

Form No. J.(2)
Item Nos.3 & 8

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

HEARD ON: 12.05.2023

DELIVERED ON: 12.05.2023

CORAM:

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

MAT 754 of 2023

With

I.A. No. CAN 1 of 2023

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I.A. No. CAN 2 of 2023

Orchid Mercantiles Private Limited & Anr.

Vs.

The Assistant Commissioner of Income Tax, Benami Prohibition Unit,
Hyderabad & Ors.

With

MAT 618 of 2023

With

I.A. No. CAN 1 of 2023

Orchid Mercantiles Private Limited & Anr.

Vs.

The Assistant Director of Income Tax (Investigation), DDIT/ADIT (INV) –
3(1), Kolkata & Ors.

Appearance:-

Mr. Mokaranm Hossain
Mr. Soumik Ganguli
Ms. Kumkum Mukherjee
Mr. Sourat Nandy

.....For the Appellant

Mr. Manmeet Singh Arora, SPP
Mr. Soumen Bhattacharya

.....For the Respondents

JUDGMENT

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

1. Since the issues involved in these appeals are common, both the appeals are taken up for hearing analogously and are being decided by this common judgement and order.
2. These intra-Court appeals have been filed by the writ petitioners challenging the orders passed by the learned Single Benches on 1st February, 2023 in W.P.A. 1189 of 2023 and 14th March, 2023 in W.P.A. 3576 of 2023.
3. Both the writ petitions have been dismissed on the ground that this Court does not have territorial jurisdiction.
4. After we have elaborately heard the learned advocates for the parties, we find that the cause of action, which has arisen for initiating proceedings under the provisions of Prohibition of Benami Property Transaction Act, 1988 (for short, “Benami Act”) and the provisions of the Income Tax Act, 1961 (for the short, “the IT Act”) are outside the jurisdiction of this Court.

It may be true that the appellants have got the registered office in Kolkata but however, that will not be the test.

5. Mr. Manmeet Singh Arora, learned Special Public Prosecutor appearing for the respondent nos.1 to 3 assisted by Mr. Soumen Bhattacharya, learned standing counsel submits that the matter is now seised of by the 3rd respondent, the authority who is situated at Chennai and the matter is being proceeded strictly in terms of the provisions of the Benami Act/IT Act.
6. From the prayers sought for in the writ petitions, we find that the writ petitioners seek to quash the summons issued under the Benami Act/IT Act. Unless and until it is shown that the authority, who has issued the summons lacks jurisdiction to do so, a challenge to a summons cannot be entertained. Apart from that, the provisions of the Benami Act provide a detailed procedure by which the alleged benamdar and the alleged beneficial owner will not be entitled to opportunity at each stage of the matter. Therefore, a summons cannot be interdicted, more particularly on the grounds, which have been canvassed in the writ petitions, which we find to be fully factual.
7. Learned advocate appearing for the appellants would submit that the appellants are ready and willing to co-operate with the proceedings initiated under both the enactments by the respondents but the difficulty would be for the 2nd appellant to appear before the authority either at Hyderabad or at Chennai.
8. The learned Special Public Prosecutor appearing for the respondents would submit the question of personal appearance at this stage does not arise as

the matter has already crossed the stage and the proceedings have to be initiated in terms of the procedure under the Benami Act.

9. In any event, we make an observation that in case the appellants are unable to appear in person before the concerned authority either at Hyderabad or at Chennai, a request can be made by the 2nd appellant to appear through video conferencing and if that request is feasible of consideration, it will be well open to the respondents to consider the same. In any event, as agreed to by the appellants, they shall co-operate in the investigation process commenced by the respondent authorities.
10. With the above observations, the appeals are dismissed along with all the connected applications.
11. There shall be no order as to costs.
12. 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)
CHIEF JUSTICE

I agree,

(HIRANMAY BHATTACHARYYA, J.)

Pallab/K.S. AR(Ct.)