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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 4th January, 2023

\+ **W.P.(C) 17784/2022 and CM APPL. 56825/2022**

SANJAY JAIN (IN JC) ..... Petitioner

Through: Mr. Siddharth Aggarwal, Sr. Advocate with Ms. Stuti Gujral, Mr. Mukul Dogra, Ms. Shaurya Singh, Mr. Harsh Yadav & Ms. Trisha Mittal, Advocates (M-9910745870)

versus

DIRECTORATE OF ENFORCEMENT ..... Respondent

Through: Mr. Zoheb Hossain & Mr. Vivek Gurnani, Advocates.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The Petitioner- Sanjay Jain has filed the present petition challenging the notices dated 20th December, 2022 bearing F. No. ECIR/DLZO-I/43/2021 seeking eviction of the present owner, as also the occupants of the following properties:

1. 95/805, Vishal Bhawan, Nehru Place, New Delhi
2. Flat No. 4/55 Ground Floor, Madhuban, Nehru Place, New Delhi 110019
3. Shop No. L-1/L-5, Lajpat Nagar-II, New Delhi
4. B-19 Greater Kailash Part-I, New Delhi 48
5. Ground Floor at B-78 Defence Colony, New Delhi
6. Plot No. 44, Sukhchain Marg, DLF Qutab Enclave, Gurugram (Haryana)

3. The said notices are a culmination of orders passed by the Adjudicating Authority (AA) in Provisional Attachment Order (PAO) 3/2022 dated 19th April, 2022 passed by the Deputy Director, Enforcement Directorate, Delhi in ECIR No. ECIR/DLZO-I/43/2021.

4. A provisional attachment order was passed by the Adjudicating Authority directing attachment of the above-mentioned properties in proceedings which were commenced against one Sh. Pankaj Jain. The said PAO was confirmed on 29th September, 2022 by the AA. The value assessed of these properties is a total sum of Rs. 66,84,151 and the value of Mr. Pankaj Jain's share in the said properties has been assessed to be Rs.32,65,516/-. The said order dated 29th September, 2022 which involved these properties has been challenged by Sh. Pankaj Jain and is pending before the Prevention of Money Laundering Act (*hereinafter, 'PMLA'*) Appellate Tribunal. The appeal is yet to be heard by the Tribunal. In the meantime, the impugned notices have been issued by the Enforcement Directorate (ED) seeking eviction of all the occupants of the said properties.

5. Mr. Aggarwal, ld. Senior Counsel appearing for the Petitioner submits that some of the properties concerned are residential properties where the family of Sh. Sanjay Jain, are residing. Sh. Sanjay Jain himself is in judicial custody. It is his submission that since the Petitioner is 50% owner of all these properties, the occupants cannot be evicted in this manner. He further submits that the value ascribed to these properties is to the tune of Rs.32,65,516/- and the same ought to be permitted to be deposited by the Petitioner in lieu of the attachment order. It is the case of the Petitioner that the eviction which is being sought is contrary to Rule 5(5) of the Prevention

of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules, 2013.

6. Mr. Zoheb Hosain, ld. Counsel appearing for the Enforcement Directorate submits that Sh. Pankaj Jain has absconded and is not submitting himself to due process in India despite warrants having been issued against him. As per ld. Sr. Counsel for the Petitioner, Sh. Pankaj Jain resides in London with his family. According to Mr. Aggarwal, the properties at serial numbers 2, 3, 4 and 7 are tenanted premises in respect of which the Enforcement Directorate is only entitled to get the lease amount or the rent from the concerned occupants and cannot evict the said occupants.

7. Heard. Admittedly, Sh. Pankaj Jain and Sh. Sanjay Jain are brothers. They own equal shares in the properties listed above. The ED is seeking eviction of the occupants from the properties, qua the share of Sh. Pankaj Jain, but the same are under occupation of the family of Sh. Sanjay Jain or tenants. The appeal filed by Sh. Pankaj Jain against whom the attachment order has been finally confirmed, is presently pending before the Appellate Tribunal constituted under Section 25 of PMLA.

8. Appeals to the PMLA Appellate Tribunal are provided for in Section 26 of PMLA. Section 26 of PMLA reads as:

> *26. Appeal to Appellate Tribunal.*
> *(1) Save as otherwise provided in sub-section (3), the Director or* ***any person aggrieved by an order*** *made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.*
> *(2) Any reporting entity aggrieved by any order of the Director made under sub-section (2) of section 13, may prefer an appeal to the Appellate Tribunal.*
> *(3) Every appeal preferred under sub-section (1) or sub-section (2) shall be filed within a period of forty-*

five days from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as may be prescribed: Provided that the Appellate Tribunal may, after giving an opportunity of being heard, entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1) or sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director, as the case may be.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of filing of the appeal.

9. A perusal of Section 26 of the Prevention of Money Laundering Act, 2002 shows that orders of attachment passed by the Adjudicating Authority are appealable to the Appellate Tribunal at the instance of *`any person aggrieved'*. In the opinion of this Court, Sh. Sanjay Jain who is the Petitioner before this Court would also be a *`person aggrieved'* who would be entitled to approach the Appellate Tribunal and challenge the attachment order or object to the impugned notices issued pursuant to the attachment order.

10. Rule 5 of the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules, 2013 Rules reads as:

> *5. Manner of taking possession of immovable property.—*
> *(1) Where the immovable property confirmed by the Adjudicating Authority is in the form of a land, building, house, flat, etc., a notice shall be issued to the Registrar having jurisdiction of the area along with the provisional attachment order and order of the Adjudicating Authority confirming such attachment requiring the Registrar not to transfer or create any interest in such property until further orders and a copy of the order confirming the attachment shall be affixed at a conspicuous part of the property;*
> *(2) Where the immovable property confirmed by the Adjudicating Authority is in the form of a land, building, house, flat, etc., and is occupied by the owner, the authorized officer shall issue a notice of eviction of ten days so as to prevent the person from enjoying such property and after issuing of such notice if the premises is not vacated within the stipulated time, such occupant shall be evicted and the possession shall be taken by seeking the assistance of the local Authorities in terms of section 54 of the Act;*
> *(3) **Where the immovable property confirmed by the Adjudicating Authority is in the form of a land, building, house, flat, etc., and is given on lease or rent to a third party which is registered in accordance with the provisions of section 17 of the Registration Act, 1908, the authorized officer shall issue a direction to the occupant to pay the lease amount or rent in the form of Demand Draft payable to the Directorate of Enforcement**;*
> *(4) Where the immovable property confirmed by the Adjudicating Authority is in the form of a land, building, house, flat, etc., and is given on lease or rent*

to any third party where the registration is optional in accordance with the provision of section 18 of the Registration Act, 1908, the authorized officer shall proceed to get the premises vacated and the possession shall be taken by seeking the assistance of local Authorities in terms of section 54 of the Act;

(5) ***Where the immovable property confirmed by the Adjudicating Authority is in the form of a land, building, house, flat, etc., and is under joint ownership, the authorized officer may accept the equivalent value of fixed deposit to the extent of the value of the share of the concerned person in the property estimated by the authorized officer, to be involved in money laundering****; and*

(6) Where the immovable property confirmed by the Adjudicating Authority is in the form or nature of productive asset or an establishment which is producing goods or a factory, etc., and where the manufacturing process or activity is being carried out, the authorized officer may take possession with a direction to the person in-charge of the concerned establishment or factory that gross income and any other monetary benefits which accrue there from shall be deposited in the account of the Directorate of Enforcement.

11. Admittedly, the family of the Petitioner is residing in two of the seven premises – from where the occupants are sought to be evicted. Some of the premises are also tenanted premises. Thus, the effect of Rule 5(3) and Rule 5(5) would have to be considered by the Tribunal. Even the Petitioner's challenge to the provisional attachment order in respect of these very properties is stated to be pending before the Adjudicating Authority and the same is yet to be confirmed.

12. Considering these facts and circumstances, the following directions are issued:

i) The Petitioner is permitted to file an appeal, within a week challenging the final attachment order passed by the Adjudicating Authority dated 29th September, 2022 before the Appellate Tribunal;

ii) Alternatively, within a week, the Petitioner is permitted to approach the Appellate Tribunal by way of an application in the pending appeal filed by Sh. Pankaj Jain for challenging the notices dated 20th December, 2022 issued pursuant to the attachment confirmation order;

iii) The Appellate Tribunal shall hear the Petitioner and pass appropriate orders in accordance with law in respect of notices dated 20th December, 2022, inter alia, considering the submissions of the Petitioner under Rule 5(3) and Rule 5 (5) of the 2013 Rules.

iv) The Petitioner's family and the occupants of all these premises shall not be dispossessed or evicted, in the meantime, until the Appellate Tribunal hears and passes orders in respect of the impugned notices either in the application or the appeal.

13. Petition is disposed of in the above terms. All remedies of the parties are left open.

PRATHIBA M. SINGH
JUDGE

JANUARY 4, 2023
Rahul/AM