

D/L
Item No. 356
27.03.2023
KOLE

WPA 11161 of 2022
Soumyendra Nath Banerjee
-Vs.-
The Union of India & Ors.

Mr. Reshmi Ghosh,
Mr. S. S. Chini,

...for the petitioner.

Mr. Phiroze Edulji,
Mr. A. Pandey,
Mr. A. Pandey,
Mr. S. Singh,

...for the ED.

The petitioner is aggrieved by an order of provisional attachment No. 05/2021 dated 29th October, 2021 passed purportedly under Section 5(1) of the PMLA Act, 2002. The writ petition was filed after expiry of 180 days of the passing of the said order. It was contended by counsel for the petitioner that on the expiry of 180 day period, the provisional attachment order comes to an end and dies a statutory death.

Such coming to an end could have been avoided had the Adjudicating Authority confirmed the said order of provisional attachment in terms of Section 8(3) of the said Act.

During the pendency of the writ petition, the Adjudicating Authority had passed an order confirming the order of provisional attachment, in its order dated 25th July, 2021.

A large number of arguments are advanced by counsel for the petitioner on the merits of the provisional attachment order and the purported illegality of the confirmation of

attachment by the Adjudicating Authority under Section 8(3).

Challenging the said order of adjudication/confirmation of the provisional attachment order, the writ petitioner has already preferred an appeal under Section 25 of the Prevention of Money Laundering Act, 2002.

A question that would arise is whether, in view of the availability of the efficacious alternative remedy of an “Appeal” under Section 25 of the PMLA Act of 2002, the writ petition should be entertained against the order of attachment or the confirmation thereof by the Adjudicating Authority.

The Hon’ble Supreme Court in the case of **United Bank of India-vs.-Satyawati Tondon & Ors.**, reported in **(2010) 8 SCC 110** in paragraphs 47 to 51 has laid down as follows:-

“47. In *Thansingh Nathmal v. Supdt. of Taxes* [AIR 1964 SC 1419 : (1964) 6 SCR 654] the Constitution Bench considered the question whether the High Court of Assam should have entertained the writ petition filed by the appellant under Article 226 of the Constitution questioning the order passed by the Commissioner of Taxes under the Assam Sales Tax Act, 1947. While dismissing the appeal, the Court observed as under: (SCC p. 1423, para 7)

“7. ... The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not

therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

48. In *Titaghur Paper Mills Co. Ltd. v. State of Orissa* [(1983) 2 SCC 433 : 1983 SCC (Tax) 131] a three-Judge Bench considered the question whether a petition under Article 226 of the Constitution should be entertained in a matter involving challenge to the order of the assessment passed by the competent authority under the Central Sales Tax Act, 1956 and corresponding law enacted by the State Legislature and answered the same in the negative by making the following observations: (SCC pp. 440-41, para 11)

“11. Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the prescribed authority under sub-section (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under Section 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Co. v. Hawkesford* [(1859) 6 CBNS 336 : 141 ER 486] in the following passage: (ER p. 495)

‘... There are three classes of cases in which a liability may be established founded upon a statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.’

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.* [1919 AC 368 : (1918-19) All ER Rep 61 (HL)] and has been reaffirmed by the Privy Council in *Attorney-General of Trinidad and Tobago v. Gordon Grant & Co. Ltd.* [1935 AC 532 (PC)] and *Secy. of State v. Mask & Co.* [(1939-40) 67 IA 222] It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.”

49. The views expressed in *Titaghur Paper Mills Co. Ltd. v. State of Orissa* [(1983) 2 SCC 433 : 1983 SCC (Tax) 131] were echoed in *CCE v. Dunlop India Ltd.* [(1985) 1 SCC

260 : 1985 SCC (Tax) 75] in the following words: (SCC p. 264, para 3)

“3. ... Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.”

50. In *Punjab National Bank v. O.C. Krishnan* [(2001) 6 SCC 569] this Court considered the question whether a petition under Article 227 of the Constitution was maintainable against an order passed by the Tribunal under Section 19 of the DRT Act and observed: (SCC p. 570, paras 5-6)

“5. In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short ‘the Act’). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. We do not propose to go into the correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.

6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.”

51. In *CCT v. Indian Explosives Ltd.* [(2008) 3 SCC 688] the Court reversed an order passed by the Division Bench of the Orissa High Court quashing the show-cause notice issued to the respondent under the Orissa Sales Tax Act by observing that the High Court had completely ignored the parameters laid down by this Court in a large number of cases relating to exhaustion of alternative remedy.”

On the same lines is an earlier decision of the Supreme Court in the case of **State of H. P.-Vs.-Gujarat**

Ambuja Cement Limited & Ors., reported in (2005) 6

SCC 499. At paragraph 17, 20 & 21 it was held as follows:-

“17. We shall first deal with the plea regarding alternative remedy as raised by the appellant State. Except for a period when Article 226 was amended by the Constitution (Forty-second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

20. In *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.* [(2003) 2 SCC 107] this Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

21. In *G. Veerappa Pillai v. Raman & Raman Ltd.* [(1952) 1 SCC 334 : 1952 SCR 583 : AIR 1952 SC 192] ; *CCE v. Dunlop India Ltd.* [(1985) 1 SCC 260 : 1985 SCC (Tax) 75 : AIR 1985 SC 330] ; *Ramendra Kishore Biswas v. State of Tripura* [(1999) 1 SCC 472 : 1999 SCC (L&S) 295 : AIR 1999 SC 294] ; *Shivgonda Anna Patil v. State of Maharashtra* [(1999) 3 SCC 5 : AIR 1999 SC 2281] ; *C.A. Abraham v. ITO* [(1961) 2 SCR 765 : AIR 1961 SC 609] ; *Titaghur Paper Mills Co. Ltd. v. State of Orissa* [(1983) 2 SCC 433 : 1983 SCC (Tax) 131 : AIR 1983 SC 603] ; *H.B. Gandhi v. Gopi Nath and Sons* [1992 Supp (2) SCC 312] ; *Whirlpool Corpn. v. Registrar of Trade Marks* [(1998) 8 SCC 1 : AIR 1999 SC 22] ; *Tin Plate Co. of India Ltd. v. State of Bihar* [(1998) 8 SCC 272 : AIR 1999 SC 74] ; *Sheela Devi v. Jaspal Singh* [(1999) 1 SCC 209] and *Punjab National Bank v. O.C. Krishnan* [(2001) 6 SCC 569] , this Court held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction.”

This Court is of the view that the writ petition is definitely maintainable but given the effective and efficacious remedy of appeal under Section 25 (Supra) the writ Court should be slow to entertain it. An appellate authority is better equipped to deal with the contentions of the petitioner given the procedural powers conferred on it. The Appellate authority is empowered to deal with all questions raised by the petitioner including the legality and or validity of the order of Adjudicating authority.

In the backdrop of the availability of the efficacious alternative remedy of appeal before the Appellate Authority under Section 25 of the Act of 2002 and the dicta of the Hon'ble Apex Court referred to hereinabove, this court is of the view that a writ petition under Article 226 of the Constitution of India may not be entertained. More so when the petitioner has already filed an appeal under Section 25 before the Appellate Authority against the order of Adjudicating Authority, confirming of order of provisional attachment.

It is made absolutely clear that the Appellate Authority shall proceed independently in the matter and all allegations are left open to be considered by the Appellate Authority, who will deal with the matter in accordance with law and the laws settled by the Division Benches of this Court and the Hon'ble Supreme Court of India.

WPA No. 11161 of 2023 stands disposed.

All parties shall act on the server copy of this order
duly downloaded from official website of this court.

(Rajasekhar Mantha, J.)