



2024 : DHC : 959



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 6th FEBRUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 14448/2023 & CM APPL. 57250/2023**

BRIJ BALA KAPUR

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Advocate with
Mr. Shishir Mathur, Mr. Harsh
Gautam, Mr. Deepak Goel and Ms.
Muskan Tyagi, Advocates.

versus

DIRECTORATE OF ENFORCEMENT SURAT SUB ZONAL UNIT

..... Respondent

Through: Mr. Manish Jain, SPP for ED with
Ms. Sougata Ganguly, Mr. Ishaan and
Mr. Rukban Tyagi, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court challenging the Provisional Attachment Order (PAO) bearing No.3/2023 dated 06.10.2023 passed by the Respondent.
2. The facts as mentioned in the Provisional Attachment Order (PAO) are that an FIR No. 1/16/2014 dated 11.04.2014 was registered by the Detection of Crime Branch, Surat Police for the offences under Sections 120(B), 420, 465, 467, 468, 471 and 477A of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*) on the basis of a complaint received from ICICI Bank, Surat against M/s R. A. Distributors Pvt. Ltd and its Directors



alleging that the company had prepared 17 fake bills of entry and presented the same before the ICICI Bank for making foreign outward remittances. Another FIR No. 1/17/2014 dated 13.04.2014 was also registered by the Detection of Crime Branch, Surat Police against M/s Harmony Diamonds Pvt. Ltd., M/s Agni Gems Pvt. Ltd. and their Directors for similar offences. The PAO further indicates that the chargesheets have been filed. The chargesheet names the following:

S. No	Date of Chargesheet	FIR No	Name of Accused
1.	19.08.2014	I/16/2014	Sunil Agarwal Ratan Agarwal
2.	30.09.2014	I/16/2014	Madan Lal Jain
3.	04.11.2014	I/16/2014	Afroz Mohd Hasanfatta Bilal Haroon Gilani
4.	26.10.2017	I/17/2014	Pankaj S Jain Deepak Mahadev Patil Kishanlal Bholuram Kumbhar

3. The allegations against the accused are that they hatched a well-planned conspiracy by forming different companies/partnership/proprietorship firms and lured people by offering them side income of Rs.10,000-12,000 just to obtained their photos, ID proofs and residence proofs and enlist them as Directors of M/s RA. Distributors Pvt. Ltd, M/s Riddhi Exim Pvt. Ltd., M/s M.B. Offshore Distributors Pvt. Ltd., M/s Maa Mumba Devi Gems Pvt. Ltd., M/s Hem Jewels Pvt. Ltd. etc. It is stated that some persons who were lured with money, were called to the office of the accused located at Office No. 416-417, Opera House, Panchratna Building, Mumbai. Bank employees were present at the location with documents required to open new bank accounts



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and such forms were filled and signatures were taken. It is mentioned that at places signatures of the witnesses were forged and false KYC documents were presented for opening accounts in ICICI Bank. After the accounts were opened, the amounts were credited on different occasions with the help of one Prafulbhai Mohanbhai Patel in Axis Bank accounts of M/s Aarzoo Enterprise, M/s G.T. Traders, M/s Vandana & Co. etc., through RTGS/NEFT and thereafter, the said amount deposited in Axis Bank were transferred to the accounts in ICICI Bank, Ring Road Branch, Surat.

4. The chargesheets also reveal that the accused deposited forged bills of entry by affixing counterfeit stamps and forged the signatures of Sh. Abhay Desai, Appraising Officer, Diamond Bourse, Custom Department, Surat and of Shri R. S. Paliya, Custom Inspector to show that cut and polished diamonds were imported during the year 2010-2011 from Dubai and Hong Kong by (1) M/s R. A. Distributors Pvt. Ltd., (2) M/s Maa Mumbadevi Gems Pvt. Ltd., (3) M/s Hem Jewells Pvt. Ltd., (4) M/s Ridhhi Exim Pvt. Ltd., (5) M/s M. B. Offshore Distributors Pvt. Ltd., (6) M/s Trinetra Trading Company Pvt. Ltd., and (7) M/s Ramshyam Exports Pvt. Ltd., and during the period from October, 2013 to March, 2014 deposited bogus and fabricated bills of entries in ICICI Bank, Ring Road Branch, Surat by forging the signatures of the directors on whose behalf the accounts were opened (who were lured with money) and remitted a total sum of Rs. 428,37,24,350/- illegally to different Hong Kong and UAE based companies.

5. When investigation was done on the basis of aforesaid FIRs, it was found that the amounts were remitted from the following companies having accounts with ICICI Bank, Ring Road, Surat:



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Sr. No.	Name of the Company	Account No	Amount illegally remitted (Rs. in crores)
1	M/s. Agni Gems Pvt. Ltd. 304, Shayona Hatfalia, Haripura, Surat	005205500995	168.93
2	M/s. Harmony Diamonds Pvt. Ltd. 1st Floor, Somnath Mahadev Street, GurajaraFaliyu, Surat	005205501001	76.28
3	M/s. R. A. Distributors Pvt. Ltd. 6/1943, Office No. 303, Cabin No. 1, 3 rd Floor, Navakar Building, Opp. Kabir Mandir, Mahidarpura, Surat	624605501750	1521
4	M/s. Hem Jewels Pvt. Ltd. 6/1764, Cabin No. 6, Ground Floor, Back side, Krishna Kunj Gundisheri, Laldarwaja, Mahidarpura, Surat	624605501807	348.59
5	M/s. Maa Mumbadevi Gems Pvt. Ltd. 6/1764, Cabin No. 6, Ground Floor, Back side, Krishna Kunj Gundisheri, Laldarwaja, Mahidarpura, Surat	624605501808	446.4
6	M/s. Riddhi Exim Pvt. Ltd. 101, 1st Floor, Krishna Kunj, Gundisheri, Laldarwaja, Mahidarpura, Surat	085005500829	994.77
7	M/s. M. B. Offshore Distributors Pvt. Ltd., 6/1943, Office No. 303, Cabin No. 1, 3 rd Floor, Navakar Building, Opp. Kabir Mandir, Mahidarpura, Surat	085005500828	1013.18
8	M/s. Ramshyam Exports Pvt. Ltd. 6/1943, Office No. 303, Cabin No. 1, 3 rd Floor, Navakar Building, Opp. Kabir Mandir, Mahidarpura, Surat	085005500850 and 085005500879	650.42
9	M/s. Trinetra Trading Pvt. Ltd. 6/1943, Office No. 303, Cabin No. 1, 3 rd Floor, Navakar Building, Opp. Kabir Mandir, Mahidarpura, Surat	085005500849 and 085005500880	176.18
Total			5395.75

6. Proceedings were also initiated under the Prevention of Money Laundering Act, 2002 (*hereinafter referred to as "PMLA, 2002"*). During the course of investigation, statements of bank account No.85005500829 of



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M/s Riddhi Exim Pvt. Ltd. held with ICICI Bank and account No.913020025830735 of M/s Maruti Trading held with Axis Bank were scrutinized which revealed that total funds of Rs. 254 crores approximately were received in these bank accounts from bank account No.588011036547 (held with Kotak Mahindra Bank) and bank account No.0032649804054 (held with SBI Bank) and bank account No.04622431121980 (held with DCB Bank) of M/s Kross Diamonds Pvt. Ltd.

7. It is pertinent to mention here that the Petitioner's husband Mr. Pankaj Kapur and the Petitioner's son Mr. Satchit Kapur are directors and shareholders of M/s Kross Diamonds Pvt. Ltd. The Petitioner is only a housewife. The PAO gives details of various amounts received in the bank account No.85005500829 of M/s Riddhi Exim Pvt. Ltd. from the bank account of M/s Kross Diamond Pvt. Ltd. during October, 2013 to March, 2014 to the tune of Rs.1,69,39,00,000.00/- and the said amount was further transferred from bank account No.8500550829 of M/s Riddhi Exim Pvt. Ltd. to UAE and Hong Kong based entities on the strength of forged bills of entry and documents.

8. Similarly, the PAO also gives details of amounts to the tune of Rs.84,48,00,000/- received in bank account No.913020025830735 of M/s Maruti Trading from M/s Kross Diamond Pvt. Ltd. during October, 2013 to March, 2014 and the said amount was also further transferred from bank account No.913020025830735 of M/s Maruti Trading to UAE and Hong Kong based entities on the strength of forged bills of entry and documents.

9. The investigation further reveals that a Letter of Request dated 20.01.2015 was sent by Ld. Special Court, PMLA, Ahmedabad to UAE authorities to obtain the detail of UAE based entities to which funds were illegally remitted from India on the basis of forged bills of entry and



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ultimate beneficiaries of proceeds of crime. In response to that, a part reply was received from UAE authorities and the scrutiny of documents received from UAE authorities in response to Letter of Request revealed that Mr. Pankaj Kapur (husband of the Petitioner herein) was the owner, sole shareholder and Managing Director of M/s Oracle General Trading FZE which was one of the three UAE based entities to which funds of Rs.58.14 crores were illegally remitted on the strength of forged bills of entry and documents. Summons were issued to Shri. Pankaj Kapur (current director of M/s Kross Diamonds Pvt. Ltd. and owner of M/s Oracle General Trading FZE), Shri. Satchit Kapur (current Director and shareholder of M/s Kross Diamonds Pvt. Ltd.), Smt. Brijbala Kapur (shareholder and initial Director of M/s Kross Diamonds Pvt. Ltd.), Shri. Pratikula Biswal (accountant of M/s Kross Diamonds Pvt. Ltd.) and the other employees of M/s Kross Diamonds Pvt. Ltd under Section 50 of PMLA, 2002 to verify the veracity of transactions made among M/s Kross Diamonds Pvt. Ltd., M/s Riddhi Exim Pvt. Ltd., M/s Maruti Trading, M/s Oracle General Trading FZE etc.

10. The Petitioner's statement recorded under Section 50 of the PMLA, 2002 reads as under:

"3.11 As Smt. Brijbala Kapur was the share holder and initial director of M/s Kross Diamonds Pvt. Ltd., she was summoned to record her statement and ascertain her role in day to day affairs of M/s Kross Diamonds Pvt. Ltd. Statement of Smt. Brijbala Kapur was recorded under Section 50 of PMLA, 2002 on 18.05.2022 wherein she inter-alia stated that she has been a housewife since her marriage in 1980; She owns a residential premises situated at B-64, Greater Kailash, South Delhi - 110048; for the purchase of this property, she sold the property situated at 1F, Northern Road, Civil Lines, New Delhi in 2009 for approx. Rs. 3 crores and she took loan of



approximately Rs.5 crores from M/s Indiabulls Housing and M/s Reliance Fincorp; the property situated at 1F, Northern Road, Civil Lines, New Delhi was ancestral property which was purchased by her father-in-law in 1985 and gifted to her and her husband Sh. Pankaj Kapur; the EMI of the home loan was paid by M/s Kapur Gems Pvt. Ltd., M/s Kross Diamonds Pvt. Ltd. and M/s Radhika Gems Pvt. Ltd. during the period from 2011 to 2021 and that the loan accounts have been closed in 2021 after full repayment of loan; EMI are paid on her behalf by M/s Kapur Gems Pvt. Ltd., M/s Kross Diamonds Pvt. and M/s Radhika Gems Pvt and that the funds taken from these companies and utilized for the repayment of loan are shown as loan in books of accounts; she will submit the details of outstanding loan taken from these 3 companies for repayment of EMIs; she was Director in M/s C P Vaults Pvt. Ltd., M/s Kapur Gems Pvt. Ltd., M/s Kapur Softech Pvt. Ltd., M/s Brij Bala Softech Pvt. Ltd.; these all companies are floated controlled and managed by her husband Sh. Pankaj Kapur and her son Sh. Satchit Kapur; she has no role in the day to day business activities of M/s C P Vaults Pvt. Ltd., M/s Kapur Gems Pvt. Ltd., M/s Kapur Softech Pvt. Ltd., M/s Brij Bala Softech Pvt. Ltd.; she was made director of these companies by her husband and son and all the decisions were taken by them; she never attended any meeting of these companies and signed all the papers of companies as per say of her husband; she doesn't know anything about the business activities carried out by these companies; she is shareholder in M/s C P Vaults Pvt. Ltd., M/s Kross Diamonds Pvt. Ltd., M/s Kapur Softech Pvt. Ltd., M/s Brijbala Softech Limited; Sh. Subhash Chander and Sh. Krishan Lal Arora were the director of M/s Kross Diamonds in F. Y. 2013-14; both were the employees of M/s Kross Diamonds Pvt. Ltd. and they were appointed directors by her husband and her son; her husband and son used to handle all the day to day affairs and business activities of the company."



11. The aforesaid statement indicates that the Petitioner was initially the Director of M/s Kross Diamonds Pvt. Ltd, however, she now remains as a shareholder.

12. Resultantly, by Provisional Attachment Order (PAO) bearing No.3/2023 dated 06.10.2023, the following properties of the Petitioner were attached by the Respondent:

3.	Second Floor House No. B-64, Greater Kailash-I, New Delhi - 110048	Mrs. Brij Bala Kapur	Apr-14	19,20,00,000
4.	Private No. F-6, Portion of First Floor House No. B-64, Greater Kailash-I, New Delhi - 110048	Mrs. Brij Bala Kapur	Apr-14	2,55,00,000
5.	Private No. FR-1, FR-2, FR-3 & FR-4, Rear Portion of First Floor House No. B-64, Greater Kailash-I, New Delhi - 110048	Mrs. Brij Bala Kapur	Apr-14	9,15,00,000
6.	Private No. F-5, Portion of First Floor House No. B-64, Greater Kailash-I, New Delhi - 110048	Mrs. Brij Bala Kapur	Apr-14	2,55,00,000
7.	Unit No. - III and Unit No. IV on Ground Floor House No. B-64, Greater Kailash-I, New Delhi - 110048	Mrs. Brij Bala Kapur	Apr-14	7,20,00,000
8.	Front Portion of the Lower Ground Floor (1/2 of the entire Lower Ground Floor) House No. B-64, Greater Kailash-I, New Delhi - 110048	Mrs. Brij Bala Kapur	Apr-14	4,50,00,000

13. It is this Provisional Attachment Order (PAO) bearing No.3/2023 dated 06.10.2023 which is under challenge in the instant writ petition.

14. Learned Senior Counsel appearing for the Petitioner submits that the Petitioner was only a housewife and most of the properties which have been attached by the Respondent were purchased prior to the period which is



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under scrutiny, and therefore, there is no application of mind on the part of the Respondent in passing the PAO. He states that the sine qua non of Section 5 of the PMLA, 2002 is that any Officer who passes Order of Provisional Attachment must have reason to believe that the persons against whom PAO is passed is in the possession of any proceeds of crime and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime.

15. Learned Senior Counsel appearing for the Petitioner further submits that since the premises bearing No.B-64, Greater Kailash-I, New Delhi-110048 were purchased after the sale of the property bearing 1F, Northern Road, Civil Lines, New Delhi which was gifted to the Petitioner by her father and therefore, the said premises could not have been attached by the Respondent.

16. Heard learned Counsel appearing for the Parties and perused the material on record.

17. The statement of the Petitioner recorded under Section 50 of the PMLA, 2002 indicates that the property situated at Civil Lines was sold for Rs.3 crores and a loan of Rs.5 crores was taken for purchasing the premises bearing No.B-64, Greater Kailash-I, New Delhi-110048.

18. Section 5 of the PMLA postulates that where the Director or any other officer not below the rank of Deputy Director authorised by the Director, on the basis of material on possession has reason to believe, which has to be recorded in writing, that any person is in possession of any proceeds of crime and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings, he may, by order in writing, provisionally attach such property for a period not



exceeding 180 days from the date of the order. The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

19. Section 8(1) and 8(2) of the PMLA, 2002 reads as under:

"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 sub-section (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], it 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 2 [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 sub-section (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 subsection (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."

20. The scheme of the Act indicates that after the Adjudicating Authority comes to a conclusion that any property is involved in money-laundering, the Adjudicating Authority by an order in writing confirms the attachment of the property under Section 8(3) of PMLA, 2002. Any Order of the Adjudicating Authority is appealable before the Appellate Tribunal constituted under Section 25 of the PMLA, 2002.

21. It is well settled that where any Statute provides a procedure to deal with the issues which arises under the Statute, the High Court while exercising its jurisdiction under Article 226 of the Constitution of India ordinarily must not interfere with the scheme unless there is a patent lack of jurisdiction.

22. The argument of the Petitioner is primarily on facts which can be dealt with by the Adjudicating Authority under Section 8 of the PMLA, 2002 and further by the Appellate Tribunal under Section 25 of the PMLA, 2002.



23. The Apex Court in Directorate of Enforcement vs. PC Financial Services Private Limited and Another, **2022 SCC OnLine Del 3582** has held as under:

"13. The Hon'ble Supreme Court in Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433, has, inter alia, held as under:

"6. We are constrained to dismiss these petitions on the short ground that the petitioners have an equally efficacious alternative remedy by way of an appeal to the Prescribed Authority under sub-section (1) of Section 23 of the Act, then a second appeal to the Tribunal under sub-section (3)(a) thereof, and thereafter in the event the petitioners get no relief, to have the case stated to the High Court under Section 24 of the Act... .."

14. The Hon'ble Supreme Court in Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd.,, (1985) 1 SCC 260, by placing reliance on Titaghur Paper Mills (supra) has, inter alia, held as under:

"3. In Titaghur Paper Mills Co. Ltd. v. State of Orissa [(1983) 2 SCC 433 : 1983 SCC (Tax) 131 : 1983 Tax LR 2905 : (1983) 142 ITR 663 : (1983) 53 STC 315] A.P. Sen, E.S. Venkataramiah and R.B. Misra, JJ. held that where the statute itself provided the petitioners with an efficacious alternative remedy by way of an appeal to the Prescribed Authority, a second appeal to the tribunal and thereafter to have the case stated to the High Court, it was not for the High Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution ignoring as it were, the complete statutory machinery. That it has become necessary, even now, for us to repeat this admonition is indeed a matter of tragic concern to us. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of



extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.”

15. *The Hon'ble Supreme Court in Punjab National Bank v. O.C. Krishnan,, (2001) 6 SCC 569, has, inter alia, held as under:*

“5. In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short “the Act”). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. We do not propose to go into the correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.

6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot



expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.”

16. *The Hon'ble Supreme Court in Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement,, (2010) 4 SCC 772, has observed as under:*

“39. If the appellant in this case is allowed to file a writ petition despite the existence of an efficacious remedy by way of appeal under Section 35 of FEMA this will enable him to defeat the provisions of the statute which may provide for certain conditions for filing the appeal, like limitation, payment of court fee or deposit of some amount of penalty or fulfilment of some other conditions for entertaining the appeal. (See para 13 at SCC p. 408.) It is obvious that a writ court should not encourage the aforesaid trend of bypassing a statutory provision.”

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18. *The Hon'ble Supreme Court in Commissioner of Income Tax v. Chhabil Dass Agarwal, (2014) 1 SCC 603, has, inter alia, observed as under:*

“10. In the instant case, the only question which arises for our consideration and decision is whether the High Court was justified in interfering with the order passed by the assessing authority under Section 148 of the Act in exercise of its jurisdiction under Article 226 when an equally efficacious alternate remedy was available to the assessee under the Act.



11. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See *State of U.P. v. Mohd. Nooh* [AIR 1958 SC 86], *Titaghur Paper Mills Co. Ltd. v. State of Orissa* [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131], *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.* [(2003) 2 SCC 107] and *State of H.P. v. Gujarat Ambuja Cement Ltd.* [(2005) 6 SCC 499])

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15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal* case [AIR 1964 SC 1419], *Titaghur Paper Mills* case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved



person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

16. In the instant case, the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In *Ram and Shyam Co. v. State of Haryana* [(1985) 3 SCC 267] this Court has noticed that if an appeal is from “Caesar to Caesar's wife” the existence of alternative remedy would be a mirage and an exercise in futility.

17. In the instant case, neither has the writ petitioner assessee described the available alternate remedy under the Act as ineffectual and non-eficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of the instant case.
... ..”

19. The Hon'ble Supreme Court in *State of Maharashtra v. Greatship (India) Limited*, 2022 SCC OnLine SC 1262, has, inter alia, observed as under:

“14. At the outset, it is required to be noted that against the assessment order passed by the Assessing Officer under the provisions of the MVAT Act and CST Act, the assessee straightway preferred writ petition under Article 226 of the Constitution of India. It is not in dispute that the statutes provide for the right of appeal



against the assessment order passed by the Assessing Officer and against the order passed by the first appellate authority, an appeal/revision before the Tribunal. In that view of the matter, the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India challenging the assessment order in view of the availability of statutory remedy under the Act. At this stage, the decision of this Court in the case of *Satyawati Tondon (supra)* in which this Court had an occasion to consider the entertainability of a writ petition under Article 226 of the Constitution of India by bypassing the statutory remedies, is required to be referred to. After considering the earlier decisions of this Court, in paragraphs 49 to 52, it was observed and held as under:

“49. The views expressed in Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 were echoed in CCE v. Dunlop India Ltd., (1985) 1 SCC 260 in the following words : (SCC p. 264, para 3)

“3. ... Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.”



50. In *Punjab National Bank v. O.C. Krishnan*, (2001) 6 SCC 569 this Court considered the question whether a petition under Article 227 of the Constitution was maintainable against an order passed by the Tribunal under Section 19 of the DRT Act and observed : (SCC p. 570, paras 5-6)

“5. In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short ‘the Act’). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. We do not propose to go into the correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.

6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.”



51. In *CCT v. Indian Explosives Ltd.* [(2008) 3 SCC 688] the Court reversed an order passed by the Division Bench of the Orissa High Court quashing the show-cause notice issued to the respondent under the Orissa Sales Tax Act by observing that the High Court had completely ignored the parameters laid down by this Court in a large number of cases relating to exhaustion of alternative remedy.

52. In *City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla* [(2009) 1 SCC 168] the Court highlighted the parameters which are required to be kept in view by the High Court while exercising jurisdiction under Article 226 of the Constitution. Paras 29 and 30 of that judgment which contain the views of this Court read as under : (SCC pp. 175-76)

“29. In our opinion, the High Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution is duty-bound to take all the relevant facts and circumstances into consideration and decide for itself even in the absence of proper affidavits from the State and its instrumentalities as to whether any case at all is made out requiring its interference on the basis of the material made available on record. There is nothing like issuing an *ex parte* writ of mandamus, order or direction in a public law remedy. Further, while considering the validity of impugned action or inaction the Court will not consider itself restricted to the pleadings of the State but would be free to satisfy itself whether any case as such is made out by a person invoking its extraordinary jurisdiction under Article 226 of the Constitution.

30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
- (b) the petition reveals all material facts;



- (c) *the petitioner has any alternative or effective remedy for the resolution of the dispute;*
- (d) *person invoking the jurisdiction is guilty of unexplained delay and laches;*
- (e) *ex facie barred by any laws of limitation;*
- (f) *grant of relief is against public policy or barred by any valid law; and host of other factors.*

The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law.”

53. In Raj Kumar Shivhare v. Directorate of Enforcement [(2010) 4 SCC 772] the Court was dealing with the issue whether the alternative statutory remedy available under the Foreign Exchange Management Act, 1999 can be bypassed and jurisdiction under Article 226 of the Constitution could be invoked. After examining the scheme of the Act, the Court observed : (SCC p. 781, paras 31-32)

“31. When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case the High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go-by by a litigant



for invoking the forum of judicial review of the High Court under writ jurisdiction. The High Court, with great respect, fell into a manifest error by not appreciating this aspect of the matter. It has however dismissed the writ petition on the ground of lack of territorial jurisdiction.

32. No reason could be assigned by the appellant's counsel to demonstrate why the appellate jurisdiction of the High Court under Section 35 of FEMA does not provide an efficacious remedy. In fact there could hardly be any reason since the High Court itself is the appellate forum.”

15. Applying the law laid down by this Court in the aforesaid decision, the High Court has seriously erred in entertaining the writ petition under Article 226 of the Constitution of India against the assessment order, bypassing the statutory remedies.”

20. This Court in Rai Foundation Through Its Trustee Mr. Suresh Sachdev v. The Director, Directorate of Enforcement, 2015 SCC OnLine Del 7626 - wherein the writ petition had been filed for quashing of provisional attachment orders under the PMLA, has held as under:

“8. Section 26 of the Act provides remedy of appeal before the Appellate Tribunal to any person aggrieved by the order made by the Adjudicating Authority. Section 42 of the Act further envisages that any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order.

9. In view of the availability of alternative remedies available to the petitioner under the this Act, I am not inclined to entertain this writ petition under Article 226 of the Constitution of India at this nascent stage, more so when complete mechanism has been provided under the Act to safeguard the interest of aggrieved person. The



petitioner has effective and efficacious statutory remedies to prove the nature of acquisition of assets and to ventilate their grievances. Furthermore, at the stage of provisional attachment, the person concerned is not divested of the property, but is only prevented from dealing with the same till orders are passed by the adjudicating authority under Section 8(2). Against order of adjudicating authority appeal shall lie to the Appellate Tribunal under Section 26 and further appeal to High Court under Section 42, the statute has provided enough safeguards and redressal mechanism. The writ court cannot go into the merits of the issue at this stage even before attachment order has become final, investigation is completed, trial concluded and issue of attachment is considered by Adjudicating Authority, Appellate Authority and second Appellate Authority.

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12. It is trite law that Article 226 of the Constitution of India vests wide discretion in the Writ Court to entertain the writ petition on any grievance and to grant appropriate relief. It is an extraordinary jurisdiction vested in the writ Court. The Writ Courts observe self-imposed restraint in exercising the jurisdiction under Article 226. Availability of alternative remedy is not a bar to entertain a writ petition. However, ordinarily, the writ petition is not entertained under Article 226 if the aggrieved person has an efficacious and effective remedy provided by concerned statute whereunder an adverse decision is taken against the person, which he seeks to assail in the writ petition. Notwithstanding, availability of alternative remedy in a case of exceptional nature or a case of glaring injustice, Writ Court can entertain a writ petition. However, that would not mean that writ jurisdiction can be exercised in every case, where alternative remedies are available to safeguard the interest of the aggrieved person. It is one thing to say that in exercise of power vested in it under Article 226 of the Constitution, this High Court entertain a writ petition



against any order passed by or action taken by the State and/or its agency or any public authority or order passed by quasi-judicial authority and it is altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

24. This Court in Rose Valley Hotels and Entertainment Limited v. The Secretary, Department of Revenue, Ministry of Finance, (2015) 221 DLT 335 has held as under:

“5. Heard learned counsel for the parties. Section 26 of the PML Act provides for appeals to the Appellate Tribunal by any person aggrieved by an order made by the adjudicating authority under the Act. Even aggrieved by the order of the Appellate Tribunal the Statute under Section 42 of the PML Act provides for an appeal on any question of law or fact to the High Court. Thus, even accepting the version of the petitioner that the impugned order is a non-reasoned order and the Appellate Court would not have the benefit of reasoning before it however such order is also an appealable order and wherein the Appellate Court on appreciation of facts and law can form its opinion. There is no denial that giving reasons is one of the fundamentals of good administration and failure to give reasons amounts to denial of justice. However, it is not a principle of law that if an order of a competent authority is bereft of reasons, the appellate authority is denuded of its statutory jurisdiction to entertain the appeal. However, brevity of reasoning cannot be understood in legal parlance as absence of reasoning. While no reasoning in support of order



whether judicial/quasi-judicial order is impermissible, the brief reasoning would suffice to meet the ends of justice at least at interlocutory stages and would render the remedy of appeal purposeful and meaningful.

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9. In Satyawati Tondon (supra) the Supreme Court while dealing with the maintainability of the writ petition in view of the availability of alternate remedy held that it is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision etc. and the particular legislation contains a detailed mechanism for redressal of his grievance and only if the petitioner is able to show that its case falls within any of the exception carved out in Whirlpool Corporation (supra) and some other judgments then the High Court may after considering all the relevant parameters and in public interest pass an appropriate interim order.

10. Thus, without dwelling into the merits of the matter since the case of the petitioners do not fall in the exceptions as laid down in Whirlpool Corporation (supra), the writ petitions and applications are dismissed with liberty to the petitioner to avail the alternative efficacious remedies available under Section 26 of the PML Act, if so advised.”

25. The present case is not a case of patent lack of jurisdiction. The Adjudicating Authority has the power to look into the facts of the case of the Petitioner before coming to a conclusion as to whether the properties in question are proceeds of crime or not. It has been contended by the



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Petitioner that one accused has been discharged and proceedings against one accused has been abated because of his death. It is pertinent to mention that apart from individuals, even companies have been made accused. Merely because proceedings have been dropped against some individuals does not mean that the proceedings against the Petitioner should or will be dropped. The offences under the PMLA Act are distinct from offences under the IPC. The companies can still be convicted for the predicate offence and the Petitioner can be prosecuted under the PMLA Act. Hence, this Court is not inclined to interfere under Article 226 of the Constitution of India.

26. The writ petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 06, 2024

S. Zakir