

*Before Augustine George Masih & Ashok Kumar Verma, JJ.*

**DIRECTORATE OF ENFORCEMENT, CHANDIGARH ZONAL  
OFFICER, CHANDIGARH—Petitioner**

*versus*

**OM PARKASH CHAUTALA—Respondents**

**PMLA-APPL-3 of 2020**

November 17, 2020

*Prevention of Money Laundering Act, 2002 — Ss.2, 8(4), (6) and (8), 3, 26(4) and 35 — Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules, 2013 — Rule 5(5) —Appeal seeking interim restoration of the attached property, a residential house, on the ground of getting son/grandson married — Appellate Tribunal partly allowed the appeal by invoking inherent powers and ordered the Enforcement Directorate to temporarily de-seal the property and hand-over possession — challenge to. — Plea that the order is without jurisdiction — Held, S.26(4) lays down that the Tribunal, after giving the parties an opportunity of being heard, may pass such orders as it thinks fit, confirming, modifying or setting aside the order appealed against — this would be at the final stage of deciding the appeal. — Where a Tribunal has been conferred the power to pass final order relating to a particular issue or subject, it has the power to pass interim order relating to the same, unless there is a specific bar to it. — The only bar with reference to S.8 would step in when the trial has commenced before the Special Court, which is not the position in the case as charges have not been framed against the respondent yet. —There is nothing which bars the Tribunal from ordering temporary de-sealing of the attached property — this power is discretionary in nature, and is required to be based upon proper appreciation of the statutory provisions and its applicability, which includes non-compliance thereof. — On merits, it was held that the Tribunal has not dealt with the issues raised by the Appellant in reply to the application for grant of interim prayer — Tribunal only referred to its inherent powers to restore the property — no reference to the facts or non-compliance to the statutory provisions has been made — it renders the order cryptic, sketchy and non-speaking. — Resultantly, appeal was allowed, the order was set-aside, and the case remanded to the Appellate Authority for fresh adjudication.*

*Held*, that the primary question, which needs to be gone into in the light of the pleadings, facts and the law cited by the counsel for the parties is with regard to the power of the Appellate Tribunal to pass an order, allowing the application for interim relief during the pendency of the appeal, such as restoration of the property for a specific purpose for a short period of time, as in the present case.

(Para 8)

*Held*, that for this provisions of Sections 26 and 35 of the Act need to be looked at. A perusal of Section 26(4) of the Act would show that the Appellate Tribunal, on receipt of an appeal, may, after giving 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. The requirement of the statute, therefore, is that a notice is mandated to the parties to the appeal for providing them an opportunity of being heard. This apparently is in consonance with the provisions of Section 35(1) of the Act, where the Appellate Tribunal has been said to be not bound by the procedure laid down by the Code of Civil Procedure and rather, the guiding principle shall be the principles of natural justice but subject to other provisions of this Act. Rest of the procedure would be regulated by the Appellate Tribunal as such powers have been conferred on it. The powers conferred on the Appellate Tribunal are for confirming, modifying or setting-aside the order appealed against and this would be at the final stage of deciding the appeal. As regards the aspect relating to the orders to be passed during the pendency of the appeal is concerned, discretion has been left at the hands of the Appellate Tribunal to pass such orders thereon as it thinks fit but with a rider that the opportunity of being heard is given to the parties to the appeal. It, therefore, cannot be said that the Appellate Authority cannot pass orders relating to the property, which is the subject matter of appeal as an interim measure, where it is prima-facie satisfied that there is an error apparent on the record with regard to the commission of offence or in the procedure followed during attachment and taking possession of the property in question. In case the argument as has been raised by counsel for the appellant is accepted, the provision of appeal, as provided under the Act, would be rendered nonest and a mere formality or aneyewash. Where the Appellate Tribunal has been conferred the power to pass a final order relating to a particular issue or subject, it has the power to pass an interim order relating to the same, unless there is a specific bar relating to it. Keeping in view the provisions of the Act, nothing has been pointed out by counsel for the parties, which would bar passing of such an order,

rendering the term used in Section 26(4) of the Act 'pass such orders thereon as it thinks fit' as nonest because it gives ample powers to the Appellate Authority to grant interim relief in deserving cases subject, however, the provisions of the statute.

(Para 8)

*Held*, that the only bar, if any, which has been projected by counsel for the respondent with reference to Section 8 of the Act, would step in only where the trial has commenced before the Special Court, which, in the present case, admittedly is not the position as till date no charges have been framed against the respondent. The said power of the Special Court, therefore, would not be applicable in any case at this stage, which again is an aspect to be looked into in an appropriate case.

(Para 9)

*Held*, that the contention of learned counsel for the appellant that after the passing of the order by the Adjudicating Authority, confirming the order of attachment of a property, mandates taking possession of the property attached under Section 5, suffice it to say that this mandate is only relatable and applicable to the Enforcement Directorate, which does not bar the Appellate Tribunal to pass an order for release of the said property so attached temporarily in the given facts and circumstances of the case and that too for a short duration of time. There is nothing which would bar the Appellate Tribunal from ordering de-sealing the attached property and that too for a limited period. It goes without saying that exercise of such power will obviously be a subject matter of adjudication depending upon the facts and circumstances where such discretion has been exercised by the Appellate Tribunal. This power, although is discretionary in nature, but the same is required to be based upon proper appreciation of the provisions of the statute and its applicability, which includes non-compliance thereof. This answers the basic issue with regard to jurisdiction of the Appellate Tribunal to pass an interim order or granting an interim relief for a short period of time and that too for a specific purpose.

(Para 10)

Arvind Moudgil, Senior counsel for Government of India with Karan Sethi, Kritin Sharma and Devinder Pal, Advocates, *for the appellant.*

Ashok Aggarwal, Sr.Advocate with Gaurav Mohunta and Mukul Aggarwal, Advocates, *for the respondent.*

**AUGUSTINE GEORGE MASIH, J.**

(1) This appeal has been preferred against the order dated 22.10.2020 passed by the Appellate Tribunal, Prevention of Money Laundering Act, New Delhi on two applications submitted by Abhay Singh Chautala, one as a power of attorney holder/representative of Om Prakash Chautala, who had preferred an appeal and the other in his personal capacity, seeking interim restoration of the attached property i.e. residential house on land bearing Khewat Nos.97/98/99 and 104 in Village Tejakhera, Tehsil Dabwali, District Sirsa, Haryana, on the ground that the grand sons of the respondent herein and sons of the applicant are to get married on 27.11.2020 and 30.11.2020. Prayer was made for interim restoration of the property attached between 15.11.2020 to 30.11.2020 with additional 15 days time to prepare to be used and vacate the property before and after the function. On hearing the parties, Appellate Tribunal has partly allowed the said applications by directing the Enforcement Directorate (appellant herein) to de-seal the attached property by 06.11.2020 and hand over the possession of the same to respondent-Om Prakash Chautala/intervener Abhay Singh Chautala for the purpose of aforesaid marriages subject to the condition that they would hand over the possession back to the appellant on or before 07.12.2020, who may thereafter seal the said property till further orders.

(2) The basic ground, which was taken by the appellant, opposing the interim prayer for restoration of the property, was that the Appellate Tribunal had no power to restore the property in the light of the provisions of Section 8(8) of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as "the Act") as the said power has been conferred on the Special Court, which is ceased of the trial in the charge sheet, which has been filed before the said Court. It was further pressed into service that the Appellate Tribunal did not have the jurisdiction to pass such an order of interim relief and, therefore, the said order could not be passed, which was negated by the Appellate Tribunal by observing that it had got inherent powers to do so if the possession of the property is taken without following due procedure of law.

(3) While challenging the said order, the ground, which has been taken by the appellant, is that there is no provision under the Act which allows/permits the temporary de-sealing of the attached property for the use of the accused. It has further been asserted that in the light of Section 3 of the said Act, the use of the property is impermissible

during the pendency of the proceedings for an offence of money laundering. Once the use of the said property itself is included in the offence of money laundering, an order permitting use of such property could not have been passed by the Appellate Tribunal. It has further been asserted that as per Section 3(ii) of the Act, the process or activity connected with the proceeds of the crime continues till a person is directly or indirectly enjoying the said proceeds by way of concealment or possession or acquisition etc. It is, therefore, said that the accused is prohibited from enjoying the proceeds of the crime and, thus, the Appellate Tribunal could not have passed such an interim order. A ground has also been taken that only 50% of the residential house has been sealed/attached by the Directorate of Enforcement, Chandigarh and since only the share which would fall in the ownership of the respondent had been sealed, there was no reason for de-sealing the same, as admittedly the remaining house is in possession of Abhay Singh Chautala. Learned counsel for the appellant has referred to various provisions of the statute to impress upon the Court the intent, purpose and scheme of the Act to contend that the property once attached, which is found to be proceeds of crime, the same cannot be, as an interim measure, ordered to be de-sealed and possession handed over.

(4) The primary emphasis has been laid by counsel on the definitions as given in Section 2(d) 'attachment', 2 (u) 'proceeds of crime', 2(v) 'property', 2(za) 'transfer' and 2(zb) 'value'. Section 3 has been relied upon to impress upon the Court with regard to offence of money laundering, where even the use of said tainted property has been mentioned as an offence, an activity which continues on possession of the said property also falls within the said offence. It is asserted on this basis that by passing of such an interim order, the Appellate Tribunal would perpetuate an offence, which would go against the very basic mandate of statute. Referring to Section 8(4) of the Act, it is asserted that on confirmation of the order of attachment by the Adjudicating Authority, the Enforcement Directorate has been mandated to forthwith take possession of the property, which is attached under Section 5 of the Act. Referring to Section 8(6) of the Act, it is asserted that the Special Court has the power to release the property only after the conclusion of trial, where the commission of offence of money laundering has not been found to have taken place or the property is not involved in the same. Referring to Section 26(4) of the Act, it has been submitted that the Appellate Tribunal although has been given powers to pass such orders as it thinks fit but that does not mean that by way of an interim

order, it would perpetuate the commission of an offence, which is not permissible in law. Reference has been made by counsel for the appellant to the following judgments:-

- i. *Dr.V.M.Ganesh versus The Registrar, Appellate Tribunal, New Delhi and others*<sup>1</sup>
- ii. *B.Rama Raju versus Union of India (UOI), Ministry of Finance, Department of Revenue and others*<sup>2</sup>
- iii. *The Deputy Director Directorate of Enforcement Delhi versus AXIS Bank and others*, CrI.A.143/2018 & CrI.M.A.2262/2018, decided on April 02, 2019
- iv. *J. Sekar versus Union of India and others*<sup>3</sup>
- v. *P.Chidambaram versus Directorate of Enforcement, BAIL APPLN.2718/2019*, decided on 15.11.2019

(5) On the other hand, learned senior counsel for the respondent has referred to second proviso to Section 8(1) to contend that the Adjudicating Authority was required to issue notice and ensure that it is served to all persons holding a property jointly. It is not disputed that no notice has been issued to the other joint holders of the property, including Abhay Singh Chautala. Since the order of attachment, as confirmed by the Adjudicating Authority, violates the provisions of Section 8 of the Act, the order confirming attachment, cannot sustain and, therefore, the Appellate Tribunal has rightly proceeded to grant the interim relief. He asserts that admittedly Abhay Singh Chautala was not a party to the proceedings, he being an interested party, had moved an application for impleading him as an intervener, which application has been allowed vide the impugned order, apart from allowing the application for interim relief but he has not been impleaded as a party respondent in the present appeal. This further fortifies that the order in part has been challenged by the appellant limited to the extent of Om Prakash Chautala. It is asserted that since it is a common order, the appeal would not be maintainable in the present form, for which reliance has been placed upon the provisions of Section 99 of the Code of Civil Procedure. Referring to Section 2(u) of the Act, which defines proceeds of crime, learned senior counsel has pressed upon the language to assert that either immovable property can be attached or the

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<sup>1</sup> (2019) 4 CTC 222

<sup>2</sup> (2011) 108 SC L491 (AP)

<sup>3</sup> 2018 CrI. L.J. 1720

value of any such property can be taken as the proceeds of crime. He has referred to this aspect in the context of Rule 5(5) of the Prevention of Money-laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules, 2013, wherein in relation to 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. He, on this basis, asserts that the respondent herein had given an undertaking before the Appellate Tribunal to deposit a sum of Rs.1,99,87,300/- in the shape of FDR with the office of appellant-Enforcement Directorate forthwith for restoration of the attached property during the pendency of the appeal. He, therefore, contends that taking of possession of the property is not always mandated, as has been asserted by counsel for the appellant.

(6) As regards the jurisdiction of the Appellate Tribunal for passing an interim order as the one impugned, reference has been made to Section 35 of the Act, which deals with the procedure and powers of the Appellate Tribunal. It is asserted that the Appellate Tribunal has the power to regulate its own procedure and the only guiding principle is that of natural justice. Referring to Section 26(4) of the Act, it is asserted that the Appellate Tribunal, after giving an opportunity of hearing to the parties concerned, can pass such orders as it thinks fit, confirming, modifying or setting-aside the order appealed against. He, on this basis, asserts that where the Appellate Tribunal has found that the order appealed against has not been confirmed by the Adjudicating Authority by following due procedure of law while taking possession of the property, the interim order so passed would be fully justified and in accordance with the law, which would fall within the discretion as conferred under Section 26(4) of the Act. The Appellate Tribunal has got inherent powers to do so and in exercise of the same, the said order cannot be said to be unsustainable.

(7) As regards the assertion of counsel for the appellant that the Appellate Tribunal did not have the power to restore the property temporarily and it was only the Special Court which could do so as per the provisions of the Act, it is asserted that the trial has not yet commenced as it is admitted between the parties that the charges are yet to be framed by the Special Court. If the trial has not commenced, the power is only vested with the Appellate Tribunal. It is, therefore,

asserted that the order impugned, being in accordance with law, does not call for any interference by this Court. Counsel for the respondent has placed reliance on the following judgments:-

- i. *The Management Hotel Imperial, New Delhi and others versus Hotel Workers' Union*<sup>4</sup>
- ii. *Allahabad Bank, Calcutta versus Radha Krishna Maity*<sup>5</sup>
- iii. *Industrial Credit and Investment Corporation of India Ltd. versus Grapco Industrial Ltd.*<sup>6</sup>
- iv. *Grindlays Bank Ltd. versus The Central Government Industrial Tribunal and others*<sup>7</sup>
- v. *Om Prakash Chautala versus The Joint Director, Directorate of Enforcement, Chandigarh, FPA-PMLA-3382/CHD/2019, decided on 23.12.2019*
- vi. *G.Amudha versus The Appellate Tribunal under the Prevention of Money Laundering Act, New Delhi and others, W.P. No.6159 of 2017, decided on 14.03.2017*
- vii. *Mydream Properties Private Ltd. versus Commissioner of Customs (Imports), Mumbai*<sup>8</sup>
- viii. *Jagtu versus Suraj Mal and others*<sup>9</sup>
- ix. *Chaman Lal versus State of Punjab and others*<sup>10</sup>
- x. *Ratilal Bhanji Mithani versus State of Maharashtra and others*<sup>11</sup>
- xi. *V.C.Shukla versus State through C.B.I.*<sup>12</sup>
- xii. *Union of India versus Major General Madan Lal*

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<sup>4</sup> 1959 AIR (SC) 1342

<sup>5</sup> 1999 AIR (SC) 3426

<sup>6</sup> 1999 AIR (SC) 1975

<sup>7</sup> (1981) AIR (SC) 606

<sup>8</sup> (2018) 9 G.S.T.L. 354

<sup>9</sup> (2010) 13 SCC 769

<sup>10</sup> (2014) 15 SCC 715

<sup>11</sup> (1979) AIR (SC) 94

<sup>12</sup> (1980) AIR (SC) 962



*Yadav (Retd.)*<sup>13</sup>

xiii. *State of U.P. and another versus Synthetics and Chemicals Ltd. and another*<sup>14</sup>

xiv. *M/s Hyder Consulting (UK) Ltd. versus Governor, State of Orissa through Chief Engineer*<sup>15</sup>

(8) We have heard counsel for the parties and with their assistance have gone through the records of the case as also the judgments referred to above.

(9) The primary question, which needs to be gone into in the light of the pleadings, facts and the law cited by the counsel for the parties is with regard to the power of the Appellate Tribunal to pass an order, allowing the application for interim relief during the pendency of the appeal, such as restoration of the property for a specific purpose for a short period of time, as in the present case.

(10) For this provisions of Sections 26 and 35 of the Act need to be looked at. A perusal of Section 26(4) of the Act would show that the Appellate Tribunal, on receipt of an appeal, may, after giving 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. The requirement of the statute, therefore, is that a notice is mandated to the parties to the appeal for providing them an opportunity of being heard. This apparently is in consonance with the provisions of Section 35(1) of the Act, where the Appellate Tribunal has been said to be not bound by the procedure laid down by the Code of Civil Procedure and rather, the guiding principle shall be the principles of natural justice but subject to other provisions of this Act. Rest of the procedure would be regulated by the Appellate Tribunal as such powers have been conferred on it. The powers conferred on the Appellate Tribunal are for confirming, modifying or setting-aside the order appealed against and this would be at the final stage of deciding the appeal. As regards the aspect relating to the orders to be passed during the pendency of the appeal is concerned, discretion has been left at the hands of the Appellate Tribunal to pass such orders thereon as it thinks fit but with a rider that the opportunity of being heard is given to the parties to the appeal. It, therefore, cannot be said that the Appellate

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<sup>13</sup> (1996) AIR (SC) 1340

<sup>14</sup> (1991) 4 SCC 139

<sup>15</sup> (2015) AIR (SC) 856

Authority cannot pass orders relating to the property, which is the subject matter of appeal as an interim measure, where it is prima-facie satisfied that there is an error apparent on the record with regard to the commission of offence or in the procedure followed during attachment and taking possession of the property in question. In case the argument as has been raised by counsel for the appellant is accepted, the provision of appeal, as provided under the Act, would be rendered nonest and a mere formality or an eyewash. Where the Appellate Tribunal has been conferred the power to pass a final order relating to a particular issue or subject, it has the power to pass an interim order relating to the same, unless there is a specific bar relating to it. Keeping in view the provisions of the Act, nothing has been pointed out by counsel for the parties, which would bar passing of such an order, rendering the term used in Section 26(4) of the Act 'pass such orders thereon as it thinks fit' as nonest because it gives ample powers to the Appellate Authority to grant interim relief in deserving cases subject, however, the provisions of the statute.

(11) The only bar, if any, which has been projected by counsel for the respondent with reference to Section 8 of the Act, would step in only where the trial has commenced before the Special Court, which, in the present case, admittedly is not the position as till date no charges have been framed against the respondent. The said power of the Special Court, therefore, would not be applicable in any case at this stage, which again is an aspect to be looked into in an appropriate case.

(12) The contention of learned counsel for the appellant that after the passing of the order by the Adjudicating Authority, confirming the order of attachment of a property, mandates taking possession of the property attached under Section 5, suffice it to say that this mandate is only relatable and applicable to the Enforcement Directorate, which does not bar the Appellate Tribunal to pass an order for release of the said property so attached temporarily in the given facts and circumstances of the case and that too for a short duration of time. There is nothing which would bar the Appellate Tribunal from ordering de-sealing the attached property and that too for a limited period. It goes without saying that exercise of such power will obviously be a subject matter of adjudication depending upon the facts and circumstances where such discretion has been exercised by the Appellate Tribunal. This power, although is discretionary in nature, but the same is required to be based upon proper appreciation of the provisions of the statute and its applicability, which includes non-

compliance thereof. This answers the basic issue with regard to jurisdiction of the Appellate Tribunal to pass an interim order or granting an interim relief for a short period of time and that too for a specific purpose.

(13) Now coming to the merits of the present case. Admittedly, the proceedings which have been initiated by the Enforcement Directorate, are against the respondent alone and the property in question is a joint property, of which one of the co-sharers is Abhay Singh Chautala, who is not a party to the present appeal. Vide the impugned order dated 22.10.2020, an application, which has been preferred by Abhay Singh Chautala, for being impleaded as an intervener, stands allowed and he has been impleaded as appellant No.2. His application for seeking interim restoration of the attached property has been allowed alongwith the application for the same relief by respondent-Om Prakash Chautala. As the appeal has been filed against Om Prakash Chautala, this Court is dealing with the appeal qua him only.

(14) A perusal of the order passed by the Appellate Tribunal clearly indicates that the issue raised by the appellant in its reply to the application for grant of interim prayer has not been dealt with, especially with regard to the statutory provisions referred to and relied upon by the appellant. The Appellate Tribunal has simply said in the order that it had inherent powers to restore the property in case the possession of the property is taken without following due procedure of law. No reasons whatsoever with regard to the non-compliance of the specific provisions of the statute has been made in the impugned order. No reference has been made to the facts as to how, when and where there has been non-compliance or violation of the statutory procedural and mandatory provisions of law. This renders the order passed by the Appellate Tribunal unsustainable in law being cryptic, sketchy and non-speaking without any justification for passing such order. There appears to be non-application of mind, rendering the order liable to be set-aside.

(15) In view of the above, the present appeal is allowed and the impugned order dated 22.10.2020 passed by the Appellate Tribunal is hereby set-aside and the case is remanded to the Appellate Tribunal for fresh decision in accordance with law at an early date keeping in view the prayer of the respondent.

(16) The parties, through their counsel, are directed to appear before the Appellate Tribunal on 18.11.2020.

(17) As the main appeal stands allowed, no orders are required to be passed on the pending applications.

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*Tribhuvan Dahiya*