

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2461 OF 2024

Aman Kokrady

..Petitioner

Versus

Securities And Exchange Of India

..Respondent

Mr. Janak Dwarkadas, Senior Advocate i/by Siddharth Satija & Saachi V. Purohit, for the Petitioner.

Mr. Mustafa Doctor, Senior Counsel a/w Manish Chhangani, Abhay Chauhan & Atul Agrawal i/by The Law Point, for the Respondent/ SEBI.

CORAM : G. S. KULKARNI &
KISHORE C. SANT, JJ.

DATE : 19th MARCH, 2024

PC.

1. We have heard Mr. Dwarkadas, learned senior counsel for the Petitioner and Mr. Doctor, learned senior advocate for the Respondent/SEBI. This Petition is filed praying for the following reliefs :-

- “i. Pass a writ, order or direction setting aside and quashing Show Cause Notice dated 17.05.2023 under the provisions of Sections 11(1), 11(2)(b), 11(4) and 11(B) of the Securities Exchange Board of India Act, 1992 bearing SEBI/MRD/19860/2023 issued by the Deputy General Manager, Securities and Exchange Board of India [“SEBI”] against the Petitioner; and*
- ii. Pass an order staying the proceedings emanating out of Show Cause Notice dated 17.05.2023 under the provisions of Sections 11(1), 11(2)(b), 11(4) and 11(B) of the Securities and Exchange Board of India Act, 1992 bearing SEBI/MRB/19860/6/2023*

issued by the General Manager, Securities and Exchange Board of India [“SEBI”] against the Petitioner till the disposal of the present writ;

iii. Ad-interim relief in terms of prayer clause(ii);”

2. Case of the Petitioner is that previously the petitioner was issued a show-cause notice by the Respondent dated 03.07.2018, which came to be adjudicated and the Petitioner was held to be discharged and exonerated of the charges under the show-cause notice by an order dated 29.08.2019 passed by the learned Adjudicating Officer of the SEBI. It is contended by the Petitioner that despite the Petitioner being fully discharged and exonerated, the Petitioner has now been issued a fresh show-cause notice as impugned in the present proceedings being show-cause dated 17th May, 2023 inter-alia issued under the provisions of Section 11(1), 11(2)(b) and other provisions of the SEBI Act by the Deputy General Manager of the SEBI. The contention of the Petitioner is that the impugned show-cause notice is identical to what was issued to the Petitioner on the earlier occasion which came to be adjudicated and on which Petitioner was discharged and exonerated.

3. In assailing the impugned show-cause notice, the Petitioner had earlier moved this Court by filing a Petition, however, the same was withdrawn by the Petitioner with liberty to approach the Security Appellate Tribunal (for short the “Tribunal”). The

Petitioner had accordingly approached the tribunal praying for the reliefs that the show-cause notice be quashed and set aside. In such proceeding, the Petitioner also moved Interim Application praying that the proceedings initiated under the show-cause notice be stayed till the pendency of the Appeal before the Tribunal. On such Interim Application, an order came to be passed by the Tribunal on 29th January, 2024 whereby the Tribunal, considering the rival contentions, ordered that in the interest of justice, the Respondent be directed to give an opportunity of a cross-examination and personal hearing. The Petitioner was directed to appear before the Whole Time Member on 9th February, 2024, on which date, the Petitioner would be provided an opportunity of cross-examination. It was however also observed that when an opportunity of a personal hearing before the WTM would be given to the Petitioner, the Petitioner could raise all issues including that of jurisdiction. The relevant observations in paragraph 7 as made by the Tribunal in that regard are required to be noted, which reads thus :-

“7. Having heard both the parties I am of the view that interim relief seeking stay on the proceedings cannot be granted at this stage. In my view, reliance by Appellant on cases Mohan Lal vs Anandibai and Others, 1971(1) SCC 813, K.P. Dwivedi vs State of U.P. and Others, (2003) 12 SCC 572 and Tirupati Balaji Develpers (P) Ltd. And Others vs. state of Bihar and Others, (2004) 5 SCC 1 is misplaced as the Respondent is still to issue any orders and all issues remain open at this stage. The SCN was issued on May 17, 2023 and the Appellant approached this Tribunal at a stage when the Respondent is at the final phase of carrying out the order of remand as per the schedule laid out by this Tribunal. However, in the interest of justice, the respondent is directed to give a final opportunity of cross- examination and personal hearing to the appellant. The appellant is directed to appear before the WTM on February 9, 2024 on which date the

Appellant will be provided an opportunity of cross-examination. Opportunity of personal hearing before the WTM will be given on February 16, 2024 where the appellant can raise all issues including that of jurisdiction.”

4. On such backdrop, the present Petition is filed. The Petition was moved before this Court on 8th February, 2024, when the following order came to be passed by a coordinate bench of this Court, of which one of us (G. S. Kulkarni, J.) was a member.

“1. Not on board. Taken on board.

2. The petitioner is permitted to seek adjournment at the hearing fixed by the Whole Time Member, which is stated to be today as also tomorrow.

3. List the proceedings on 15 February, 2024.”

5. On the above backdrop, the proceedings are listed before this Court today.

6. The contention as urged on behalf of the Petitioner is that the impugned show-cause notice is without jurisdiction and the issue of jurisdiction is required to be decided as a preliminary issue before the show-cause notice itself is taken up for adjudication. It is submitted that now the Petitioner after passing of the order dated 8th February, 2024 has already withdrawn the proceedings before the Tribunal and hence the Petitioner intends to canvass his contention on the reliefs prayed for in this Petition that the show-cause notice itself is without jurisdiction and not maintainable and hence the same cannot be adjudicated on merits.

7. Mr. Doctor, learned senior advocate for the Respondent/ SEBI however has opposed all the contentions as urged on behalf of the Petitioner. He submits that contention of the Petitioner that the show-cause notice is identical is not correct and ought not to be accepted. It is his contention that the show-cause notice in the facts of the case is appropriately issued within the jurisdiction of the SEBI and that the earlier show-cause notice and its fate has no relevance insofar as the present show-cause notice is concerned. It is also submitted that the show-cause notice is at the stage of cross-examination of the witness. It is hence his contention that no relief ought to be granted on the Petition and the same be dismissed.

8. Having heard learned counsel for the parties and having perused the record, in our opinion, it appears to be not the case that the Petitioner at any point of time including in the proceedings filed before the tribunal had given up his case that the impugned show-cause notice was without jurisdiction. In fact, the Tribunal itself has observed that the Petitioner would be permitted to raise the issue of jurisdiction in the proceeding of the show-cause notice to be held on 16th February, 2024.

9. In this view of the matter, considering the contentions of the Petitioner, we are of the opinion that the present Petition can be disposed of by directing the concerned Officer of the Respondent to decide the issue of jurisdiction being raised by the Petitioner as a

preliminary issue and only after such issue is decided, take an appropriate call on the adjudication of the show-cause notice. All contentions of the parties in that regard are expressly kept open.

10. The Petitioner shall be intimated the date on which the Petitioner would be heard on the issue of jurisdiction and appropriate orders in deciding such issue be passed as expeditiously as possible.

11. We clarify that till the issue of jurisdiction is decided, the concerned officer of the Respondent shall not adjudicate the show-cause notice on merits including recording of any evidence of the same. In the event is any order adverse to the Petitioner is passed, remedy of the Petitioner to assail the same in appropriate proceedings as the law would permit, is expressly kept open.

12. Ordered accordingly.

13. We may observe that the present order is passed only in the context of the petitioner before us and same shall not prejudice or affect the proceedings of any other show-cause notice.

14. We dispose of the Petition in the aforesaid terms. No costs.

[KISHORE C. SANT, J.]

[G. S. KULKARNI, J.]