IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 13.12.2022

ORDER PRONOUNCED ON : 21.12.2022

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Writ Petition Nos.23054 & 25278 of 2022

and

W.M.P.No.22070 and 22071 of 2022 in W.P.No.23054 of 2022

and W.M.P.No.24236 of 2022 in W.P.No.25278 of 2022

W.P.No.23054 of 2022

1.M/s.Saravana Stores (Gold Palace),
A Partnership firm represented by its
Partner, Shri.Y.P.Shiravan
No.28, Renganathan Street,
T.Nagar, Chennai - 600 017.

2.Mrs.P.Sujatha
W/o.Late Y.Palakkudurai

3.Shri.Y.P.Shiravan
S/o.Late Y.Palakkudurai .. Petitioners

Vs.

1.The Deputy Director,

Directorate of Enforcement,
O/o.The Joint Director,
Chennai Zonal Office - I,
Government of India,
2nd & 3rd Floor,
Murugesan Naicker Complex,
No.84, Greams Road, Chennai - 600 006.

2.The Adjudicating Authority [PMLA],
Room No.26, 4th Floor,
Jeevan Deep Building,
Parliament Street,
New Delhi - 110 001.

3.M/s.Indian Bank,
Stressed Assets Management Branch,
represented by the Branch Head,
No.55, Ethiraj Salai,
Wellington Estate, 2nd Floor,
Chennai - 600 008. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari calling for the records of the first respondent in and connected with provisional attachment order dated 30.06.2022 in No.08/2022 (CEZO-I) emanating from F.No.ECIR/CEZO-I/45/2022 passed under Section 5(1) of PMLA, 2002 and consequent O.C.No.1779 of 2022 on the file of the second respondent and further proceedings, quash the same.

For Petitioner : Mr.B.Kumar, Senior Counsel for Mr.B.Sathish Sundar

For Respondents : Mr.P.Siddharthan,
Special Public Prosecutor [ED] [R1 & R2]
Mr.AL.Somaiyaji, Senior Counsel
for Mr.T.Sundrarajan [R3]

W.P.No.25278 of 2022

Indian Bank,
Stressed Assets Management (Large) Branch,
No.55, Ethiraj Salai, Chennai - 600 008.
represented by its
Assistant General Manager .. Petitioner

Vs.

1.The Deputy Director,
Directorate of Enforcement,
O/o.The Joint Director,
Chennai Zonal Office - I,
Government of India,
2nd & 3rd Floor,
Murugesan Naicker Complex,
No.84, Greams Road, Chennai - 600 006.

2.The Adjudicating Authority [PMLA],
Room No.26, 4th Floor,
Jeevan Deep Building,
Parliament Street,
New Delhi - 110 001.

3.M/s.Saravana Stores (Gold Palace),
represented by its Partners,
Mrs.P.Sujatha & Mr.Y.P.Shiravan,
Having Office at :
No.28, Ranganathan Street,
T.Nagar, Chennai - 600 017.

4.Mrs.P.Sujatha
W/o.Pallakkudurai

5.Mr.Y.P.Shiravan
S/o.Y.Pallakkudurai .. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari calling for the records of the first respondent in the Provisional Attachment Order dated 30.06.2022 in No.08/2022 (CEZO-I) in F.No.ECIR/CEZO-I/45/2022 under Sub Section (1) of Section 5 of the Prevention of Money Laundering Act and the consequent O.S.No.1779/2022 dated 02.08.2022 of the second respondent and further proceedings, quash the same as being without jurisdiction.

For Petitioner : Mr.A.L.Somaiyaji, Senior Counsel
for Mr.T.Sundarrajan

For Respondents : Mr.P.Siddharthan,
Special Public Prosecutor [ED] [R1 & R2]
Mr.B.Kumar, Senior Counsel
for Mr.B.Sathish Sundar [R3 to R5]

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COMMON ORDER

N.ANAND VENKATESH, J.

The issue involved in both these writ petitions are common and hence, they are taken up together, heard and disposed of through this common order.

2. W.P.No.25278 of 2022 has been filed by the Indian Bank

challenging the provisional attachment order of the first respondent dated 30.06.2022 passed u/s.5(1) of the Prevention of Money Laundering Act, 2002 [hereinafter referred to as "PMLA"] and the notice issued by the second respondent in O.S.No.1779 of 2022, dated 02.08.2022 for the purpose of adjudication to decide on the confirmation of the provisional attachment order u/s.8(3) of the PMLA.

3. W.P.No.23054 of 2022 has been filed by the petitioners, who have been shown as accused persons in Crime No.RC0692022E0009 registered by the Central Bureau of Investigation, Economic Offence Branch, Chennai, questioning the very same proceedings of the respondents 1 and 2.

4. The brief facts of the case is that the Indian Bank sanctioned a medium term loan to the petitioners in W.P.No.23054 of 2022 to the tune of Rs.150 crores for the purpose of purchase of immovable properties. The borrowers also executed loan documents and they mortgaged their immovable properties and also hypothecated certain movable properties. That apart, the petitioners in W.P.No.23054 of 2022 also availed open cash credit facility to

the tune of Rs.90 crores from Indian Bank. They defaulted in the repayment of the loan and hence, was classified as non-performing asset by the Indian Bank on 07.07.2019. Thereafter, proceedings were initiated under SARFAESI Act and symbolic possession was taken by the Indian Bank on 27.01.2020.

5. Indian Bank detected several irregularities in the disbursal and availment of the loan and also in the properties that were mortgaged and it was found to be overvalued by the petitioners in W.P.No.23054 of 2022 and there was also diversion of funds and hence, a complaint came to be lodged against them on 25.04.2022 before the CBI and a First Information Report came to be registered in Crime No.RC0692022E0009 for offences u/s.120-B and 420 IPC and Section 13(2), 13(1)(d) of the Prevention of Corruption Act, 1988.

6. The First Information Report that was registered by the CBI was taken note of by the Enforcement Directorate and it was taken up for investigation in ECIR/CEZO-1/45/2022 dated 26.05.2022.

7. A provisional attachment order came to be passed on 30.06.2022 by the first respondent in exercise of powers u/s.5(1) of the PMLA r/w Rule 3 of

the PMLA Rules. Thereafter, a complaint came to be filed before the second respondent for the purpose of adjudication u/s.8 of the PMLA and for the confirmation of the provisional attachment order u/s.8(3) of the PMLA. The same was taken on file in O.C.No.1779 of 2022 and a notice dated 02.08.2022 was issued to the petitioners in both the writ petitions. Both the provisional attachment order and notice issued by the second respondent u/s.8 of the PMLA have been put to challenge in these writ petitions.

8. Heard Mr.B.Kumar, the learned Senior Counsel and Mr.AL.Somaiyaji, the learned Senior Counsel appearing for the petitioners and Mr.P.Siddharthan, learned Special Public Prosecutor [ED], appearing for the Enforcement Directorate.

9. The main ground that was urged by the learned Senior Counsel appearing on behalf of the petitioners is that the SARFAESI Act will have the primacy/overriding effect over the provisions of the PMLA. In other words, it was contended that the SARFAESI Act has to be treated as a Special Act and the PMLA must be considered to be a General Act and hence, SARFAESI

Act will have primacy over the PMLA. To substantiate this submission, Section 26(c) of the SARFAESI Act was pressed into service and it was contended that any security interest or attachment order upon any property in favour of the secured creditor shall have priority over any subsequent proceedings initiated. Therefore, according to the learned Senior Counsel appearing on behalf of the petitioners, since the subject properties have already been secured by the Indian Bank, the provisional attachment order passed by the first respondent and the proceedings initiated for confirmation of the provisional attachment order by the second respondent are unsustainable and must be held to be non-est in the eye of law.

10. To substantiate the above submissions, the following judgments were relied upon:

(a) Indian Bank, represented by its Chief Manager v. Government of India [2012 (4) CTC 225];

(b) The Government of India v. Indian Bank and another [W.A.Nos.2614 and 2615 of 2022, dated 13.09.2021];

(c) HDFC Bank Limited v. Government of India [CDJ 2021 Bihar HC 249];

and

(d) Deputy Director, Directorate of Enforcement, Delhi v. Axis Bank and others [2019 SCC OnLine Del 7854].

11. Per contra, the learned Special Public Prosecutor appearing on behalf of the Directorate of Enforcement submitted that the writ petition itself is not maintainable since there is an alternative remedy available to the petitioners to raise all the issues before the Adjudicating Authority. Even if they fail before the Adjudicating Authority, the petitioners can go before the Appellate Tribunal and in the event of failure before the Tribunal, they can approach this Court by filing an appeal. Hence, it was contended that the petitioners cannot be straight away permitted to knock the doors of this Court in exercise of Article 226 of the Constitution of India. To substantiate this submission, the earlier order passed by the Co-ordinate Bench of this Court in ***A.John Kennedy and others v. Joint Director, Directorate of Enforcement*** reported in **2021 Crl. LJ 865,** was relied upon.

12. It was further contended that an order of attachment under the

PMLA cannot be rendered illegal only on the ground that a secured creditor has a prior security interest (charge) in the subject property. To substantiate this submission, the learned Special Public Prosecutor relied upon the judgment of the Delhi High Court in ***The Deputy Director, Directorate of Enforcement, Delhi v. Axis Bank and others*** reported in ***2019 SCC OnLine Delhi 7854*** and specifically relied upon the following passages from the said judgment :

> "(a) "To sum up on the issue, the objective of the legislation in PMLA being distinct from the purposes of the three other enactments viz. RDBA, SARFAESI Act and Insolvency Code, the latter cannot prevail over the former. There is no inconsistency. The purpose, the Crl.Appeal No.143/2018 & others Page 84 of 105 text and context are different. This court thus rejects the argument of prevalence of the said laws over PMLA." (Para 147, Page - 83)
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> (b) "In view of the conclusions reached as above, rejecting the argument of prevalence of RDBA, SARFAESI Act and Insolvency Code over PMLA, the said laws (or similar other laws, some referred to above) must co-exist, each to be construed and enforced in harmony, without one being in derogation of the other ...." (Para 148, Page - 84)
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> (c) "An order of attachment under PMLA, if it meets with the statutory pre-requisites, is as lawful as an action initiated by a bank or financial institution, or a secured creditor, for recovery of dues legitimately claimed or for enforcement of secured interest in accordance with RDBA or SARFAESI Act. An order of attachment under PMLA is not rendered illegal only because a secured creditor has a prior secured interest (charge) in the subject property ... ..." (Para 148, Page - 84)."

13. The learned Special Public Prosecutor also relied upon the judgment of the High Court of Punjab and Haryana in ***Deputy Director v. PNB Housing Finance Limited [CRA-S-4326-SB-2017 (O&M), dated 28.02.2020].***

14. The learned Special Public Prosecutor also made submissions on the merits of the case and ultimately, sought for dismissal of both the writ petitions.

15. We have carefully considered the submissions made on either side and the materials available on record.

16. It has been brought to our notice that all the petitioners have already raised objections both on facts and on law and it has been submitted before the Adjudicating Authority *viz.,* the second respondent. The second respondent is a quasi judicial authority, who can go into both the facts and law while dealing with the objections raised by the petitioners. The

provisional attachment order passed u/s.5 of the PMLA has been held to be constitutionally valid by the Apex Court in ***Vijay Madanlal Choudhary and others v. Union of India and others [2022 SCC OnLine SC 929]*** and hence, the provisional attachment order passed by the first respondent does not suffer from lack of jurisdiction. The provisional attachment order has been placed before the second respondent for confirmation u/s.8(3) of the PMLA. The petitioners have also been put on notice by the second respondent and the petitioners have put forward their objections both on facts and on law. The issue as to whether there can be an order of attachment under the PMLA over a property, in which a secured creditor has a prior interest, can always be raised before the second respondent since the second respondent is a quasi judicial authority exercising the powers of adjudication.

17. The alternative remedy is only a self-imposed restriction and it is not an absolute one and in appropriate cases, this Court can exercise its jurisdiction under Article 226 of the Constitution of India in spite of the availability of an alternative remedy. Such exercise of jurisdiction is normally done in cases where the authority has initiated proceedings or passed orders without or in excess of jurisdiction or in cases where there is a serious

violation of principles of natural justice or where certain extraordinary/special circumstances exist, which require the exercise of extraordinary power and jurisdiction under Article 226 of the Constitution of India. The law on this issue is too well settled.

18. In the facts of the present case, we have already held that the provisional attachment order passed by the first respondent does not suffer from any excess or lack of jurisdiction. The petitioners in both the writ petitions have been put on notice by the Adjudicating Authority and the petitioners have also submitted their objections both on facts and on law and hence, it cannot be held that a decision is taken behind the back of the petitioners and there is no violation of principles of natural justice. We also do not find any extraordinary circumstance warranting the exercise of our writ jurisdiction to interfere with the provisional attachment order and the adjudication proceedings pending before the second respondent. The petitioners have an effective, alternative and efficacious remedy and hence, we are not inclined to entertain these writ petitions. If any adverse order is passed by the Adjudicating Authority, an appeal is provided u/s.26 of the

PMLA to the Tribunal from where there is a further appeal to the High Court u/s.42 of the PMLA.

19. It is also brought to the notice of this Court that there are conflicting judgments on this issue of various High Courts and a batch of cases filed by the financial institutions/banks are now pending before the Apex Court. Hence, we do not deem it fit and proper to render our findings on the legal issues that have been raised in these writ petitions. If we render any adverse findings on the legal issues that have been put forth before us, it will have a bearing in the adjudication proceedings pending before the second respondent.

20. In the light of the above discussion, we do not find any ground to entertain these writ petitions and we leave it open to the petitioners to raise all the grounds both on facts and on law before the Adjudicating Authority, *viz.,* the second respondent and the same shall be considered on its own merits and in accordance with law.

In the result, these Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are dismissed.

[P.N.P., J] **[N.A.V., J]**
21.12.2022

Index: Yes/No
gm

To
1.The Principal Sessions Judge
[designated Court for PMLA cases),
Chennai.

2.The Deputy Director,
Directorate of Enforcement,
O/o.The Joint Director,
Chennai Zonal Office - I,
Government of India,
2nd & 3rd Floor,
Murugesan Naicker Complex,
No.84, Greams Road, Chennai - 600 006.
3.The Adjudicating Authority [PMLA],
Room No.26, 4th Floor,
Jeevan Deep Building,
Parliament Street,
New Delhi - 110 001.

4.The Special Public Prosecutor [ED],
High Court, Madras.

P.N.PRAKASH, J
and
N.ANAND VENKATESH, J

gm

Writ Petition Nos.23054 and 25278 of 2022

21.12.2022