

(2023) 05 DEL CK 0480

In the Delhi High Court

Case No : Miscellaneous Appeal (PMLA) No. 5 Of 2023

Sanjay Jain (In JC)

APPELLANT

Vs

Directorate Of Enforcement

RESPONDENT

Date of Decision : 09-05-2023

Acts Referred:

Prevention of Money Laundering Act, 2002 — Section 8, 26

Citation : (2023) 05 DEL CK 0480

Hon'ble Judges : Sanjeev Sachdeva, J;Manoj Jain, J

Bench : Division Bench

Advocate : Sandeep Sethi, Siddharth Aggarwal, Madhav Khurana, Stuti Gujral, Trisha Mittal, Shaurya Singh, Harsh Yadav, Zoheb Hossain, Vivek Gurnani

Final Decision : Dismissed

Judgement

Sanjeev Sachdeva, J

CM APPL. 23891/2023 (Exemption)

Exemption allowed, subject to all just exception.

MISC. APPEAL(PMLA)-5/2023 dated 09-05-2023 is 2023:DHC:3341-DB

MISC. APPEAL (PMLA) 5/2023 & CM APPL. 23892/2023(stay)

1. Appellant impugns order dated 08.05.2023 of the Appellate Tribunal under SAFEMA, whereby the appeal filed by the appellant under Section 26 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'the Act'), impugning an order dated 13.04.2023 passed by the Adjudicating Authority under the Act, has been dismissed.

2. By an application dated 23.03.2023, appellant had inter alia sought an opportunity to summon the Assistant Director and Deputy Director of the respondent authority for their examination/cross-examination.

3. By order dated 13.04.2023, the Adjudicating Authority rejected the application

holding that no meaningful purpose would be served by cross-examining the said officers. This order was impugned before the Appellate Tribunal and the challenge by the appellant has been rejected by the impugned order dated 08.05.2023.

4. Learned senior counsel appearing for the appellant submit that two major issues arise with regard to the impugned order, i.e.,:

(i) The Appellate Tribunal has erroneously returned a finding that the valuation of the assets to be attached has to be the valuation as on the date of acquisition or possession of the assets and not the fair market value of the assets as on the date of the attachment; and

(ii) With regard to the mode and manner of proving the valuation by the authority as well as the counter material to be produced by the appellant before the Adjudicating Authority qua the valuation. He submits that no evidence has been taken with regard to the valuation of the assets as on the date of the attachment.

5. Issue Notice. Notice is accepted by learned counsel appearing for the respondent.

6. With the consent of parties, the appeal is taken up for consideration today.

7. After some arguments, learned senior counsel for the appellant seeks leave to withdraw the appeal reserving the right of the appellant to raise all factual as well as legal issues before the Adjudicating Authority.

8. Learned Senior Counsel pray that though the issue before the Appellate Tribunal was with regard to the request of the appellant to examine/cross-examine the officers of the authority, finding has been returned with regard to the date of the valuation of the asset, i.e., as to whether it is the market value or the acquisition value.

9. He submits that said issue had not arisen for consideration at this stage before either the Adjudicating Authority or the Appellate Tribunal as the Adjudicating Authority is yet to hear final arguments and this finding pre-judges the issue and forecloses their right to agitate the same before the Adjudicating Authority.

10. With the consent of parties, the appeal is disposed of with the following directions:

(i) It would be open to the appellant to raise all issues, factual as well as legal before the Adjudicating Authority at the time of final hearing.

(ii) The Adjudicating Authority would be at liberty to take an independent view of the entire factual matrix as well as legal issues without being influenced by any observation contained in the impugned order of the Tribunal dated 08.05.2023 on the merits of the factual matrix as well as legal issues.

(iii) The Adjudicating Authority shall permit the appellant to address arguments and rely upon the material that has already been placed before it by the

appellant before forming an opinion with regard to passing of the final order in terms of Section 8 of the Act.

11. The appeal is accordingly dismissed as withdrawn, however with the above directions.

12. It is clarified that this Court has neither considered nor commented upon the merits of the contentions of the either party. All rights and contentions of parties are reserved.

13. We are informed that the proceedings are listed today before the concerned Adjudicating Authority for final arguments.

14. Learned senior counsel for the appellant points out that he had earlier, in the morning, requested the Adjudicating Authority to defer the proceedings in view of the present appeal but the request was declined. He assures that appellant shall proceed with the final arguments without seeking any adjournment or moving any application seeking deferment. The statement is taken on record.

15. Order dasti under the signatures of the Court Master.