the show cause notice could not have maintained a challenge to the show cause notice and the complaint though they restricted their relief only to the extent of a sum of Rs.11.50 lakhs, which was seized by the official respondents. Secondly, the learned Writ Court was also right in arriving at a conclusion that disputed question of fact cannot be adjudicated in a writ proceeding under Article 226 of the Constitution of India, more particularly, when the claim of the appellants / writ petitioners is that the said amount of Rs.11.50 lakhs, which have been seized by the authorities is the property of the

appellants. On the third issue regarding territorial jurisdiction, we partly agree with the finding of the learned Single Bench to the extent that a writ of certiorari or a writ of mandamus cannot be issued to an authority, who is situated outside the State over which the High Court exercises territorial jurisdiction but there is an exception to this Rule, if the litigant is able to show that part of the cause of action arose within the territorial jurisdiction of the Court in which the proceedings are initiated.

5. Be that as it may, we are of the view that the appellants / writ petitioners cannot be left remediless. For which purpose, we have gone through the statutory provisions of the Foreign Exchange Management Act, 1999 (for short, "the Act") and the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 (for short, "the Rules").

6. Section 13 which occurs in Chapter IV of the Act deals with penalties. In terms of sub-Section (1) of Section 13, if any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any

condition subject to which an authorisation is issued by the Reserve Bank of India, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

7. Sub-Section (2) of Section 13 states that any adjudicating authority adjudging any contravention under sub-Section (1) of Section 13 may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holding, if any, of the persons committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

8. The explanation in Sub-Section (2) of Section 13 states that for the purposes of sub-Section 2, property in respect of which contravention has taken place shall include deposits in a bank, Indian currency and any other property, which has resulted out of the conversion of the property. Thus, in terms of Section 13(1) read with sub-Section (2) empowers the adjudicating authority not only to impose penalty but also direct the money to be confiscated to the Central Government.

9. The case of the appellants / writ petitioners is that the sum of Rs.11.50 lakhs, which has been seized is the individual property of the appellants and it has got nothing to do with the noticees and during the seizure operations, though a higher sum was supposed to be seized, on satisfactory explanation being given by the appellants / writ petitioners, an amount of Rs.11.50 lakhs was only seized and not balance amount. The appellants' further case is that they have enough evidence to establish that the said sum of Rs.11.50 lakhs is not the property of any of the noticees as presumed in the complaint lodged by the adjudicating authority.

10. The learned standing counsel appearing for the respondent authorities would submit that the cash, which was not seized was based upon the documents, which were produced by one of the noticees and upon the authority being satisfied that the said sum, which was not seized does not belong to the said noticee. In any event, we are not here to adjudicate these disputed questions, which are best left to the adjudicating authority to consider.

11. As pointed out earlier, the appellants cannot be left remediless, therefore, we have scanned the relevant rules and we find that Rule 4 of the said Rules given enough power to the adjudicating authority to take note of the factors such as the case of the appellants.

12. On a reading of sub-Rule (6) of Rule 4, we find that while holding an enquiry under the said Rule, the adjudicating authority shall have the power to summon and enforce attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating authority, may be useful for or relevant to the subject matter of enquiry. This Rule, in our

opinion, would empower the adjudicating authority to even summon the appellants for the purpose of conducting an enquiry as required to be done under Rule 4 of the said Rules.

13. Therefore, we are of the view that the appellants should be relegated to the adjudicating authority by granting liberty to them to make a representation / application before the adjudicating authority setting out the facts and as to how and on what basis, they claim that the sum of Rs.11.50 lakhs is their property and not the property of any one of the noticees. Since the adjudication proceedings is at the very nascent stage, no prejudice would be caused to the adjudicating process if such course is adopted.

14. For the above reasons, this Court would be empowered to issue such a direction regardless of the fact that the adjudicating authority is situated outside the State of West Bengal and beyond the jurisdiction of this Court as the search and seizure operations had been done in the State of West Bengal, namely, at Kolkata and the seizure of the cash was done at Kolkata. The appellants are permanent residents of Kolkata and therefore, they would be entitled to ventilate their

grievances before this Court to the extent indicated by us in the preceding paragraphs.

15. In the result, the appeal filed by the appellants is partly allowed while affirming the order passed by the learned Single Bench that challenge to the show cause notice at the instance of the appellants is not maintainable and the Writ Court cannot adjudicate disputed questions of facts especially with regard to the ownership rights of the property either movable or immovable and so far as the territorial jurisdiction is concerned, subject to what we have said in the preceding paragraphs, this Court would be entitled to exercise jurisdiction by issuing the appropriate directions to enable the appellants to go before the adjudicating authority.

16. In the result, there will be a direction to the appellants to submit an application / representation before the adjudicating authority clearly setting out all facts accompanied by documents and such application be filed within three weeks from the date of receipt of the server copy of this judgment and order before the adjudicating authority, who shall consider the said representation / application, hear the noticees, if

required and pass an order on merits and in accordance with law and communicate the same to the appellants.

17. Since the appellants are third parties to the complaint and the show cause notice, the adjudicating authority can consider the claim independently, if permissible or in the absence take it up along with the adjudication process of the show cause notice.

18. There shall be no order as to costs.

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

(T. S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB(AR.C)