

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

% **Date of decision: 31st January, 2014.**

+ **LPA 99/2014, CMs No.2003/2014 (for stay) & 2004/2014 (for exemption)**

ARUN KUMAR MISHRA Appellant
Through: Mr. Neeraj Kishan Kaul, Sr. Adv.
with Mr. Saket Sikri and Mr. Sri
Singh, Advocates.

Versus

UNION OF INDIA & ANR Respondents
Through: Mr. Ravinder Agrawal and Mr. M.P.
Singh, Advocates for UOI.

AND

+ **LPA 100/2014, CMs No.2037/2014 (for stay) & 2038/2014 (for exemption)**

M/S AJANTA MERCHANTS PRIVATE LTD. Appellant
Through: Mr. Manish Sharma, Mr. Gurpreet,
Ms. Shivanshi Gupta and Mr. Nitin
Sharma, Advocates.

Versus

THE DIRECTORATE OF ENFORCEMENT Respondent
Through: Mr. Ravinder Agrawal and Mr. M.P.
Singh, Advocates for UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. These intra court appeals impugn the identical orders, both dated 17th January, 2014, of the learned Single Judge of this Court of dismissal of

W.P.(C) Nos.318/2014 & 345/2014 respectively preferred by the appellants.

2. We have heard the senior counsel for the appellant appearing in LPA No.99/2014. No separate arguments have been addressed in the other appeal.

3. The respondent Directorate of Enforcement vide order dated 30th August, 2013 under Section 5(1) of the Prevention of Money Laundering Act, 2002 and addressed *inter alia* to both the appellants, provisionally attached property No.11, Prithviraj Road, New Delhi held in the name of the appellant M/s. Ajanta Merchant Pvt. Ltd. A complaint dated 24th September, 2013 under Section 5(5) of the said Act was also filed against the appellants before the Adjudicating Authority under the said Act. The Adjudicating Authority issued notices dated 30th September, 2013 of the said complaints, under Section 8 of the Act, to both the appellants calling upon the appellants to show cause why the property provisionally attached should not be declared to be the property involved in money laundering and confiscated by the Central Government and directed the appellants to appear before the Adjudicating Authority on 11th November, 2013. The appellants filed their reply before the Adjudicating Authority and also claim to have filed applications dated 9th & 10th January, 2014 respectively under Section

11 of the Act read with Regulation 18 of the Adjudicating Authority Regulations, 2006, seeking permission for cross-examination of witnesses on whose statements, according to the appellants, the complaints against them were based.

4. It is the case of the appellants that though the Adjudicating Authority heard arguments on the applications aforesaid of the appellants for cross-examination, but no speaking order was passed thereon and on the contrary the Adjudicating Authority posted the complaints to 17th January, 2014 for final disposal.

5. The appellants on 16th January, 2014 filed the writ petitions from which these appeals arise, seeking opportunity for cross-examination as sought in the applications filed before the Adjudicating Authority and for restraining the respondent Directorate of Enforcement from proceeding with the complaints without the appellants having such right/opportunity to cross-examine.

6. The said writ petitions came up before the learned Single Judge on 17th January, 2014 i.e. on the same date when the complaints were listed before the Adjudicating Authority for final disposal. The learned Single Judge dismissed the writ petitions with the following observations:

“This Court is of the view that at this juncture when the Adjudicating Authority under PMLA is seized of the matter, no interference is called for in the present writ petition. However, petitioner shall be at liberty to raise this grievance in the event it is aggrieved by the final order to be passed by Adjudicating Authority under PMLA.

With the aforesaid observations, present writ petition and applications are disposed of.”

7. Aggrieved therefrom, these intra court appeals have been filed. It is mentioned in the memorandum of appeals itself that the Adjudicating Authority on 17th January, 2014 orally dismissed fresh applications dated 17th January, 2014 filed by the appellants calling upon the Adjudicating Authority to pass a separate order on the applications of the appellants for cross-examination and reserved the matter for final orders, though to the knowledge of the appellants, no final order has been pronounced by the Adjudicating Authority till now.

8. The senior counsel for the appellant in LPA No.99/2014, has argued:

(i) that Section 11 of the Act vests in the Adjudicating Authority the powers of the Civil Court under the Civil Procedure Code (CPC), 1908 in the matter of discovery and inspection, enforcing the attendance of any person, compelling the production of records, receiving evidence of affidavits etc.;

(ii) that though Section 6(15) of the Act provides that the

Adjudicating Authority shall not be bound by the procedure laid down by the CPC and shall have the powers to regulate its procedure but requires the Adjudicating Authority to be guided by the principles of natural justice;

(iii) that the complaints against the appellants are based largely on oral testimonies of several witnesses;

(iv) that under Section 24 of the Act, the burden of proof is on the accused/noticee as the appellants are;

(v) that it will be unfair and inequitable and contrary to the principles of natural justice for oral testimonies of persons whom the appellants have had no opportunity to cross-examine being relied against the appellants;

(vi) that all that the appellants are asking is for the Adjudicating Authority to pass a speaking order on the applications filed by the appellants.

9. We have however invited the attention of the senior counsel for the appellant to ***Cooper Engineering Ltd. Vs. P.P. Mundhe*** (1975) 2 SCC 661 laying down that there is no justification for a party to stall the final adjudication of the dispute by questioning the decision on preliminary issues

and to *S.K. Verma Vs. Mahesh Chandra* (1983) 4 SCC 214 deprecating the practice of raising preliminary issues/objections, to delay and defeat adjudication on merits and to *D.P. Maheshwari Vs. Delhi Administration* (1983) 4 SCC 293 also laying down that all issues whether preliminary or otherwise should be decided together so as to rule out the possibility of any litigation at interlocutory stage. Attention of the senior counsel for the appellants is also invited to *National Council for Cement & Building Materials Vs. State of Haryana* (1996) 3 SCC 206 noticing the appalling situation created due to challenge to the decision on preliminary issues in the High Court and during which time the reference is stayed and lies dormant and laying down that the High Court should refuse to intervene in the proceedings before the Tribunals at an interlocutory stage.

10. We have enquired from the senior counsel for the appellant, whether not the appellants, by filing these proceedings are inviting this Court to commit the same mischief qua which the Supreme Court has warned the High Courts.

11. We have further enquired from the senior counsel for the appellant that even if the appellants are right in their contention of having a right to cross-examine the persons whose oral testimony is intended to be used

against the appellants and even if the Adjudicating Authority is wrongly depriving the appellants of the said right, is it not open to the appellants to, if at all aggrieved by the orders of the Adjudicating Authority, to take up the said aspect in appeal under Section 26 of the Act against the said orders and which right of the appellants has been protected in the impugned order by the learned Single Judge also.

12. The senior counsel for the appellant, though not controverting the aforesaid legal position, contends that if the appellants have a right in law to cross-examine the witnesses whose testimonies are intended to be used against the appellants, why should this Court not interfere at this stage itself instead of allowing the Adjudicating Authority to proceed on a futile exercise and which will only result in multiplicity of proceedings.

13. We are unable to agree. The Adjudicating Authority is currently seized of and in seisin of the complaints. We, at this stage, do not know as to which way the order of the Adjudicating Authority will go. It cannot also be said at this stage whether the Adjudicating Authority even if deciding against the appellants will rely upon the material before it qua which the appellants claim a right of cross-examination. All this can be known only when the Adjudicating Authority passes an order and qua which if the

appellants are aggrieved, the appellants shall have their statutory remedy. Any interference by us at this stage in the proceedings of which the Adjudicating Authority is seized is thus uncalled for and would result in a situation which the Supreme Court has warned the High Courts to avoid. Reference may also be made to *Union of India Vs. Kunisetty Satyanarayana* AIR 2007 SC 906 reiterating that the reason why ordinarily a writ petition should not be entertained against a mere show cause notice is that at that stage the writ petition may be held to be premature—a mere show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so and it is quite possible that after considering the reply to the show cause notice or after holding an enquiry, the authority concerned may drop the proceedings. It was further held that a writ lies only when some right is infringed and a mere show cause notice does not infringe the right of any one and it is only when a final order adversely affecting the party is passed, that the said party can be said to be having any grievance. The Supreme Court held that the writ jurisdiction being discretionary, should not ordinarily be exercised by quashing a show cause notice.

14. Similarly, a learned Single Judge of this Court as far back as in *Safari Airways Vs. The Estate Officer* AIR 1983 Delhi 347 concurred with by the Division Bench of this Court in *Maruti Suzuki India Ltd. Vs. Indian Tourism Development Corporation Ltd.* MANU/DE/1034/2013 held that a show cause notice serves no other purpose than to set the machinery of law into motion and has no serious consequences because the noticee is heard before an order is made.

15. We are therefore of the opinion that the learned Single Judge, vide the impugned orders, rightly refused to interfere, while at the same time protecting the rights of the appellants. The senior counsel for the appellant is unable to tell the prejudice, if any, suffered by the appellants.

16. There is thus no merit in the appeals, which are dismissed.

No costs.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J.

JANUARY 31, 2014

bs