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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 11th January, 2021.

+ **W.P.(C) 301/2021 & CM APPLs. 774/2021, 775/2021**

BLISS ABODE PVT LTD

..... Petitioner

Through: Mr. Siddharth Aggarwal, Ms. Stuti
Gujral, Mr. Abhinav Sekhri, Mr.
Vishwajeet Bhati, Ms. Ipsita Agarwal,
Mr. Yuvraj Paul & Ms. Priti Verma,
Advocates. (M-9910745870)

versus

ZONAL OFFICE DIRECTORATE OF ENFORCEMENT
& ORS

..... Respondents

Through: Mr. Amit Mahajan, CGSC with Mr.
Zoheb Hossain, Spl. Counsel for ED.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done by video conferencing.
2. The Petitioner has approached this Court by way of the present writ petition seeking two primary reliefs. Firstly, that a copy of order dated 1st January, 2021 passed under Section 8(3) of the Prevention of Money Laundering Act, 2002 (*hereinafter 'PMLA'*) be supplied to the Petitioner. Secondly, that the same may not be given effect to for a period of at least 45 days in order to enable the Petitioner to approach the Appellate Tribunal under Section 26 of the PMLA.
3. Mr. Siddharth Aggarwal, ld. counsel appearing for the Petitioner submits that it is unfortunate that the authority did not supply a copy of order dated 1st January, 2021, despite repeated requests and now, physical possession of the property, being 40, Amrita Shergill Marg, New Delhi – 110003, is sought to be taken. He relies upon the following two judgements in

support of his submission, that the time period for filing of an appeal should be provided in accordance with law before possession of the property can be taken by the Respondent:

- a) ***Arun Kumar Saha & Anr. v. UOI & Anr. [W.P. (Crl.) 1207/2020, decided on 5th March, 2020]*** passed by the Bombay High Court
- b) ***B. Kamalam v. The Joint Director, Directorate of Enforcement & Anr. [W.P.(C) 27451/2014, decided on 15th October, 2014]*** passed by the Madras High Court

4. Mr. Amit Mahajan, ld. counsel appearing for the Respondents submits that under Section 8(4) of the PMLA, once the provisional order of attachment is confirmed, the authorised Officer can take possession of the property forthwith. As per Rule 5(2) of the *Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties confirmed by the Adjudicating Authority) Rules, 2013*, only ten days' notice is liable to be given before possession of the immovable property is taken by the Authorised Officer. Rule 5(2) of the Rules reads as under:

“5. Manner of taking possession of immovable property. —

...

(2) Where the immovable property confirmed by the Adjudicating Authority is in the form of a land, building, house, flat, etc., and is occupied by the owner, the authorized officer shall issue a notice of eviction of ten days so as to prevent the person from enjoying such property and after issuing of such notice if the premises is not vacated within the stipulated time, such occupant shall be evicted and the possession shall be taken by seeking the assistance of the local Authorities in terms of section 54 of the Act;”

5. Heard. The reliefs sought in this petition are as under:

“In light of the aforementioned facts and circumstances, it is most humbly prayed that this Hon’ble Court may be pleased to:

A. Issue a writ, order or direction in the nature of certiorari or any other appropriate writ, order or direction quashing/setting aside Order **believed to be dated 01.01.2021 under Section 8(3) PMLA in OC 1329/2020, or in the alternative**

B. Issue a writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction to Respondent No. 3 directing it to forthwith supply a certified copy of all record of proceedings/Orders in OC 1329/2020, including Orders/record of proceedings dated 23.12.2020, 30.12.2020 and Order under Section 8(3) PMLA believed to be dated 01.01.2021; **and**

C. Issue a writ, order or direction in the nature of certiorari or any other appropriate writ, order or direction quashing/setting aside/staying Notice bearing F. No. ECIR/MBZO-I/04/2020/PVP dated 07.01.2021 issued by Respondent Nos. 1-2 in ECIR/MBZOI/04/2020; **and**

Pass any other order and/or further orders that this Hon’ble Court may deem to be just, fair and equitable in the facts and circumstances of the case.”

6. On the first aspect of serving of copies of orders passed by the authority, there can be no doubt that such orders ought to be made readily available to the parties concerned. The impugned order is stated to have been passed on 1st January 2021 and the present writ petition was filed on 8th January 2021. By the time of filing, at best, the Petitioner believes that the

order was served on 7th January 2021 and the same came to its knowledge only on 9th January 2021. It is only as of this morning that the counsel for the Petitioner confirms that the order has been finally supplied to the Petitioner. Such a course of action would not be permissible. Whenever an Adjudicating Authority or any other officer of the Enforcement Directorate passes any order, the said order ought to be made available to the litigants within a reasonable period of time in order to enable them to avail of their remedies in accordance with law. Mr. Mahajan, ld. counsel submits that he does not have instructions from the authority as to when the order was made available. It is, however, relevant to note here that the order was available to the department concerned, which is evident from the eviction notice under Section 8(4) of the PMLA issued to the Petitioner via email addressed by the Assistant Director (PMLA) ED, Mumbai Zonal Office-I, Mumbai on 7th January, 2021.

7. A perusal of the Adjudicating Authority's order dated 1st January, 2021 shows that the same records as under:

“CONCLUSIONS:

I have carefully considered the written replies filed by the Defendants to the Notice to show cause. I have also considered the rejoinders filed by the Complainant to the written replies. I have heard the Counsel for the Defendant at length. I have also heard the Counsel for the Complainant. I have taken into account all the relevant materials placed on record before me.

*Considering the material in O.C., the written replies and rejoinders and the arguments above referred, I find that the immovable property provisionally attached by PAO No. 06/2020 dated 09.07.2020 i.e., immovable property to the extent of **Rs. 307 Crore.** (approximate value of the property is Rs. 685 Crore mentioned at page no - 2 of this*

order) is involved in money laundering.

a. I, therefore, hereby confirm the attachment of the properties made under sub-section (1) of Section 5 of PMLA. I, therefore, order that the said Attachment shall continue during pendency of the proceedings relating to any offence under the prevention of Money-Laundering Act, 2002 before the Special Court; and become final after an order of confiscation is passed under Sub-section (5) or sub-section (7) of section 8 of PMLA by the Special court.

b. PAO No. 06/2020 dated 09.07.2020 is hereby confirmed.

c. Hence OC no. 1329/2020 is allowed.

Order is pronounced on 1st January 2021 in the open court. ”

8. Reference is made to Regulation 27 of the Adjudicating Authority (Procedure) Regulations, 2013 which reads as under:

“27. Copy of order be delivered on date of its pronouncement. – If the parties or representatives of the parties remain present on the date of pronouncement of the order, a copy of the order, if ready, shall forthwith be delivered to the parties or the representatives of the parties present under their signatures and in that case, it shall not be necessary to send again the copy of the order to the parties present. ”

9. As per the order of the Adjudicating Authority the order was passed in open court. If so the same ought to have been served on the Petitioner forthwith, in terms of Regulation 27, which evidently did not happen. Mr. Aggarwal, ld. counsel submits that a physical copy of the order was delivered to the erstwhile address of the Petitioner on 7th January, 2021, of which his

client acquired knowledge on 9th January, 2021. He also submits that the copy of the order was e-mailed as of this morning as well. The order is confirmed to have been received by the Petitioner today.

10. Insofar as the second aspect is concerned, i.e., the time that ought to be provided to the Petitioner for availing of its legal remedies, the Id. Counsel for the Petitioner has relied upon the decisions of the Madras High Court and the Bombay High Court mentioned above. In the decision of **B. Kamalam (supra)**, the Madras High Court has categorically held that the period available for appeal under Section 26 (3) of the PMLA ought to be available to the party concerned, before physical possession is taken over. The relevant portion of the said judgment is set out below:

“2. Under Section 26(3) of the Act, the petitioner has a right of appeal to the Tribunal. The limitation for filing an appeal is 45 days and it has not expired. However, the first respondent issued a notice of eviction on 10.10.2014. Therefore, the petitioner has come up with the above writ petition challenging the notice of eviction.

3. Heard Mr. A. Mohamed Ismail, learned counsel for the petitioner. Mr. M. Dhandapani, learned Standing Counsel takes notice for the respondents.

4. The petitioner has even taken a demand draft on 10.10.2014 for a sum of Rs.10,000/- in favour of the Registrar, Appellate Tribunal for moving an appeal. The time limit for filing an appeal has not so far expired. What is provided by Section 26(3) is a statutory right of appeal. Therefore, such a right cannot be defeated by dispossessing the petitioner even before the expiry of the period of limitation.

5. Hence, the writ petition is disposed of to the following effect:

(i) The petitioner shall file the statutory appeal

within the period of limitation before the Appellate Tribunal, along with an application for stay;

(ii) The petitioner is granted time upto 31.12.2014 to get some orders of protection from the Appellate Tribunal;

(iii) If the petitioner is unable to get any protective order from the Tribunal on or before 31.12.2014, it will be open to the first respondent to proceed with the impugned notice of eviction; and

(iv) However, in case there is any difficulty due to reasons not attributable to the petitioner, it is open to the petitioner to come up.

No costs. Consequently, the above MP is closed.”

11. In **Arun Kumar Saha (supra)**, the Bombay High Court has, in view of the submission on behalf of the UOI that the period of 10 days mentioned in the notice of eviction shall begin to run after the expiry of the period of 45 days prescribed for preferring the appeal, recently held that the notice of eviction would not be implemented for a period of 55 days from the date of service of the order of confirmation of attachment.

12. Mr. Agarwal, Id. Counsel, however submits that since the order has now been supplied to the Petitioner, he would not insist on a period of 45 days or 55 days being provided to the Petitioner. He submits that any reasonable period may be provided to enable the Petitioner to avail of its appellate remedy. Mr. Mahajan, Id. counsel, however submits that only a period of ten days ought to be provided as per the Rules.

13. In view of the submissions made by Id. Counsels for the parties and considering the facts and circumstances of the present case, 20 days' time is granted to the Petitioner to avail of its appellate remedies and physical possession of the immovable property shall not be taken for a period of 20 days from today. The question of law raised is left open.

14. Further, in order to avoid such a dispute in future and to ensure fairness and non-arbitrariness, the Registrar of the Adjudicating Authority under the PMLA shall ensure that in future, all orders passed by the Adjudicating Authority, apart from being served in accordance with the provisions of the Act, Rules and Regulations, would also be uploaded on the website of the Adjudicating Authority within 48 hours from the date of the pronouncement. The Adjudicating Authority shall also fix a specific date for pronouncement of orders in open Court in terms of Regulation 27.

15. The petition is disposed of in the above terms. All pending applications are also disposed of. The present order be communicated by the worthy Registrar General to the Registrar, Adjudicating Authority, PMLA on the email ID - registraraapmla-rev@nic.in for compliance and necessary action.

PRATHIBA M. SINGH
JUDGE

JANUARY 11, 2021

Rahul/C

(Corrected and released on 15th January, 2021.)