



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12355 OF 2023

Kaushal Doshi and Ors. ... Petitioners

V/s.

Directorate of Enforcement ... Respondent

Mr. Baban Bharihoke I.by Ms. Aishwarya Kantawala a/w. Ms. Diya J.
for petitioners.

Mr. H.S. Venegavkar a/w. Mr. Aayush Kedia for respondent / ED.

**CORAM : SUNIL B. SHUKRE &
FIRDOSH P. POONIWALLA, JJ**

DATE : 6th OCTOBER 2023.

PC:

1. Heard learned counsel for the petitioners and learned
counsel for respondent/ED.

2. It is the contention of learned counsel for the petitioners
that facts of the present case are so glaring that now nothing has
remained in the attachment order passed by the Adjudicating
Authority. He submits that one Mack Star Marketing Pvt. Ltd. owned a
building in Andheri known as “Kaledonia” and this company was joint
venture between Asian DET Investment Holdings Ltd. and Wadhwans.
He submits that Wadhwans falsely claimed to have right to sell units in
these buildings and accordingly sold 7 units to the company of the
petitioners for a consideration, but, later on, one Sumit Saha filed a

complaint with police at Mumbai alleging fraudulent transaction of sale / purchase between Wadhwan and company of the petitioners, in which no offence was registered although offence was registered in a separate complaint made by Sumit Saha with CBI, which was in respect of some fraud played on Yes Bank. He further submits that the complainant also filed a civil suit challenging the sale of 7 units by Wadhwan to the company of the petitioners and in this civil suit, there was a consent decree passed by the civil court on 11th March 2021, which witnessed surrender of 5 units to the complainant and payment of the agreed amount for the remaining 2 units. Therefore, the petitioners are now claiming that the continuation of the attachment order is causing prejudice to the petitioners.

3. However, after hearing learned counsel for the respondent, it has now emerged that an appeal is preferred against the order of attachment and it is already pending before the Appellate Authority. If that is so, it would be appropriate that the petitioners are relegated to the statutory remedy of appeal which they have already availed of in the present case.

4. Learned counsel for the petitioners submits that if the petitioners are to be relegated to their remedy of appeal, the Appellate Authority may be directed to decide the appeal in a time bound manner, keeping in view effect of the consent decree and the contentions of the petitioners, already kept open by the Apex Court. He also submits that the petitioners are intending to file their discharge application on the basis of the subsequent developments.

5. We find no difficulty in accepting the request of learned counsel for the petitioners to make the appellate proceedings time bound. Accordingly, we direct the Appellate Authority to decide the appeal in accordance with law, by taking into consideration the effect of the consent decree and all contentions of the petitioners, at the earliest and in any case within four weeks from the date of appearance of the petitioners before the Appellate Authority.

6. Petitioners shall appear before the Appellate Authority on 12th October 2023 at 11.00 a.m. Liberty is granted to the petitioners to file discharge application, if so advised, provided it is filed in four weeks and if is so filed, the same shall be decided in accordance with law at the earliest, preferably within a period of eight weeks from the date of the filing of the application.

7. The petition is disposed of.

(FIRDOSH P. POONIWALLA, J)

(SUNIL B. SHUKRE, J)