(2017) 08 ATPMLA CK 0002

In the Appellate Tribunal Under Prevention Of Money Laundering Act

Case No : FPA-PMLA-1368/GOA/2016

HDFC APPELLANT

Vs

Joint Director Directorate Of Enforcement, Goa RESPONDENT

Date of Decision : 28-08-2017

Acts Referred:

Constitution Of India, 1950 — Article 226
Prevention Of Money Laundering Act, 2002 — Section 2(u), 2(1)(u), 2(1)(y), 3, 5, 5(1)(c), 8, 8(1), 8(2), 50, 71
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2), 13(4), 14, 26E, 31B
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22, 32, 32(1)
Special Court (Trial Of Offences Relating To Transactions in Securities) Act, 1992 — Section 3, 3(4), 11(1), 11(2), 13
Recovery Of Debts Due To Banks And Financial Institutions Act, 1993 — Section 2, 31B, 34
Enforcement Of Security Interest And Recovery Of Debts Laws And Miscellaneous Provisions (Amendment) Act, 2016 — Section 41
Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 120B, 420, 467, 471
Prevention Of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2017) 08 ATPMLA CK 0002

Hon'ble Judges : Manmohan Singh, J;G. C. Mishra, Member;B.K. Bansal, Member

Bench : Full Bench

Advocate : Devmani Bansal, Neeraj Atri

Final Decision : Allowed

Judgement

,,

FPA-PMLA-1368/GOA/2016,,

1. The present appeal is preferred by the HDFC Bank Ltd. against the impugned order dated 30.05.2016 passed by the Adjudicating Authority in OC,,

No. 537/2016 and Provisional Attachment Order (PAO) dated 8.12.2015 in

ECIR/04/NGSZO/2013 (ECIR) inter-alia praying for the following :-,,

a. Quash and set-aside the impugned order dated 30.05.2016 passed by the learned Adjudicating Authority under the Prevention of Money Laundering,,

Act, 2002;",,

b. Quash and set-aside the provisional Attachment Order dated 08.12.2015 passed by the Joint Director, Directorate of Enforcement, Panaji, Goa;",,

c. Pass any other order or orders as may be deemed to be fit and proper in the interest of justice.,,

2. Brief facts of the case:-,,

a. The said ECIR was registered by the Enforcement Directorate on the basis of FIR bearing no. RC-219/2012/E/0013 dated 20.09.2012 registered by,,

CBI against (a) M/s Grace Industries Ltd. (â??GILâ?) , (b) Sh. Mukesh Gupta, (D-1 in the OC no. 537/16) the then Director of GIL, (c) Smt. Seema",,

Gupta, (D-2 in the OC No. 537/16) the then Director of GIL, (d) unknown public servants and (e) unknown others for the commission of offences",,

punishable under section 120 â?" B read with section 420 of IPC and section 13(2) read with section 13(1) (d) of the Prevention of Corruption Act,",,

1988. This aforesaid FIR was registered by the CBI on the basis of reference from Central Vigilance Commission for alleged corruption in the matter,,

of allocation of coal blocks to the private companies during the period 2006-2009.,,

3. The allegations against the alleged persons therein was that the share capital was inflated by the GIL in a fraudulent manner using shell companies,,

without any real influx of share capital. It is also revealed from the investigation carried out by the Enforcement Directorate that the GIL and its,,

associates received a sum of Rs. 24,92,49,850/- on account of selling of coal blocks to M/s Sanvijay Rolling & Engineering Ltd. (SREL) , Nagpur",,

which was illegally acquired and the acquisition of said coal blocks was in contravention of scheduled offence of section 420 of IPC. The,,

Enforcement Directorate concluded that the aforesaid amount of Rs. 24,92,49,850/- was derived out of commission of scheduled offence and was",,

considered as â??proceeds of crimeâ? generated by the commission of scheduled offence as defined under section 2(1) (u) of Prevention of Money,,

Laundering Act, 2002 (PMLA).",,

4. During the course of investigation, the Enforcement Directorate attached the

scheduled property which was under mortgage with the appellant. The",,

scheduled property alleged to have been acquired along with several other properties that are listed in provisional attachment order and became,,

subject matter of adjudication. In the present appeal, we are concerned with only one property that has mentioned in the scheduled below:-",,

5. CONTENTIONS OF THE APPELLANT,,

The appellant has in its appeal has contended the following:-,,

(i) The scheduled property was purchased on 14.10.2005 that is prior to the registration of FIR against the GIL even much prior to the reference from,,

CVC.,,

(ii) The property was mortgaged with the appellant prior to the passing of the PAO and impugned order. The scheduled property cannot be said to be,,

purchased out of â??proceeds of crimeâ??.,,

(iii) The possession of the Scheduled Property under the Securitization and Re-construction of Financial Assets and Enforcement of Security Interest,",,

2002 (SARFAESI) is much prior to the passing of the PAO.,,

(iv) No reasons has been recorded for treating the schedule property acquired out of â??proceeds of crimeâ??.,,

(v) Neither the PAO, nor the impugned order contains any reasons to believe.",,

(vi) The provisions of SARFAESI would have overriding effect over the provisions of the PML Act in view of the fact that a secured creditor has,,

taken over possession of the secured asset under a statute.,,

(vii) Sh. Mukesh Deodutta Gupta, Smt. Seema Mukesh Gupta and M/s Gupta International Industries Ltd. (GIIL) (D-3 in O.C. No. 537/16) were the",,

customers of the Centurion bank of Punjab. M/s GIIL had availed credit facilities of Rs. 11 crores from the said bank vide sanction letter dated,,

26.07.2007 against the Mortgage of the scheduled property vide a registered Mortgaged Deed dated 20.09.2007. The scheduled property was,,

purchased by Sh. Mukesh Gupta and Seema Gupta vide Sale Deed dated 04.10.2005.,,

(viii) The Centurion Bank of Punjab merged and amalgamated with HDFC Bank vide RBIâ?s order dated 20.5.2008 w.e.f 23.05.2008. The aforesaid,,

borrowers confirmed their liability to the appellantsâ?? Bank vide letter of confirmation dated 03.05.2010.,,

(ix) The loan account became Non Performing Assets on 29.12.2010 and thereafter the present appellant initiated action under SARFAESI Act by,,

issuing notice dated 27.02.2013 under section 13(2) of SARFAESI act for an outstanding amount of Rs. 5,55,27,481.83/- along with interest and",,

thereafter action under section 13(4) under SARFAESI Act and symbolic possession of the scheduled property was taken on 20.2.2014.,,

(x) It is further contended by the appellant that had moved before the District Magistrate under section 14 of the SARFAESI Act for taking physical,,

possession of the schedule properties. The District Magistrate allowed the applicantâ? application registered bearing no. 26/2014. The applicantsâ?,,

application was allowed by the District Magistrate vide order 05.11.2015.,,

(xi) It is further contended by the appellant that they have filed a recovery application before the Debt Recovery Tribunal, Nagpur being original",,

application no. 164/2014 for recovery of about Rs. 7.33 crores and the said application is pending before the adjudication.,,

6. THE GROUNDS OF THE APPEAL,,

The appellant has challenged the impugned order, inter-alia on the following grounds:-",,

(i) PAO dated 08.12.2015 is non-est in Law.,,

(ii) The Enforcement Directorate has not recorded reasons and there is no reasons to believe in the PAO/impugned order.,,

(iii) An amount of Rs. 24,92,49,850/- crores was treated as â??proceed of crimeâ?? not the schedule property.",,

(iv) The said amount was not used to generate the scheduled property so the same could not have been attached under the garb of â??proceeds of,,

crimeâ??.,,

(v) That the Enforcement Directorate as well as the Adjudicating Authority have misplaced reliance on section 71 of the PMLA regarding over-riding,,

effect of PMLA Act, 2002 over SARFAESI Act, 2002.",,

(vi) The reasoning of Adjudication Authority confirming the PAO on the premise that since the proceed of crime are not easily available or traceable,",,

other assets of the accused can be confiscated. This reasoning of Adjudicating Authority is contrary to law.,,

(vii) The Enforcement Directorate has no justification to attach the scheduled property possession of which had been taken by the appellant under the,, provision of SARFAESI Act. The impugned order, as per the contention of the appellant are concerned, is a non speaking and un-reasoned order and",,

is, thus, violative of principle of natural justice.",,

7. THE CONTENTIONS OF THE RESPONDENT,,

(i) The contentions of the respondent, inter-alia, are that the provisionally attached properties including the scheduled properties are acquired out of the",,

â??proceeds of crimeâ? i.e. Rs. 24,92,49,850 and section 71 of PMLA Act, 2002 provides for the over-riding effect of the Act notwithstanding",,

anything inconsistent therewith contained in any other law for the time being in force.,,

(ii) The aforesaid stand of the respondent remains the same both before the Adjudicating Authority as well as before this Tribunal.,,

8. So far as this appeal is concerned, we are to examine the legality of the attachment made by the Enforcement Directorate by its PAO dated",,

08.12.2015 and confirmation of the same by the Adjudicating Authority vide the impugned order dated 30.05.2016.,,

9. The appellant has raised several grounds before us. Here, we have first examined the legal issue regarding overriding effect of both the special",,

Acts.,,

10. Admittedly, the property has been purchased in the year 2005, that is, prior to the alleged commission of scheduled offences i.e. section 420 of",,

Indian Penal Code. It is also not disputed by the respondent that the defendant no. 1, 2 and 3 had availed loan from the Centurion bank of Punjab in",,

2007 which was subsequently taken over the by the HDFC Bank and the defendant no. 1 to 3 confirmed the loan taken from Centurion Bank of,,

Punjab to continue the liability with the present appellant i.e. the defendant no. 4. There is also no refusal or dispute raised by the respondent with,,

respect to the fact that the appellant had initiated again under SARFAESI Act, 2002, took symbolic position of the scheduled property, applied before",,

the District Magistrate for taking the physical possession of the said scheduled property and also filed recovery of loan application before the Debt,,

Recovery Tribunal (DRT) for recovery of the loan.,,

11. Both parties have made their submissions and referred the relevant documents available on record. We have heard them and gone through the,,

papers. Recently, this Tribunal dealt with a group of 12 appeals involving various banks having similar facts and legal issues involved herein in the",,

present appeal and decided the said group of appeals by a common judgment and order dated 14.7.2017 under the title State Bank of India Vs.,,

Enforcement Directorate in the matter of FPA-PMLA-1026-Kol-2015 and 11 others.,,

12. It may be stated here that the legal issue of overriding effect of the two Acts i.e. SARFAESI Act, 2002 and the PMLA Act, 2002 has since been",,

decided by this Tribunal. In the aforesaid common judgment, dated 14.07.2017 (supra) this Tribunal has held that SARFAESI Act, 2002 has over-",,

riding effect over the PMLA Act, 2002 after discussing the said legal issues in details on the basis of the latest amendment of SARFAESI Act, 2002",,

in which section 31 (B) has been inserted in the year 2016 and judgment of Honâ?ble Supreme Court and the latest judgment of full bench of Madras,,

High Court. We have also discussed several other judgments in the said common judgment dated 14.7.2017.,,

13. The relevant paras of our said judgment dated 14.7.2017 are reproduced below:-,,

â??30. We may point out that the aspect of overriding effect between the two special Act i.e. PMLA, 2002 and SARFAESI Act has been",,

widely discussed by the Supreme Court in the case of Solidaire India Ltd. V/s. Fair Growth Financial Services Ltd. & Ors. Wherein after,,

discussion in para 7-11 it was held that later enactment would prevail with a non-obstante clause. Paras 7-11 reads as under:-,,

â??7. Coming to the second question, there is no doubt that the 1985 Act is a special Act. Section 32(1) of the said Act reads as follows:",,

â??32. Effect of the Act on other laws.â?"(1) The provisions of this Act and of any rules or schemes made there under shall have effect,,

notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act,",,

1973 (46 of 973) and the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) for the time being in force or in the Memorandum or",,

Articles of Association of an industrial company or in any other instrument having effect by virtue of any /law other than this Act.â??,,

8. The effect of this provision is that the said Act will have effect notwithstanding anything inconsistent therewith contained in any other law,,

except to the provisions of the Foreign Exchange Regulation Act, 1973 and the Urban Land (Ceiling and Regulation) Act, 1976. A similar",,

non obstante provision is contained in Section 13 of the Special Court Act which reads as follows:,,

â??13. Act to have overriding effect.â?"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith,,

contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act, or in any",,

decree or order of any Court, tribunal or other authority.â??",,

9. It is clear that both these Acts are special Acts. This Court has laid down in no uncertain terms that in such an event it is the later Act,,

which must prevail. The decisions cited in the above context are as follows:,,

â??Maharashtra Tubes Ltd. v. State Industrial & investment Corpn. Of Maharashtra Ltd.; Sarwan Singh v. Kasturi Lal;,,

AllahabadBankv.Canara Bank and Ram Narain v. Simla Banking & Industrial Co. Ltd.,,

10. We may notice that the Special Court had in another case dealt with a similar contention. In Bhoruka Steel Ltd. v. Fairgrowth Financial,,

Services Ltd. it had been contended that recovery proceedings under the Special Court Act should be stayed in view of the provisions of the,,

1985 Act. Rejecting this connection, the Special Court had come to the conclusion that the Special Court Act being a later enactment would",,

prevail. The headnote which brings out succinctly the ration of the said decision is as follows:,,

â??Where there are two special statutes which contain non obstante clauses the later statute must prevail. This is because at the time of,,

enactment of the later statute, the Legislature was aware of the earlier legislation and its non obstante clause. If the Legislature still confers",,

the later enactment with a non obstante clause it means that the Legislature wanted that enactment to prevail. If the Legislature does not,,

want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment,,

continue to apply.,,

The Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, provides in Section 13. that its provisions are to",, prevail over any other Act. Being a later enactment, it would prevail over the Sick Industrial Companies (Special Provisions) Act, 1985. Had",,

the Legislature wanted to exclude the provisions of the Sick Companies Act from the ambit of the said Act, the Legislature would have",,

specifically so provided. The fact that the Legislature did not specifically so provide necessarily means that the Legislature intended that the,,

provisions of the said Act were to prevail even over the provisions of the Sick Companies Act.,,

Under Section 3 of the 1992 Act, all properly of notified persons is to stand attached. Under Section 3(4), it is only the Special Court which",,

can give directions to the Custodian in respect of property of the notified party. Similarly, under Section 11(1), the Special Court can give",,

directions regarding property of a notified party. Under Section 11(2), the Special Court is to distribute the assets of the notified party in",,

the manner set out thereunder. Monies payable to the notified parties are assets of the notified party and are, therefore, assets which stand",,

attached. These are assets which have to be collected by the Special Court for the purposes of distribution under Section 11(2). The,,

distribution can only take place provided the assets are first collected. The whole aim of these provisions is to ensure that monies which are,,

siphoned off from hanks and financial institutions into private pockets are returned to the banks and financial institutions. The time and,,

manner of distribution is to be decided by the Special Court only. Under Section 22 of the 1985 Act, recovery proceedings can only be with",,

the consent of the Board for Industrial and Financial Reconstruction or the appellate authority under that Act. The Legislature being aware,,

of the provisions of Section 22 under the 1985 Act still empowered only the Special Court under the 1992 Act of the 1992 Act to give,,

directions to recover and to distribute the assets of the notified persons in the manner set down under Section 11 (2) of the 1992 Act. This,,

can only mean that the Legislature wanted the provisions of Section 11(2) of the 1992 Act to prevail over the provisions of any other law,,

including those of the Sick Industrial Companies (Special Provisions) Act, 1985.",,

It is a settled rule of interpretation that if one construction leads to a conflict, whereas on another construction, two Acts can he",, harmoniously constructed then the latter must be adopted. If an interpretation is given that the Sick Industrial Companies (Special,,

Provisions) Acy 1985, is to prevail then there would be a clear conflict. However, there would be no conflict if it is held that the 1992 Act is",,

to prevail. On such an interpretation the objects of both would be fulfilled and there would be no conflict. It is clear that the Legislature,,

intended that public monies should be recovered first even from sick companies. Provided the sick company was in a position to first pay,,

back the public money, there would be no difficulty in reconstruction. The Board for Industrial and Financial Reconstruction whilst",,

considering a .scheme for reconstruction has to keep in mind the fact that it is to be paid off or directed by the Special Court. The Special,,

Court can, if it is convinced, grant time or installments.",,

There can, therefore, be no stay of any proceedings for recovery against a sick company so far as the Special Court under the 1992 Act is",,

concerned.""",,

11. We are in agreement with the aforesaid decision of the case, more so when we find that whenever the legislature wishes to do so it",,

makes appropriate provisions in the Act in that behalf. Mr Shiraz Rustomjee has drawn our attention to Section 34 of the Recovery of Debts,,

Due to Banks and Financial Institutions Act, 1993 wherein after giving an overriding effect to the 1993 Act it is specifically provided that",,

the said Act will be in addition to and not in derogation of a number of other Acts including the 198.5 Act. Similarly under Section 32 of the,,

1985 Act the applicability of the Foreign Exchange Regulation Act and the Urban Land (Ceiling and Regulation) Act is not excluded. It is,,

clear that in the instant case there was no intention of the legislature to permit the 1985 Act to apply, notwithstanding the fact that",,

proceedings in respect of a company may be going on before the BIFR. The 1992 Act is to have an overriding effect notwithstanding any,,

provision to the contrary in another Act.â??,,

31. The similar view was taken by the Bombay High Court in the case of Bhoruka Steel Ltd. Vs. Fairgrowth Financial Services Ltd. The,,

judgment rendered on 09.02.2016 reported in 1997 (89) company cases 547 (BOM) para 15 of the said judgment read as under:,,

15. To be noted that in both the judgments, relied upon by counsel, the Supreme Court has held that generally where there are two special",,

statues, which contain non-obstante clauses, the later statute must prevail. This is because at the time of enactment of the later statute, the",,

Legislature was aware of the earlier legislation and its non-obstante clause. If the Legislature still confers the later enactment with a non-,,

obstante clause it means that the Legislature wanted that enactment to prevail. If the Legislature does not want the later enactment to prevail,,

then it could and would provide in the later enactment that the provisions of the earlier enactment continue to apply. In the present case, the",,

said Act is later. The said Act provides that its provisions are to prevail over any other Act. This would include the Sick Companies Act. If,,

the legislature wanted to provide otherwise, they would have specifically so provided.â??",,

32. Recently, the Parliament has amended the twin legislations viz. (i) the SARFAESI Act, 2002 and (ii) the DRT Act, 1993(after amendment",,

titled as the Recovery of Debts and Bankruptcy Act, 1993) by the Enforcement of Security Interest and Recovery of Debts Laws and",,

Miscellaneous Provisions (Amendment) Act, 2016 and its provisions have been given effect from 01.09.2016.",,

33. The amended provisions give overriding effect over any other law and priority to the secured condition for the time being in force,,

including the provisions of PMLA in so far as recovery of the loan by the secured creditors is concerned.,,

The amended provisions are reproduced as under:,,

(i) Section 26E of the SARFAESI Act, 2002 :",,

â??26E. Priority to secured creditors â?" Notwithstanding anything contained in any other law for the time being in force, after the",,

registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes,",,

cesses and other rates payable to the Central Government or State Government or local authority.,,

Explanation : For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy",,

Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower,",,

priority to secured creditors in payment of debt shall be subject to the provisions of that Code.â??,,

(ii) Section 31B of the Recovery of Debts and Bankruptcy Act, 1993 :",,

31B. Priority to secured creditors â?" Notwithstanding anything contained in any other law for the time being in force, the rights of secured",,

creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and",,

shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and other rates due to the Central",,

Government, State Government or local authority.",,

Explanation : For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy",,

Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower,",,

priority to secured creditors in payment of debt shall be subject to the provisions of that Code.â??,,

34. In Section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 after the words ""the date of the application"",",,

and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower",,

by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities or;""",,

is added which makes the said amendment or the 1993 Act applicable to all the debts which remains unpaid.,,

35. Thus, it is very clear from above that the secured creditor, get a priority over the rights of Central or State Government or any other",,

Local Authority. The amendment has been introduced to facilitate the rights of the secured creditors which are being hampered by way of,,

attachments of properties, belonging to the financial institutions/secured creditors, done by/in favour of the government institutions.",,

36. The Full Bench of the Madras High Court while acknowledging the amount of losses suffered by the Banks and while approving the,,

latest amended Section 31B of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 held in the case â??The Assistant",, Commissioner (CT), Anna Salai-III Assessment Circle Vs. The Indian Overseas bank and Ors.â?? that",,

â??There is, thus, no doubt that the rights of a secured creditor to realise secured debts due and payable by sale of assets over which",,

security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the",,

Central Government, State Government or Local Authority. This section introduced in the Central Act is with ''notwithstanding'' clause and",,

has come into force from 01.09.2016. Further it was also held that the law having now come into force, naturally it would govern the rights",,

of the parties in respect of even a lis pending.â??,,

37. The Assistant Commissioner (CT) Vs. The Indian Overseas Bank, Madras High Court, WP No. 2675 of 2011 (Full Bench)",,

â??2 We are of the view that if there was at all any doubt, the same stands resolved by view of the Enforcement of Security Interest and",,

Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, Section 41 of the same seeking to introduce Section 31B in",,

the Principle Act, Which reads as under:-",,

â??31B. Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realize secured",,

debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over",,

all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local",,

authority.,,

Explanation. â?" for the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy",,

Code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to",,

secured creditors in payment of debt shall be subject to the provisions of that Code.â??,,

â??3 There is, thus, no doubt that the rights of a secured creditor to realize secured debts due and payable by sale of assets over which",,

security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the",, Central Government, State Government or Local Authority. This section introduced in the Central Act is with â??notwithstandingâ? clause",,

and has come into force from 01.09.2016â??,,

â??4 The law having now come into force, naturally it would govern the rights of the parties in respect of even a lis pending.â??",,

â??5 The aforesaid would, thus, answer question (a) in favour of the financial institution, which is a secured creditor having the benefit of",,

the mortgaged property.â??,,

38. In another Madras High Court judgment in the case of â??Dr. V. M. Ganesan vs. The Joint Director, Directorate of Enforcementâ? has",,

explained the grievances faced by the financial institutions while holding that,,

â??For instance, if LIC Housing Finance Limited, which has advanced money to the petitioner in the first writ petition and which",,

consequently has a right over the property, is able to satisfy the Adjudicating Authority that the money advanced by them for the purchase",,

of the property cannot be taken to be the proceeds of crime, then, the Adjudicating Authority is obliged to record a finding to that effect",,

and to allow the provisional order of attachment to lapse. Otherwise, a financial institution will be seriously prejudiced. I do not think that",,

the Directorate of Enforcement or the Adjudicating Authority would expect every financial institution to check up whether the contribution,,

made by the borrowers towards their share of the sale consideration was lawfully earned or represent the proceeds of crime. Today, if the",,

Adjudicating Authority confirms the provisional order of attachment and the property vests with the Central Government, LIC Housing",,

Finance Limited will also have to undergo dialysis, due to the illegal kidney trade that the petitioner in the writ petition is alleged to have",,

indulged in. This cannot be purport of the Act.â??,,

39. In a case contested by one of the branches of the Appellant Bank, the High Court of Madras â??State Bank of India Vs. The Assistant",,

Commissioner, Commercial Tax, Puraswalkam Assistant Circle and Ors.â?, while upholding the Amendment Act, 2016 to Section 26E of the",,

SARFAESI Act and reaffirming the view of the Full Bench of the same court in The Assistant Commissioner (CT), Anna Salai-III Assessment",,

Circle (supra) lifted the attachment entry and held that,, â??In other words, not only should the amendment apply to pending lis, but the declaration that the right of a secured creditor to realise",,

the secured debts, would have priority over all debts, which would include, Government dues including revenues, taxes, etc., should hold",,

good qua 2002 Act as well.â??,,

40. B. RAMA RAJU V. UOI AND ORS. Reported in (2011) 164 company case 149(AP)(D Bw)ho has dealt with the aspect of bonafide,,

acquisition of property in para 103. The same read as under:-,,

â??103. Since proceeds of crime is defined to include the value of any property derived or obtained directly or indirectly as a result of,,

criminal activity relating to a scheduled offence, where a person satisfies the adjudicating authority by relevant material and evidence",,

having a probative value that his acquisition is bona fide, legitimate and for fair market value paid therefor, the adjudicating authority must",,

carefully consider the material and evidence on record (including the Reply furnished by a noticee in response to a notice issue under,,

Section 8(1) and the material or evidence furnished along therewith to establish his earnings, assets or means to justify the bona fides in the",,

acquisition of the property); and if satisfied as to the bona fide acquisition of the property, relieve such property from provisional",,

attachment by declining to pass an order of confirmation of the provisional attachment; either in respect of the whole or such part of the,,

property provisionally attached in respect whereof bona fide acquisition by a person is established, at the stage of the section 8(2)",,

processâ?¦â??,,

41. The Supreme Court in (2010)8 Supreme Court Cases 110 (Before G.S. Singhvi and A.K. Ganguly, JJ) in the case of United Bank of",,

India V/s. Satyawati Tondon and Ors. In paras no. 6, 55 & 56 has held as under:-",,

6. To put it differently, the DRT Act has not only brought into existence special procedural mechanism for speedy recovery of dues of banks",,

and financial institutions, but also made provision for ensuring that defaulting borrowers are not able to invoke the jurisdiction of the civil",,

courts for frustrating the proceedings initiated by the banks and other financial institutions.,,

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability",,

of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have,,

serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High,,

Courts will exercise their discretion in such matters with greater caution, care and circumspection.",,

56. Insofar as this case is concerned, we are convinced that the High Court was not at all justified in injuncting the appellant from taking",,

action in furtherance of notice issued under Section 13(4) of the Act. In the result, the appeal is allowed and the impugned order is set",,

aside. Since the respondent has not appeared to contest the appeal, the costs are made easy.â??",,

In the subsequent changes in law and amendment in the another Special Act i.e. SARFAESI Act, 2002 the decisions referred by Mr. Matta in",,

the case of Solidaire (Supra) and Bhoruka Steel (Supra) does not help the case of the respondent no. 1 because the effect of overrding the,,

PMLA looses its validity once the amendment is made which even has been interpreted subsequently by the Full-Bench of the Chennai High,,

Court in the case of Assistant Commissioner CT (Supra) and other decision in the nature of the facts in the present matter.,,

42. It is also a matter of fact that after passing the impugned order the borrowers have also settled the loan amount with the complainant,,

â?" i.e. Union of India in order to pay the remaining out-standing amount. The undertaking in this regard is recorded in Court. It is written,,

agreement and the statement of the parties were recorded. Counsel for the borrowers has also informed us that his client also intent to pay,,

the remaining out-standing amount to the State Bank of India in order to clear their liabilities once the attached properties are sold and,,

even otherwise.,,

Copy of the settlement of the borrowers and the complainant Bank of India was filed before us. As far as the schedule offence is concerned,",,

we do not wish to make any comment. But we can only observe that in case of settlement, joint petition for quashing of FIR in the High",, Court u/s 482 Cr. P.C. could be filed.,,

43. It is not denied on behalf of department that these provisional attachment was made, the proceedings of recovery of amount were",,

pending before the DRT for recovery against the borrowers and for sum of the properties, possession were with the bank. The mortgaged",,

deeds are also not disputed or/and validity of the same are not challenged on behalf of ED.,,

44. It is settled law that generally when the civil dispute between the parties are settled before the court particularly pertaining to the,,

recovery of out-standing amount, on joint petition, the High Court while exercising its discretion may quash the criminal petition u/s 482 Cr.",,

P.C. at the joint request of the parties.,,

45. Three judge bench in narendra lal jain & ors., (supra) held that during the investigation pertaining to the culpability of the accused in",,

the crime, the concerned bank had instituted suits for recovery of the amount claimed to be due from the respondents and the said suits were",,

disposed of in terms of the consent decrees. On the basis of the said consent decrees an application for discharge was filed which was,,

rejected by the trial court but eventually was allowed by the high court. The charges in the matter were framed under section 120-b/420 ipc,,

by the learned trial judge against the private parties. As far as bank officials are concerned, charges were framed under different",,

provisions of the prevention of corruption of act, 1988. Being dissatisfied with the said order,, the cbi had preferred an appeal by obtaining",,

special leave and in that context the court observed that the accused respondent had been charged under section 120-b/420 ipc and the,,

civil liability of the respondent to pay the amount had already been settled and further there was no grievance on the part of the bank.,,

Taking note of the fact that offence under section 420 of ipc is compoundable and section 120-b is not compoundable, the court eventually",,

opined thus:-,,

â??11. In the present case, having regard to the fact that the liability to make good the monetary loss suffered by the bank had been",,

mutually settled between the parties and the accused had accepted the liability in this regard, the High Court had thought it fit to invoke its",, power under Section 482 Cr.P.C. We do not see how such exercise of power can be faulted or held to be erroneous. Section 482 of the,,

Code inheres in the High Court the power to make such order as may be considered necessary to, inter alia, prevent the abuse of the",,

process of law or to serve the ends of justice. While it will be wholly unnecessary to revert or refer to the settled position in law with regard,,

to the contours of the power available under Section 482 CR.P.C.it must be remembered that continuance of a criminal proceeding which is,,

likely to become oppressive or may partake the character of a lame prosecution would be good ground to invoke the extraordinary power,,

under Section 482 Cr. P.C.,,

In Sanjay Bhandari V/s. CBI, Crl. M.C. M.C. 5798/2014, Delhi High Court, dated 29.06.2015",,

â??69â?¦.. By consent the parties have settled all disputes in the recovery suit, the consent decree of DRT stood to be disposed off as duly",,

satisfied. There is hence no force in the submission of respondents that the complainant bank has not exonerated the petitioners, first being",,

the Civil Procedure Code, and the second being the OTS Scheme of the Reserve Bank of India, which the petitioners have extensively",,

referred to in the original petition. The provisions of OTS Scheme prevent the complainant bank from entering into any compromise or,,

settlement under the said OTS Scheme in the cases of willful default, fraud and malfeasance. The complainant bank in choosing to enter into",,

such consent terms under the provisions of OTS Scheme has not only exonerated the petitioners, but for all intents and purposes given up",,

the perusal of the complaint and having no grievance against them in any other proceeding whether civil or criminal on the same set of,,

issues.â??,,

â??70. There is no doubt that the trial has been proceeding for offences for the last about 20 years ago. The dispute between the petitioner,,

and complainant Bank 33 years old. A long time has in fact been elapsed since the alleged commission of offences. Still the trial continues.,,

The present petition is maintainable as the same has been filed also on additional grounds and circumstances. No useful purpose would be,,

served if such oppressive trial may continue for many more years. Thus, ends of justice are served by quashing such a proceeding, as the",,

parties cannot be allowed to go through the rigmarole of criminal prosecution for long numbers of years in a matter, it is doubtful in the",,

mind of the Court in whose favour it would be decided.â??,,

â??71. In view of above mentioned reasons, this Court is inclined to quash the proceedings pending against the petitioners, arising out of",,

R.C. No. 4A/94/SIU(X) dated 23rd May, 1994, titled â??CBI vs. N. Bhojraj Shetty & Ors.â??, being C.C. No.65/11, pending in the Court of",,

Spl. Judge (CBI), Tis Hazari Courts, Delhi.â??",,

The said decision has been upheld by the Honâ??ble Supreme Court.,,

46. In the present case, it is undisputed facts that the attached property were purchased much prior to the period when the facility of loan",,

sanctioned to the borrowers. The banks while rendering the facilities were boanfide parties. It is not the case of the respondent that the,,

attached properties were purchased after the loan was obtained. The mortgaged of the properties were done as bonafide purposes. None of,,

the bank is involved in the schedule offence. No PMLA proceedings are pending except the complainant bank was arrayed as Column;-11,,

at the time of framing charges. Union Bank of India has not granted sanction against its employee to proceed against him in criminal,,

complaint. There is no criminal complaint under the schedule offence and PMLA is pending against the two banks. In case of failure on the,,

part of borrowers to comply with the terms of settlement, the contempt proceedings are maintainable in the Court where the settlement was",,

recorded.,,

47. In view of the entire gamut of the dispute, we are of the considered opinion that the conduct of the banks are always bonafide. Both",,

banks are innocent parties. They were legally entitled to inform the Adjudicating Authority about their innocence and they rightly did so but,,

their contention was rejected as appeared from the impugned order.,,

48. This Tribunal in the case of IPRS in appeal no. FPA-PMLA-1302/MUM/2016 decided on 22.06.2017 had dealt with the similar issue as,,

to whether the innocent party whose immovable properties are attached by the ED can approach the Adjudicating Authority for release of,, the same in para no. 55 to 60 the same read as under:-,,

â??55. Whether innocent party whose properties i.e. movable or immovable are attached can approach the Adjudicating Authority for,,

release of attached property.,,

The Scheme of Prevention of Money Laundering Act clearly provides the mechanism whereby the innocent parties can approach the,,

Adjudicating Authority for the purposes of release of properties which have been attached in terms of the provisions of Section 5 of the Act.,,

This can be seen by reading Section 8(1) and the proviso to Section 8(2) of the Act whereby Adjudicating Authority has to rule whether all,,

or any of the properties referred to in the notice are involved in money laundering or not.,,

â??8. Adjudication.- (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section",,

17 or under subsection (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence",,

under section 3 or is in possession of proceeds of crime, he may serve a notice of not less than thirty days on such person calling upon him to",,

indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-",,

section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information",,

and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-",,

laundering and confiscated by the Central Government: Provided that where a notice under this sub-section specifies any property as being,,

held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person: Provided further that",,

where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.",,

(2) The Adjudicating Authority shall, after- (a) considering the reply, if any, to the notice issued under subsection (1); (b) hearing the",,

aggrieved person and the Director or any other officer authorised by him in this behalf, and (c)taking into account all relevant materials",,

placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-",,

section (1) are involved in money-laundering: Provided that if the property is claimed by a person, other than a person to whom the notice",,

had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-",,

laundering, section 58 B or sub-section (2 A) of section 60 by the Adjudicating Authority (4) Where the provisional order of attach""",,

56. There are judicial pronouncements whereby it has been laid down that the innocent parties can approach the Adjudicating Authority for,,

release of property by showing their bonafides in their dealings with the property. In the case of Sushil Kumar Katiyar (Appellants) Vs UOI,,

and Ors. (Respondents) MANU/UP/0777/2016 decided on 10.05.2016 by Allahabad High Court, it has been observed by the Ld. Single",,

Judge after noticing the judgment of Karnataka High Court that the element of knowingly or mens rea have been provided under the Act so,,

that the aspect of implicating any innocent person can be ruled out. Relevant para 26 of judgment is reproduced below:-,,

â??26. Thus, upon consideration of the law laid down by the Hon'ble Karnataka High Court, it is clear that the amendment incorporated in",,

the Money Laundering Act was not held unconstitutional and ultra virus, but it was observed by the Karnataka High Court that the property",,

of a person can be attached without there being any prosecution for the offence of Money Laundering, but so far as the prosecution of a",,

person for the offence of money laundering is concerned, the proceedings under section 3 of the PML Act can be initiated only in case the",,

person is held guilty of receiving proceeds of crime as a result of commission of scheduled offence. The Karnataka High Court has also held,,

that the complainant in such a case is not required to wait for the result of trial being held for the scheduled offence. A complaint can still be,,

filed against such person, but if ultimately the person is acquitted of the charge for the scheduled offence, his prosecution under section 3 of",,

the Act for the offence of Money-Laundering would also come to an end. It has also been kept open by the Karnataka High Court that a,,

person against whom complaint under section 3 of the PML Act has been filed and he is being prosecuted for the offence of money-,, laundering, he can show before the court that he is innocent and has not received any proceeds of crime.â??",,

It is clear that innocent person can approach the Adjudicating Authority of any competent court to demonstrate his innocence that he has,,

not received any proceeds of crime. The consequence of this is that while considering whether all or any of the properties provided under,,

notice issued u/S 8(1) are involved in money laundering, the Adjudicating Authority can take into consideration the plea of innocence",,

raised by any person and also the fact as to whether the property which has been attached has any nexus whatsoever with that of money,,

laundering or not if the person before the Tribunal/ Adjudicating Authority is able to demonstrate that he neither directly nor indirectly has,,

attempted to indulge nor with knowledge or ever assisted any process or activity in connection with proceeds or crime and the question of,,

his involvement does not arise as he is third party, then the Tribunal/ Adjudicating Authority can consider the said plea depending upon",,

whether there exist bona fide in the said plea or not and proceed to adjudicate the plea of innocence of the said party.,,

57. This is due to the reason that Section 8 allows the Adjudicating Authority to only retain the properties which are involved in money,,

laundering which means as to whether properties attached are involved in money laundering or not is a pre-condition prior to confirming,,

or attachment by Adjudicating Authority. Therefore, at that time, if the plea is raised that the party whose property is attached is innocent or",,

is without knowledge of any such transaction with respect to money laundering, then the Tribunal can consider the said plea and proceed to",,

release the said property out of the properties by holding that the said property is not involved in money laundering.,,

58. For the purposes of determining whether the property is involved in money laundering, the Court may consider the ingredients of",,

Section 3 which define offence of money laundering. The aspect of knowledge or involvement has been discussed by Ld. Single Judge of,,

Gujarat High Court in the case of Jafar Mohammed Hasanfatta and Ors (Appellants) Vs Deputy Director and Ors. (Respondents),,

MANU/GJ/0219/2017 wherein Ld Single Judge has observed as under:-,, â??37. A holistic reading of this definition of 'proceeds of crime' and the penal provision under Section 3 of PMLA, which uses conjunctive",,

'and', makes it luminous that any persons concerned in any process or activity connected with such ""proceeds of crime"" relating to a",,

scheduled offence"" including its concealment, possession, acquisition or use can be guilty of money laundering, only if both of the two",,

prerequisites are satisfied i.e.-,,

â??(i) Firstly, if he-",,

(a) directly or indirectly 'attempts' to indulge,",,

(b) â??knowinglyâ?? either assists or is a party, or",,

(c) is â??actually involvedâ?? in such activity; and,,

(ii) Secondly, if he also projects or claims it as untainted property;""",,

38. The first of the two pre-requisite to attract Section 3 of PMLA shall thus satisfy any of the following necessary ingredients-,,

â??A. RE: DIRECT OR INDIRECT ATTEMPT:,,

In State of Maharashtra v. Mohd.Yakub, MANU/SC/0239/1980 : (1980) 3 SCC 57, the Hon'ble Supreme Court observed that-",,

â??13. Well then, what is an â??attemptâ?? ...In sum, a person commits the offence of ""attempt to commit a particular offence"" when (i)",,

he intends to commit that particular offence and (ii) he, having made preparations and with the intention to commit the offence, does an act",,

towards its commission; such an act need not be the penultimate act towards the commission of that offence but must be an act during the,,

course of committing that offence.""",,

Thus, an â??attempt to indulgeâ? would necessarily require not only a positive ""intention"" to commit the offence, but also preparation for",,

the same coupled with doing of an act towards commission of such offence with such intention to commit the offence. Respondent failed to,,

produce any material or circumstantial evidence whatsoever, oral or documentary, to show any such 'intention' and 'attempt' on the part of",,

any of the petitioners.,,

B. RE: KNOWINGLY ASSISTS OR KNOWINGLY IS A PARTY:,,

In JotiParshad v. State of Haryana, MANU/SC/0161/1993 : 1993 Supp (2) SCC 497 the Hon'ble Supreme Court has held as follows-",, â??5. Under the Indian penal law, guilt in respect of almost all the offences is fastened either on the ground of ""intention"" or ""knowledge""",,

or ""reason to believe"". We are now concerned with the expressions â??knowledgeâ? and ""reason to believe"". â??Knowledgeâ? is an",,

awareness on the part of the person concerned indicating his state of mind. â??Reason to believeâ? is another facet of the state of mind.,,

Reason to believe"" is not the same thing as â??suspicionâ? or â??doubtâ? and mere seeing also cannot be equated to believing.",,

â??Reason to believeâ? is a higher level of state of mind. Likewise â??knowledgeâ? will be slightly on a higher plane than â??reason to,,

believeâ?. A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to,,

believe if he has sufficient cause to believe the same.â??,,

The same test therefore applies in the instant case where there is absolutely no material or circumstantial evidence whatsoever, oral or",,

documentary, to show that any of the petitioners, 'Knowingly', assisted or was a party to, any offence.",,

C. Actually involved:,,

Actually involved would mean actually involved into any process or activity connected with the proceeds of crime and thus scheduled,,

offence, including its concealment, possession, acquisition or use. There is absolutely no material or circumstantial evidence whatsoever,",,

oral or documentary, to substantiate any such allegation qua the petitioners,",,

D. Neither any of the petitioners is arraigned as accused in the 'Scheduled Offences' punishable under Indian Penal Code for direct or,,

indirect involvement, abetment, conspiracy or common intention, nor is any such case made out even on prima facie basis against any of",,

them.""",,

39. The second of the two pre-requisite to attract Section 3 of PMLA would be satisfied only if the person also projects or claims proceeds of,,

crime as untainted property. For making such claim or to project 'proceeds of crime' as untainted, the knowledge of tainted nature i.e. the",,

property being 'proceeds of crime' derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence,",,

would be utmost necessary, which however is lacking in the instant case.""",,

59. These are four ingredients which are determinative factors on the basis of which it can be said that whether any person or any property,,

is involved in money laundering or not. If there is no direct / indirect involvement of any person or property with the proceeds of the crime,,

nor there is any aspect of knowledge in any person with respect to involvement or assistance nor the said person is party to the said,,

transaction, then it cannot be said that the said person is connected with any activity or process with the proceeds of the crime. The same",,

principle should be applied while judging the involvement of any property of any person in money laundering. This is due to the reason that,,

if the property has no direct involvement in the proceeds of the crime and has passed on hands to the number of purchasers which includes,,

the bona fide purchaser without notice, the said purchaser who is not having any knowledge about the involvement of the said property",,

with the proceeds of the crime nor being the participant in the said transaction ever, cannot be penalized for no fault of his. Therefore, it",,

cannot be the Scheme of the Act whereby bona fide person without having any direct/ indirect involvement in the proceeds of the crime or its,,

dealings can be made to suffer by mere attachment of the property at the initial stage and later on its confirmation on the basis of mere,,

suspicion when the element of mens rea or knowledge is missing.,,

60. Similar principle has been laid down by Chennai High Court in the case of C. Chellamuthu (Appellants) Vs The Deputy Director,",,

Prevention of Money Laundering Act, Directorate of Enforcement (Respondent) MANU/TN/4087/2015 decided on 14.10.2015, relevant",,

portion of which are reproduced below:-,,

â?? 20. The said sections read as follows:--,,

â??23. Presumption in inter-connected transactions Where money-laundering involves two or more inter-connected transactions and one or,,

more such transactions is or are proved to be involved in money-laundering, then for the purposes of adjudication or confiscation (under",,

section 8 or for the trial of the money-laundering offence, it shall unless otherwise proved to the satisfaction of the Adjudicating Authority or",,

the Special Court), be presumed that the remaining transactions form part of such inter-connected transaction.",,

24. Burden of proof,,

In any proceeding relating to proceeds of crime under this Act,",,

(a) in the case of a person charged with the offence of money-laundering under Section 3, the Authority or Court shall, unless the contrary is",,

proved, presume that such proceeds of crime are involved in money-laundering; and",,

(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.",,

21. In the present case, one G. Srinivasan is accused of having played fraud and obtained a loan of Rs. 15,00,00,000/- by producing bogus",,

and fabricated documents. From and out of the said amount, the property in question was purchased by him in the names of his Benamies.",,

One Ayyappan was appointed as their Power Agent. One Gunaseelan purchased the property through the Power Agent Ayyappan. The said,,

Gunaseelan was examined and his statement was recorded Under Section 50 of the Act. He had stated that he purchased the property for,,

cultivation. He developed the property but geologist gave opinion that property will not yield proper income. In the circumstances, he sold",,

the property to appellants. The respondent has not produced any document or material to disprove the statement of Gunaseelan. There is,,

nothing on record to show that the transaction in favour of the said Gunaseelan, is not genuine. It is not the case of respondent that the said",,

Gunaseelan is a Benami or employee of G. Srinivasan and that Gunaseelan did not pay any amount as sale consideration or the sale,,

consideration paid by Gunaseelan was not legitimate money. There is no material to show nexus and link of Gunaseelan with G. Srinivasan,,

and his Benamies. In the absence of any verification or investigation by respondent with regard to genuineness or otherwise of the purchase,,

by Gunaseelan; whether he was connected with G. Srinivasan or the sale consideration is legitimate or not the property in the hands of,,

Gunaseelan cannot be termed as proceeds of crime.,,

22. Further, the appellants have given statements under Section 50 of the Act. They have categorically stated that they possess agricultural",,

lands, cultivate GloriosaSuperba seeds and sell the same and derive considerable income. They have named the persons to whom they have",, sold the GloriosaSuperba seeds and produced Bank statements. Some of the Appellants have stated that they sold their lands and borrowed,,

monies to purchase the property in question. There is nothing on record to show that the respondent had verified these statements.,,

Especially, the respondent has not verified the Bank statement produced by the Appellants to ascertain the genuineness of the same and",,

whether the money deposited came from genuine purchasers or from the persons involved in fraud and Money Laundering. The respondent,,

does not allege that Appellants are Benamies of G. Srinivasan or no sale consideration passed to the vendor.,,

23. Considering the materials on record and judgments reported in MANU/ MH/1011/2010: 2010 (5)Bom CR 625 [supra] and : [2011] 164,,

Comp Cas 146(AP) [supra], I hold that appellants have rebutted the presumption that the property in question is proceeds of crime. The",,

respondent failed to prove any nexus or link of Appellants with G. Srinivasanand his benamies. Once a person proves that his purchase is,,

genuine and the property in his hand is untainted property, the only course open to the respondent is to attach sale proceeds in the hands of",,

vendor of the appellants and not the property in the hands of genuine legitimate bona fide purchaser without knowledge.,,

24. Before the Adjudicating Authority it was admitted by complainant that appellants had no knowledge that properties in the hands of their,,

vendor was proceeds of crime. It was also not disputed by complainant that the appellants did not have financial capacity to buy properties.,,

Paragraphs 21, 22, 23 and 24 of order of Adjudicating Authority is extracted herein for better appreciation.",,

â??21. The CBIBS & FC (BLR) has filed a charge sheet in the court of Spl. Judge for CBI cases Coimbatore, against Sh. Arivarasu, Sh. R.",,

Manoharan, Sh. R. Selvakumar, Sh. G. Srinivasan, Sh. K. Martha Muthu, Sh. V. InduNesan, Sh. K. Vignesh, Sh. A. Sainthil Kumar, Sh. M.",,

Ram Krishnan, for the offences punishable under Section 120-B read with 420, 467, 471 IPC and section 13(2) read with 13(1)(d) of PC",,

Act 1988. The offences punishable under section 120-B, 420, 471 are schedule offence under Section 2(1)(y) of the PMLA and therefore on",,

of the condition for issuing provisional attachment order is satisfied. The other important point to be determined is whether the properties,, attached vide Provisional attachment order are involved in money-laundering. The only defense or explanation raised by Defendants,",,

particularly Def No. 2 to 8 is that the landed properties attached by the complainant are not proceeds of crime. These properties were,,

purchased by these defendants without having any knowledge, whatsoever, that these properties were derived or obtained through criminal",,

activities relating to schedule offence. It has been demonstrated by them that they verified the title deeds relating to the properties and after,,

due verification of every details entered into the sale transactions as such these are bona fide deals entered by them against proper sale,,

consideration and the money paid to the seller is also well explained.,,

22. Against the above arguments vehemently raised by the defendants, the complainant without disputing that the deals are bona fide",,

heavily relied on the judgment of the Bombay High Court, dated 05.08.2010 in Mr. Radha Mohan Lakhotia Vs. Deputy Director, PMLA,",,

Directorate of Enforcement, Mumbai in first appeal No. 527/2010. In this case it held by the Bombay High Court that the property bought",,

without the knowledge that the same is tainted could be subjected to Provisional Attachment Order.,,

23. In the instant case the only point to be decided is whether the properties bought by any person against clean money and without any,,

knowledge that properties have been acquired directly or indirectly through scheduled offence could be subject matter of provisional,,

attachment order.,,

24. It is an admitted position that the Defendants (D-2 to D-8) had no knowledge that the properties in the hands of the vendor was proceeds,,

of crime. They have also verified the papers relating to these properties before the deal. No point has been raised with regard to the,,

financial capability of these Defendants to buy these properties. However, the Bombay High Court decision in Radha Mohan Lakhotia has",,

been pressed into service to make out a plea that the properties could be attached in such circumstances under the PMLA.""",,

Provisional attachment was sought to be continued only based on the judgment of Bombay High Court in Radha Mohan Lakhotia's case.,,

25. A reading of paragraphs 21 to 24 clearly reveals that both the Adjudicating

Authority as well as Appellate Authority failed to properly,,

appreciate the facts and findings in Radha Mohan lakhotia's case. In that case, the Department had placed substantial and acceptable facts",,

to prove that the property in the hands of third party was proceeds of crime. It is pertinent to note that in Mr. Radha Mohan Lokatia's case,",,

Department had proved the nexus and link between the person possessing the property and person accused of having committed an offence.,,

All the persons involved in that case were close relatives.,,

26. In the present case, the respondent failed to prove that the appellants did not have sufficient financial capacity to buy the property or",,

that the money paid by them as sale consideration was not legitimate money derived by agricultural activities. No material was produced to,,

show that the appellants are close relatives of person, who involved in criminal activities and the person, who sent monies to purchase the",,

property did not possess financial capacity to provide such huge amounts and that they are not genuine purchasers of agricultural products,,

of appellants. The respondent has not made any such investigation and has not produced any such material. Further, the Appellate",,

Authority in fact considered the additional documents produced before it, but rejected the same on the ground that Appellants have not given",,

any valid reasons for not filing the appellate authority failed to same before the Adjudicating Authority. Having considered the Additional,,

documents, the give any finding on merits after verifying with the concerned Bank.""",,

49. From the scheme of the Prevention of Money Laundering Act, 2002 and its object, it is clear that the intention of the legislation was not",,

to apply the Act to the transaction subject matter of the present case.,,

50.The EDâ?¦.,,

â?¦from Union Bank of India.,,

51. The mortgaged propertiesâ?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦.,,

â?¦criminal action.,,

52. The appellant banks is the rightful claimants of the said properties which are

already in the possession of the appellant bank under the,,

SARFAESI Act. The Honâ??ble Supreme Court of India in the case oAf ttorney General of India and Ors. (AIR 1994 SC 2179)while dealing,,

with the matter under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act has defined the illegally acquired,,

properties and held that such properties are earned and acquired in ways illegal and corrupt, at the cost of the people and the state, hence",,

these properties must justly go back where they belong, the state. In the present case as the money belongs to the Appellant bank it is public",,

money. The appellant bank has the right to property under the Constitution of India. The property of the appellant bank cannot be attached,,

or confiscated if there is no illegality in the title of the appellant and there is no charge of money laundering against the appellant. The,,

mortgage of property is the transfer under the transfer of property act.,,

53. The objective of Prevention of Money Laundering Act, 2005 has a greater relation to crimes connected with reference to Illicit Traffic in",,

Narcotic Drugs and Psychotropic Substances, drug crimes and other connected activities. None of the provisions are applicable in the facts",,

of the present case. As far as the borrowers are concerned, we are not expressing any opinion with regard to matters pending before the",,

Special Court in relation to schedule offences and the complaint under this Act. These matters are to be considered as per law.,,

54. There is noâ?¦ â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦.PML,,

Act in the year 2002.,,

55. The ED has also filed the copies of the sale deeds/ title deeds of the properties which shows the date of acquisition of all the properties.,,

The original title deeds of all the properties are lying with the Appellant Bank. The Appellant Banks are having the mortgage charge over,,

the properties.,,

56. That the definition of â??proceeds of crimeâ? as per Section 2(u) of the PML Act comprises of the property which is derived or,,

obtained as a result of criminal activity. In the present case, all the properties have been purchased by the Respondents and have been",,

mortgaged with the Appellant Bank much prior to the date of alleged offence which shows that no proceeds of crime are involved in the,,

obtention of these properties and hence the same cannot be attached by the ED because the same would result in hampering the interest of,,

the Appellant Bank.,,

57. The Ld. Adjudicating Authorityâ?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦ â?¦money,,

laundering.,,

58. Thus, in the present case, even though the Ld. Adjudicating Authority had all the reasons to believe that the abovementioned were",,

mortgaged to the Appellant Bank and that the Appellant/SBI had prior charge over the subject matter/five properties; still the Ld.,,

Adjudicating Authority confirmed the provisional attachment order of the Respondent No. 1 and thus causing huge loss to the,,

Appellant/SBI.,,

59. The Adjudicating Authority did not understand that the alleged illegal money received by the Respondents from the Union Bank of India,,

cannot overshadow the huge amount of credit facilities which were taken by the Respondents from the appellant bank in lieu of the,,

properties kept as security with the Appellant Bank. Thus, making the Appellant Bank the rightful owner of the said properties which are",,

already in the possession of the Appellant Bank under the SARFAESI Act. The origin of the funds is not illegal or unlawful in any manner.,,

The funds were only deposited in the accounts with the Appellant Bank against the drawings already availed or availed subsequently.,,

60. We also find that the Adjudicating Authorityâ?¦â?¦â?¦â?¦â?¦ â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦. proceeds of,,

crime.,,

The meaning of money laundering as mentioned in the objects of the Act will have to be read as part of the statute because as per Supreme,,

Court of India in Vishaka and others Vs. State of Rajasthan reported in AIR1997SC3011 lays down at para 40 that the International,,

Conventions and Norms are to be read into them in the absence of enacted Domestic Law occupying the field when there is no inconsistency,,

between them.,,

61. The Ld. Adjudicating Authority has failed to considered that the ED has attached all the properties without examining the case of the,,

banks. The evidence on record suggested that all the properties were acquired by the accused much-much before the alleged date of crime.,,

No money disbursed by the Union Bank of India from its Loan Account, has been invested in acquiring his property. Furthermore, the",,

Appellants Banks had mortgaged charge over the property prior to the date of the crime. The Bank has already filed the Suit for recovery,,

and has also had taken the action under SARFAESI Act. The Ld. Adjudicating Authority failed to appreciate that depriving the Appellant,,

Bank from its funds/property, without any allegations or involvement of the Bank in the alleged fraud would be unjustified.",,

62. The properties attached cannot be attached under Section 5 of the PML Act because the properties are not purchased from the alleged,,

proceeds of crime. As per the provisions of Section 5(1) (c) the primary requirement for the attachment is that the proceeds of crime are,,

likely to be concealed, transferred or dealt with in any manner. In this case it is clear by the order of the Adjudicating Authority that the",,

funds were transferred for the satisfaction of the bigger credit facilities taken by the respondents from the appellant bank which they could,,

not pay due to the losses suffered by the companies.,,

The said properties are already in the possession of the appellant bank under the SARFAESI Act. The Honâ??ble Supreme Court of India in,,

the case of Attorney General of India and Ors. (AIR 1994 SC 2179)while dealing with the matter under Conservation of Foreign Exchange,,

and Prevention of Smuggling Activities Act has defined the illegally acquired properties and has held that the illegally acquired properties,,

are earned and acquired in ways illegal and corrupt, at the cost of the people and the state, the state is deprived of legitimate revenue to",,

that extent hence these properties must justly go back where they belong, the state. In the present case as the money belongs to the",,

Appellant Bank it is liable to be recovered by the Appellants Banks.,,

63. The property of the Appellant Bank cannot be attached or confiscated when there is no illegality or unlawfulness in the title of the,,

Appellant and there is no charge of money laundering against the Appellant. The mortgage of property is the transfer under the transfer of,,

property act as there is no dispute as regards the origin of funds or the title of the properties. As far as the bank is concerned, the bank had",,

to recover its outstanding dues by taking over the possession of the mortgaged properties in case the Respondents are not able to pay back,,

the credit facilities availed by the Respondents and by way of the SARFAESI provisions these properties are being taken in possession by,,

the appellant bank so that recovery can be made from the accounts which have become NPA.,,

64. The respondent has no lien over the said properties as the Appellants banks are now the Legal transferee of said properties. Even in the,,

criminal jurisprudence the stolen property when it is in the hands of unauthorized person that person cannot claim title to the property. The,,

said recipient cannot retain the property over which he has no legal title and the property should be returned to the lawful owners because,,

the both banks are victims and even after trial, they are to receive-back the said properties being victim party in normal types of cases u/s",,

8(8) of the Act. However in the present cases, the banks are innocent parties. They are not involved in any criminal proceedings. If they are",,

asked to await till the trial is over, the systems in these types of cases, the economy would collapse. In the case, of Union Bank of India, no",,

sanction against the employee was granted who is also not involved in any criminal proceedings.,,

65. From the entire gamut of the matter we are of the view that there is no nexus whatsoever between the alleged crime and the two bank,,

who are mortgagee of all the properties which were purchased before sanctioning the loan. Thus no case of money-laundering is made out,,

against banks who have sanctioned the amount which is untainted and pure money. They have priority to the secured creditors to recover,,

the loan amount/debts by sale of assets over which security interest is created, which remains unpaid. The Ld. Adjudicating Authority has",,

not appreciated the facts and law involved in these matters and the primary objective of section 8 of PMLA is that the Adjudicating,,

Authority to take a prima facie view on available material and facts produced. All the contentions raised by Mr. Matta has no substance.,, The provisional attachment in the present matter is bad and against the law.,,

In the circumstances available in the present case, the allegation of money laundering prima facie found to be unsustainable for the",,

purpose of attachment under the PMLA, 2002.",,

66. In view of aforesaid facts and circumstances in the present case and for reasons referred above, we set aside the Impugned Order dated",,

02.07.2015 and the provisional attachment order dated 04.02.2015. All the eight properties are released from attachment forthwith.â??,,

14. Admittedly, neither the banks nor employees of these appellants are accused in any criminal proceedings nor there is any allegations against them",,

that they are involved in the commission of alleged crime or generating â?? proceeds of crimeâ?. The amounts of loan sanctioned are public money,,

and they are entitled to get back their money by selling the mortgaged property as a first charge.,,

15. The Parliament has amended the SARFAESI Act, 2002 by inserting the section 31 B in the said Act w.e.f. 01.09.2016. The effect of the said",,

amendment has already been discussed in our judgment dated 14th July, 2017 (Supra).",,

16. The facts and the legal issues involve in the present appeals are identical to the facts and the legal issues involved in the groups of matter which,,

has been decided by this tribunal on 14.07.2017 (Supra).,,

17. Keeping in view, the facts and circumstances of the present appeals and the judgments cited herein above in the group of matters of State Bank of",,

Description of the Property,Value (in Rs.),Value as per sale Deed

House property having an area of

9524 square feet belonging to Shri

Mukesh Gupta and Smt. Seema

Gupta at House No. 334/B, Ward

No. 66, East High Court Rooad,C ivil

Lines, Nagpur. In the name of Shr

Mukesh Gupta and Seema Gupta","9,75,00,000/- Valuation done by

Maharashra Valuers and Consultants

i","Rs. 2,01,00,000/-

