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W.P.No.21128 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

W.P.No.21128 of 2023

and

W.M.P.No.20517 of 2023

M.Veermani

... Petitioner

Vs.

1.The Adjudicating Authority,
(Under the Prevention of Money Laundering Act, 2002)
Jeevan Deep Building, Parliament Street,
New Delhi – 110 001.

2.Directorate of Enforcement
Represented by its Deputy Director,
Mallikarjun Mamani I.R.S
Government of India, Ministry of Finance,
Department of Revenue Chennai – I (Zonal Office),
2nd and 4th Floor, Murugesu Naicker Complex,
No.84, Greaves Road, Thousands Lights, Chennai-600 006.

3.The Inspector of Police,
CBI/ACB/CHENNAI
RC.No.032 2020 A 0006,
Chennai.

4.V.Manimozhi

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,



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praying for the issuance of Writ of Certiorari, for calling for the records and to quash the order of the 1st respondent dated 22.08.2022 confirming the provisional attachment order in PAO No. 04 / 2021 dated 24.12.2021 and allowing O.C.No. 1608 of 2022 in ECIR / CEZO -I / 40 / 2020 on the file of the 2nd Respondent attaching Petitioner's house property alone situated at No. 2 / 87 Mela Theru, Thiruchitrambalam, Mayiladuthurai District, Tamil Nadu.

For Petitioner : Mr.John Sathiyam, Senior Counsel
for Mr.Swami Subramanian
For Respondents : Mr.P.Sidharthan, Special Public Prosecutor
for Enforcement Directorate (for R1 & 2)

Mr.E.Raj Thilak,
Additional Public Prosecutor (for R3)

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

The lis on hand has been instituted to assail the Provisional Attachment order passed by the 1st respondent Adjudicating Authority vide proceedings dated 22.08.2022 confirming the Provisional Attachment Order passed by the Director of Enforcement in PAO.04/2021 dated 24.12.2021.

2. Mr.John Sathiyam, the learned Senior counsel would submit that petitioner herein was not a party before the Adjudicating Authority and therefore, he has chosen to file the present Writ Petition to assail the order



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of the Adjudicating Authority.

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3. Mr.P.Sidharthan, the Special Public Prosecutor appearing for the Enforcement Directorate would oppose by stating that, even in such circumstances, an aggrieved person/petitioner shall prefer an Appeal under Section 26 of PMLA, 2002, challenging the order passed by the Adjudicating Authority. Therefore, the present Writ Petition is to be rejected.

4. Exhausting the statutory remedy contemplated under an Enactment is of paramount importance. Disputed facts cannot be adjudicated in a Writ Petition under Section 226 of the Constitution of India. Disputed facts and issues ought to be adjudicated with reference to original documents and evidences available on record and this is exactly is the reason appellate remedy is contemplated under the Special Enactments. Such a remedy contemplated at no circumstances would be undermined, nor be dispensed with in routine manner. Rule is to exhaust the statutory remedy and thereafter, approach the High Court.



5. The factual findings of the Original Authority, Appellate Authority would be of greater assistance to the High Court for the purpose of exercising the powers of the judicial review. The High Court cannot decide disputed issues based on mere affidavits filed in a Writ Petition. Therefore, the aggrieved person has to exhaust the statutory remedy contemplated. The Constitutional Courts have time and again reiterated that statutory remedy, which all are efficacious, under Special Enactments ought to be exhausted before approaching the High Court, by way of Writ Petition.

6. In the present case, the Tribunal has been constituted under Section 26 of PMLA, 2002. The Tribunal is admittedly functioning as of now. Thus, the petitioner is at liberty to approach the Tribunal for the purpose of redressing his grievances. After disposal of the appeal, if any filed before the Tribunal and by the Tribunal, thereafter petitioner has got a remedy under Section 42 of PMLA by preferring a statutory appeal and same is also to be exhausted. When the scheme of the Act provides efficacious alternative remedy, the present Writ Petition filed challenging the order of the Adjudicating Authority deserves no merit consideration.



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7. The learned Senior Counsel for the petitioner would submit that, at the time of filing of the present petition, member was not appointed in the Tribunal and therefore, the petitioner was constrained to move the present Writ Petition. However, the member has been subsequently appointed and the Tribunal is functional as of now.

8. Thus, the petitioner is at liberty to approach the Tribunal by following the procedures as contemplated under law.

9. In the event of filing any such appeal under Section 26, the Tribunal shall entertain the same by condoning the period during which the Writ Petition was pending and decide the issues on merits.

10. With the above observations, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.



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[S.M.S., J.]

[V.S.G., J.]

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Index: Yes/No

Speaking/Non-speaking order

gd



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