07.05.2024
Item No.20
gd/ssd

FMA/21/2024
IA NO: CAN/1/2024
MD. SALIM AND ORS.
VS
SECURITIES AND EXCHANGE BOARD OF INDIA

Mr. Abhrajit Mitra,
Mr. Tarique Quasimuddin,
Ms. Sanchita Chaudhuri
..for the Appellants.

Mr. Prasanta Kumar Dutt,
Mr. Susanta Kumar Dutt,
Mr. Syamantak Banerjee
..for the Respondent.

1. This intra court appeal by the writ petitioners is directed against the order dated 20.06.2023 in WPA 8515 of 2023.

2. By the said writ petition the appellants had challenged notice of attachment of bank account issued by the Security and Exchange Board of India (in short, SEBI) which has directed full freezing of the account for non-compliance of the direction to refund the investors as issued by the SEBI in its order dated 24th January, 2018.

3. Admittedly, the appellants have not challenged the order dated 24th January, 2018 before the appropriate forum in terms of the provisions of the Securities and Exchange Board of India Act, 1992 (in short, the Act).

4. The consequential proceedings or the notice of attachment was questioned in the writ petition.

5. The learned Single Bench, in our view, rightly dismissed the writ petition for the reasons assigned in the impugned order.

6. The appellants are trying to take advantage of certain observations made by SEBI in the order dated 24th January, 2018.

7. However, those observations can be of no assistance to the appellants since those observations are contrary to the settled legal principles.

8. Admittedly, the observations were made and directions were issued deferring implementation of certain directions contained in paragraph 66 of the order dated 24th January, 2018 on the ground that a judgment has been rendered in Title Suit No.166 of 2015. Unfortunately, SEBI did not know that the Title Suit was decreed by consent.

9. We would be justified in also making an observation that there are very good chances that the suit itself was a collusive litigation. The Title Suit No.166 of 2015 on the file of the 5th Bench, City Civil Court, Calcutta is between two sets of private parties which consist of individuals as well as companies. In the said suit the learned City Civil Court passed an order of 11th May, 2015 stating that the suit be and the same is partly decreed on the basis of the prayer of the parties on consent and the plaintiff therein who are the writ petitioners are entitled to get a decree for

declaration that after signing the agreement dated 29.11.2013 as amended along with Deed of Assignee having seized to control of the defendant/Companies being Nos.20, 23 and they have no responsibility or obligation to repay any of the depositors, investors, creditors and others of the defendant nos.20, 21, 22 and 23 and further a decree of declaration as per the award passed on 23.07.2014 among other things. This order was passed on 11.05.2015. There is also a writ petition pending before this court in WP 3408(W) of 2015 where an order was passed on 03.11.2016 restraining the respondent Group of Company(s)/Firm(s) not to dispose of any of the movable or immovable properties till the direction of the court. Similarly, the Director(s)/Partner(s) of the respondent Group of Company(s)/Firm(s) were directed not to dispose of or shall not create any encumbrances of their valuable, movable or immovable properties till further orders.

10. SEBI has rightly taken note of the directions issued by the Division Bench of this court in its order dated 03.11.2016.

11. So far as the decree obtained in the Title Suit which we have branded to be a collusive litigation, SEBI not being a party to the said proceedings. The said decree does not bind SEBI.

12. Therefore, the observations made by the SEBI in the order dated 24th January, 2018 is superfluous and uncalled for and the question of filing an application in the Title Suit by SEBI is unnecessary and, therefore, to that extent the order has to be treated as an order which does not lay down the correct legal principle.

13. Thus, apart from the reasons assigned by the learned Single Bench for the aforementioned reasons also the appellants are not entitled to get any relief.

14. Accordingly, the appeal is dismissed.

15. After we have dictated the judgment the learned advocate for the SEBI pointed out that it is not as if the appellants have not preferred an appeal against the order, but they have preferred an appeal being No.232 of 2018 before the Securities Appellate Tribunal, Mumbai and the Miscellaneous Application was also filed being Miscellaneous Application No.533 of 2019.

16. The said submission is placed on record so far clarity of facts.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)