

M/S Incred Financial Services Ltd vs Deputy Director, Directorate Of ... on 2 June, 2022

Author: Yashwant Varma

Bench: Yashwant Varma

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 6354/2022 & CM APPL. 19204/2022

M/S INCRED FINANCIAL SERVICES LTD Petitioner

Through: Mr.Puneet Bajaj, Adv.

versus

DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr.Zoheb Hossain, Mr.Vivek
Gurnani and Mr.Shoaib Alvi, Advs.
for ED.

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+ W.P.(C) 7656/2022 & CM APPL. 23484/2022

SMT. PAVANA DIBBUR Petitioner

Through: Mr.Trideep Pais, Sr. Adv. with
Ms.Chinmayee C
Ms.Sudakshina Prasad and Ms.Sur
Rajappan, Advs.

versus

DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT

& ANR.

..... Respondents

Through: Mr.Zoheb Hossain, Mr.Vivek
Gurnani and Mr.Shoaib Alvi, Advs.
for ED.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

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02.06.2022

W.P.(C) 6354/2022

W.P.(C) 7656/2022

1. A preliminary objection is taken to the maintainability of the writ petition with Mr. Hossain, learned counsel appearing for the Enforcement Directorate, contending that this Court would have no jurisdiction to entertain the present writ petitions. Insofar as W.P.(C) 6354/2022 is concerned, it is pointed out that the parties are all residents of Bangalore and that the principal order of attachment was also passed by an authority situate in that State. It is further pointed out that the

properties which form subject matter of the said writ petitions are all situate in the State of Karnataka. Placing reliance on the decision of the Division Bench of this Court in Aasma Mohammed Farooq and Anr. Vs. Union of India and Ors. [2018 SCC OnLine Del 12800], Mr. Hossain would submit that the said writ petition would not be maintainable. Similar arguments are addressed in respect of W.P.(C) 7656/2022. Mr. Hossain submits that here too the petitioner is a company whose principal office is situate in the State of Karnataka and that the provisional order of attachment was also made by the competent authority situate in that State. In view of the aforesaid, it was submitted that bearing in mind the principles of forum conveniens as were propounded by the Division Bench of the Court in Aasma Mohammed Farooq, the two writ petitions are liable to be dismissed on this score alone. The attention of the Court has further been drawn to the order of 14 December 2018 in terms of which the Special Leave to Appeal taken against the judgment rendered by the Division Bench in Aasma Mohammed Farooq came to be disposed of with the Supreme Court observing that it was in agreement with the view which had been expressed therein.

2. Having considered the aforesaid submission, the Court notes that in Aasma Mohammed Farooq the Division Bench had also noticed the judgment rendered by the Court in Vishnu Security Services Vs. Regional Provident Fund Commissioner [2012 SCC OnLine Del 1024]. Dealing with the aforesaid decision it was observed as follows:-

"9. During the course of the arguments, a reference was made to the judgment of the Coordinate Bench of this Court in Vishnu Security Services (supra), wherein the Coordinate Bench has further explained the judgment of the Five Judges in Sterling Agro Industries Ltd. (supra) and has clarified in para 11 as under:-

"11. It is thereafter that the Court went further and expounded the doctrine of forum conveniens with reference to a situation where original authority is in one State and the seat of the appellate authority is located in another State. Once it is categorically held in paras 25 to 27 that in such a case, the writ would be maintainable in both the Courts and also that it is the petitioner which has right to choose his forum, we are of the view that primacy to the freedom given to the petitioner needs to be respected. Therefore, we clarify that normally in such circumstances, writ would be maintainable at both the places and only in extreme cases where the Court finds that it is totally inconvenient for a Court to entertain the writ petition and the other High Court may be better equipped to deal with such a case then the doctrine of forum conveniens has to be applied. The directions of the Sterling Agro (supra) have to be understood in that manner alone, otherwise it would be negation of the principle stated in Kusum Ingots (supra), particularly paras 25 to 27 thereof....."

(Emphasis provided by this Court)

10. In other words, the Division Bench clarified in a case where the original authority is in one State and the seat of the appellate authority is located in another State, a writ petition would be maintainable in both the Courts and also that it is the petitioner who has a right to choose his forum, which need to be respected. The Division Bench clarified that normally in such circumstances, writ

petition would be maintainable at both the places and only in extreme cases where the Court finds that it is totally inconvenient for a Court to entertain the writ petition and the other High Court may be better equipped to deal with such a case then the doctrine of forum conveniens has to be applied."

3. Vishnu Security Services was dealing with a situation where while the original authority may have been in one State, the appellate authority was located in another. In such a situation the Court in Vishnu Security Services held that it would be open for a party to choose either of the two courts including that within whose territorial jurisdiction the appellate authority may be situate. The decision in Vishnu Security Services was noticed in Aasma Mohammed Farooq with the Division Bench agreeing with the view expressed therein and observing that only in a situation where a Court finds that it would be "totally inconvenient" to entertain the writ petition that the doctrine of forum conveniens would be liable to be invoked.

4. The Court notes that in W.P.(C) 6354/2022 an appeal has already been filed. The Tribunal is yet to be constituted and it is in the aforesaid backdrop that the petitioner has instituted the present writ petition. Insofar as W.P.(C) 7656/2022 is concerned the challenge is to the authority of the Adjudicating Authority to proceed further in terms of Section 8 of the Prevention of Money Laundering Act, 2002 [PMLA] as more than 180 days have lapsed since the passing of the provisional order of attachment. It is in that backdrop that learned has placed reliance on the decision rendered by a learned Judge of the Court in Vikas WSP and Others vs. Directorate Enforcement and Another [2020 SCC Online Del 1732]. Although the decision in Vikas WSP forms subject matter of pending LPA No. 362/2020, the Division Bench, in that appeal has also extended interim protection.

5. In view of the aforesaid facts, this Court is of the opinion that since the Appellate Forum has already been approached and the petitioner in W.P.(C) 6354/2022 stands deprived of his right to pursue the remedy available, it cannot be said that the Court would lack territorial jurisdiction.

6. Insofar as W.P.(C) 7656/2022 is concerned, the Court notes that a direct challenge is made to the Authority and jurisdiction of the Adjudicating Officer to proceed further in terms of Section 8 of the PMLA.

The Adjudicating Authority is undisputedly situate within the territorial jurisdiction of this Court. The objection raised in the said writ petition would not sustain.

7. The Court notes that in any case since the respondents have failed to show at least at this stage that it would be totally inconvenient to decide the questions raised, the preliminary objection would not sustain. The issue of forum conveniens is kept open to be addressed by Mr. Hossain insofar as it arises in W.P.(C) 6354/2022.

8. For the aforesaid reasons, the objections raised are negatived. Issue notice. Since the respondents are duly represented by learned counsel, let counter affidavits be filed on or before the next date fixed.

9. List on 04.11.2022.

CM APPL. 19204/2022 (for Stay) in W.P.(C) 6354/2022

1. The Court notes the submission of learned counsel who contends that it had validly extended financial facilities to M/s SreeKanvaSouhardha Cooperative Credit limited [SKSCCL] against proper documentation and on creation of equitable mortgages. It is submitted that those mortgages preceded the attachment of properties by the Enforcement Director under the provisions of the Act. Matter requires consideration.

2. Parties shall consequently maintain status quo till the next date of listing.

3. List on 04.11.2022.

CM APPL. 23484/2022 (Interim Direction) in W.P.(C) 7656/2022

1. Notice. Since the respondents are duly represented by learned counsel, let a counter affidavit be filed within a period of six weeks.

2. For the purposes of considering the prayer for interim directions, the Court notes that the judgment in Vikas WSP and Others vs. Directorate Enforcement and Another [2020 SCC Online Del 1732] passed by a learned Judge of the Court has clearly held that the Adjudicating Authority would stand rendered as functus officio, once the period of 180 days expires. Although that petition forms subject matter of challenge in LPA 362/2020, the Division Bench there too has passed interim orders of protection. Matter requires consideration.

3. Till the next date of listing, the respondents shall stand restrained from taking further steps as contemplated under Section 8 of Prevention of Money Laundering Act, 2002. The petitioner shall also stand restrained from disposing of or creating any third party rights or encumbering the property which forms subject matter of the provisional order of attachment.

4. List on 04.11.2022.

YASHWANT VARMA, J.

JUNE 2, 2022 bh