(2014) 04 JH CK 0067

In the Jharkhand High Court

Case No : L.P.A. No. 143 of 2013

Sunplant Agro Ltd. APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Securities and Exchange Board of India Act, 1992 — Section 11, 11AA, 11B, 19

Citation : (2014) 3 JLJR 504

Hon'ble Judges : R. Banumathi, C.J;S. Chandrashekhar, J

Bench : Division Bench

Advocate : Indrajit Sinha, Advocate for the Appellant; Rajesh Kumar, G.P.-IV for the Respondent Nos. 1 to 3 and Mr. Anil Kumar Sinha, Sr. Advocate for the Respondent No. 6, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. This Letters Patent Appeal is preferred against the order dated 2.4.2013, dismissing the writ petition being W.P. (C) No. 933 of 2013, whereby the learned Single Judge directed the appellant to appear and cooperate before the S.E.B.I in respect of the proceedings. The appellant is a Public Limited Company. To carry out the business of the Company, namely work of environment etc., the appellant has been raising money from the public. By virtue of ad interim ex parte order dated 21.10.2010 the appellant-company was directed by the S.E.B.I. not to collect any money from the customers and to launch any Scheme and also restrained the appellant from disposing the assets of the Scheme or from diverting the funds raised from the public. Vide order dated 3.5.2011, S.E.B.I. directed the Company to wind up its existing collective schemes and the money collected by it under the Scheme and return the money which are due to the customers as per terms of the offers. Challenging the said order dated 3.5.2011, the appellant filed writ petition being W.P. No. 12920 (W) of 2011 before the Calcutta High Court and the same is still pending.

2. The grievance of the appellant is that on 5.2.2013, the second respondent

with the help of local police officials sealed the branch offices of the appellant situated at Deoghar. Challenging the same, the appellant filed writ petition being W.P. (C) No. 933 of 2013 and the same was dismissed by a common order on 2.4.2013 holding that in the facts and circumstances of the case, the Court is not inclined to exercise its discretionary jurisdiction and directed the appellant to appear and cooperate before the S.E.B.I. in the proceedings pending before S.E.B.I. Being aggrieved by the dismissal of the writ petition, the appellant has filed this Letters Patent Appeal.

3. The learned counsel for the appellant Mr. Indrajit Sinha submitted that subsequently S.E.B.I. has passed the order on 30.12.2013 as against which the appellant has also filed appeal before the S.E.B.I. Appellate Tribunal and seeks permission to withdraw the Letters Patent Appeal.

4. We have heard the learned Senior Counsel Mr. Anil Kumar Sinha appearing for respondent-S.E.B.I. and Mr. Rajesh Kumar appearing for the State of Jharkhand.

5. The learned Senior Counsel Mr. Anil Kumar Sinha appearing for S.E.B.I. submitted that the S.E.B.I. has passed the order on 30.12.2013 inter alia issuing various directions and submitted that the order of the learned Single Judge may be confirmed.

6. The learned counsel for the State Mr. Rajesh Kumar submitted that challenge in the writ petition was sealing of the premises of the appellant at Deoghar on 05.02.2013 and the learned Single Judge rightly dismissed the writ petition holding that the Court cannot exercise its discretionary jurisdiction and the order does not suffer from any infirmity.

7. We have considered the submissions of the learned counsel Mr. Indrajit Sinha appearing for the appellant, the learned Senior Counsel Mr. Anil Kumar Sinha appearing for S.E.B.I. and Mr. Rajesh Kumar appearing for the State of Jharkhand.

8. Vide order dated 30.12.2013, S.E.B.I. has inter alia issued following directions:--

15. In view of the foregoing, in exercise of the powers conferred upon me under Sections 11, 11B and 19 of the Securities and Exchange Board of India Act, 1992 read with the regulations 65 and 73 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 I hereby:--

(a) restrain and debar the following persons/entity from accessing the securities market and further prohibit them from buying, selling or dealing in securities market, directly or indirectly, in any manner whatsoever for a period of 5 years:--

(b) Prohibit the above entities/persons from mobilizing funds under any schemes or arrangement, existing or future, as defined u/s 11AA of the S.E.B.I. Act.

16. In furtherance to the above directions, S.E.B.I. may initiate all other actions as contemplated in the SCN dated January 03, 2013 including adjudication

proceedings, attachment and recovery proceedings u/s 28A of the S.E.B.I. Act against the above mentioned entities/persons for non compliance of the order dated May 03, 2011.

17. It is hereby clarified that above directions shall not be construed to absolve the SPAL and other notices from the obligations to wound up all its collective investment schemes and repay the investors to the satisfaction of S.E.B.I.

Having regard to the order passed by the S.E.B.I., we are not inclined to interfere with the order passed by the learned Single Judge and this Letters Patent Appeal is dismissed.