

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

Reserved on: 08.09.2020

Date of Decision: 18.11.2020

+ **W.P.(C) 3551/2020 & 12626/2020**

M/S VIKAS WSP LTD. & ORS.

..... Petitioners

Through: Mr. Dayan Krishnan, Sr. Adv. with
Mr. Arshdeep Singh, Mr. Akshat
Gupta, Mr. Sanjeevi Seshadri,
Ms. Rajshree Sharma, Advs.

versus

DIRECTORATE ENFORCEMENT & ANR. Respondents

Through: Mr. Amit Mahajan, CGSC with
Ms. Mallika Hiremath and Mr. Atul
Tripathi, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition raises an interesting question of the effect of the lockdown declared by the Central Government due to the outbreak of the COVID-19 Pandemic on the period of the Provisional Attachment Orders passed under Section 5(1) of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the 'Act').

BRIEF FACTS:

2. The respondent no. 1, in exercise of its powers under Section 5(1) of the Act, passed a Provisional Attachment Order dated 13.11.2019, provisionally attaching certain properties of the petitioners amounting to

Rs. 52,21,16,797/-, for a period of 180 days from the date of the said order.

3. The respondent no.1 thereafter, in terms of Section 5(5) of the Act, filed a complaint, being OC No.1228/2019, before the Adjudicating Authority on 05.12.2019.

4. The Adjudicating Authority, on 18.12.2019, issued a Show Cause Notice under Section 8(1) of the Act to the petitioners. However, before the proceedings could be concluded, on 23.03.2020, the Government of India declared a nationwide lockdown with effect from 24.03.2020 due to the spread of the COVID-19 Pandemic.

5. The lockdown declared by the Government of India was partially lifted on 20.04.2020 and the Adjudicating Authority, admittedly, began functioning in a restricted manner thereafter.

6. On 26.05.2020, the Adjudicating Authority issued the Impugned Notice/Summons to the petitioners by way of an e-mail, indicating the next date of hearing in the complaint to be 16.06.2020.

7. The petitioners filed the present petition on 15.06.2020 claiming therein that as the period of 180 days from the date of the Provisional Attachment Orders had expired, in terms of Section 5(3) of the Act, the said order ceased to have effect and therefore, the Adjudicating Authority had become *functus officio* and the proceedings in the complaint cannot proceed. Following prayers have been made in the petition:

"(a) writ of certiorari or any other appropriate writ/ direction/ order in the nature of a writ quashing/ setting aside the Notice/

Summons dated 26.05.2020 issued by the Respondent no. 2 Adjudicating Authority through email in Original Complaint No. 1228/2019 dated 05.12.2019 intimating a fresh date of hearing and directing the Petitioner to join the proceedings and all consequential proceedings emanating therefrom; and

(b) writ of declaration or any other appropriate writ/ direction/ order declaring that the Provisional Attachment Order No. 10/2019 dated 13.11.2019 issued by the Respondent No.1 ED and all proceedings emanating therefrom including Original Complaint No. 1228/2019 has lapsed and ceased to have any effect on and from the expiry of 180 day period provided under Section 5 PMLA i.e. from 12.05.2020."

PETITIONERS SUBMISSIONS:

8. The learned senior counsel for the petitioners has submitted that the provisions of sub-section (1) and sub-section (3) of Section 5 provide for the maximum period of the validity of a Provisional Attachment Order and on expiry of the said period, the Provisional Attachment Order ceases to have effect without any further action/omission on part of any Authority. He submits that there is no provision in the Act by which such period can be extended by any Authority or even by a Court of law. He places reliance on the judgment of the Supreme Court in *S.Kasi vs. State* 2020 SCC OnLine SC 529.

9. He submits that the effect of an order under Section 5(1) of the Act is deprivation of the right of a person to enjoy his property. The same cannot be extended for an indefinite period. The right to enjoyment of a property is a Constitutional right guaranteed under Article 300A of the

Constitution and cannot be denied to a person except in accordance with the procedure prescribed by law. In this regard, he places reliance on the judgment of the Supreme Court in *M.C.Mehta vs. Union of India & Ors.* 2020 SCC OnLine SC 648.

10. The learned senior counsel for the petitioners further submits that though the Supreme Court in its orders dated 23.03.2020, 06.05.2020 and 10.07.2020 passed in Suo Moto WP(C) No.3/2020- *In Re: Cognizance for Extension of Limitation*, has extended the period of limitation to file proceedings under the general or special laws, including the Arbitration and Conciliation Act, 1996 and the Negotiable Instruments Act, 1881, and also with respect to Section 29A and 23(4) of the Arbitration and Conciliation Act, 1996 etc., the same cannot extend the period of validity of a Provisional Attachment Order passed under Section 5(1) of the Act, as it is not a period of limitation. He further submits that the Government of India, by a Notification dated 31.03.2020 extended the period for completion of proceedings prescribed under various Acts, like the Wealth Tax Act, 1957, The Prohibition of Benami Property Transactions Act, 1988, etc., however, the period prescribed under the provisions of the Prevention of Money Laundering Act, 2002 has not been extended. Therefore, there is no occasion for this Court also to extend the period prescribed.

11. Placing reliance on the judgment of the Supreme Court in *New India Assurance Co. Ltd. vs. Hilli Multipurpose Cold Storage Pvt. Ltd.* (2015) 16 SCC 20 and in *Central Bureau of Investigation & Ors. vs. Keshub Mahindra & Ors.* (2011) 6 SCC 216, he submits that where the

statute does not vest any power with the Court to extend the period prescribed in the Act, the same must prevail and the Court cannot ignore the same on ground of equity.

12. He submits that even the Supreme Court would not have such power under Article 142 of the Constitution, leave alone this Court under Article 226 of the Constitution. In this regard, he places reliance on the judgment of the Supreme Court in *Assistant Commissioner (CT) LTU, Kakinada & Ors. vs. Glaxo Smith Kline Consumer Health Care Ltd.* 2020 SCC OnLine SC 440.

13. In the alternative, he submits that even if the period of the lockdown declared by the Government of India has to be excluded, that is between 24.03.2020 to 20.04.2020, 180 days from passing of the Provisional Attachment Order would have expired by 16.06.2020, which was the next date of hearing, rendering the Adjudicating Authority *functus officio* thereafter.

14. He further submits that this Court on 06.07.2020 was pleased to stay further proceedings in the Complaint pending before the Adjudicating Authority. The period of 180 days having already expired as on 06.07.2020, even the benefit of the proviso to Section 5(1) of the Act would not be available to extend the period of validity of the Provisional Attachment Order.

RESPONDENTS SUBMISSIONS:

15. On the other hand, the learned counsel for the respondents submits that the Supreme Court by the above referred orders passed in *Suo Moto*

W.P.(C) No.3/2020, has extended the period of limitation for various proceedings, which would also include proceedings before the Adjudicating Authority. He submits that the period of the Provisional Attachment Order, therefore, stands extended in terms of the said orders of the Supreme Court. Placing reliance on sub-section (1) of Section 8 of the Act, he submits that a notice of not less than 30 days has to be issued by the Adjudicating Authority on receipt of the Complaint under sub-section (5) of Section 5 of the Act. As the said period itself would get extended in terms of the Supreme Court order, it cannot be said that the Provisional Attachment Order would lose its validity only because such notice could not be issued due to the lockdown declared by the Government of India.

16. He further submits that the proceedings before the Adjudicating Authority is in the nature of a quasi-judicial proceedings and it is settled principal of law that a party cannot be prejudiced by the act or omission of a Court. He submits that the delay in completion of the proceedings before the Adjudicating Authority, not being attributable to the respondents, the respondents cannot be prejudiced by the same.

17. I have considered the submissions made by the learned counsels for the parties.

REASONING AND FINDING:

18. Sub-section (1) of Section 5 of the Act empowers the Director or any other officer not below the rank of the Deputy Director authorized by the Director of Enforcement in this regard, to pass an order provisionally

attaching property of a person ‘for a period not exceeding 180 days from the date of the order’. In terms of the third proviso to sub-section (1) of Section 5, this period is extended by 30 days from the date of the order vacating any stay order granted by the High Court on such Provisional Attachment Order or proceedings before the Adjudicating Authority. Sub-section (3) of Section 5 to the Act provides that every Provisional Attachment Order passed under sub-section (1) of Section 5 of the Act, shall cease to have effect after the expiry of the period of one hundred and eighty days or on the date of the order made under sub-section (3) of Section 8, “whichever is earlier”. Therefore, one hundred and eighty days from the date of the order passed under sub-section (1) of section 5 of the Act, is the outer limit of the validity/life of such order and the same ceases to remain in effect, by efflux of time, beyond that date, in case no order confirming the Provisional Attachment Order is passed by the Adjudicating Authority under sub-section (3) of Section 8 of the Act prior thereto.

19. Sub-sections (1) and (3) of Section 5 of the Act are reproduced herein below:

"5. Attachment of property involved in money-laundering. —

(1) Where the Director, or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime; and

(b) 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 under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in first proviso, any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.

xxxxx

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (3) of section 8, whichever is earlier.

(Emphasis supplied)

20. A reading of the above provisions would clearly show that one hundred and eighty days from the passing of the Provisional Attachment Order is not prescribed as a period of limitation to do a particular act, but as the outer period of validity of the Provisional Attachment Order itself. On expiry of the said period, in absence of an order passed by the Adjudicating Authority under sub-section (3) of Section 8 of the Act, the Provisional Attachment Order ceases to have effect or lapses on its own. Such lapsing does not require any confirmation from the Authority or any Court of law; it is automatic; it is preemptory in nature.

21. It is also to be noted that the Act, except in the third Proviso to Section 5(1) of the Act, does not provide for any extension of validity of the period of the Provisional Attachment Order. There are no exceptions; there is no provision for extension.

22. "Attachment" is defined under Section 2(1)(d) of the Act to mean as under:

"2(1)(d) "attachment" means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III."

23. Therefore, a reading of sub-section (1) of Section 5 with Section 2(1)(d) of the Act leaves no manner of doubt that the effect of the Provisional Attachment Order is deprivation of the right to property.

24. Article 300A of the Constitution creates a Constitutional right in every person to hold and enjoy his property, unless deprived by authority of law. In *M.C. Mehta* (supra), the Supreme Court has emphasized that when the statute prescribes a mode, the property deprivation cannot be done in other modes. It was further emphasized that Statutes which encroach upon rights, whether as regards person or property, are subject to strict construction in the same way as penal Acts. They should be interpreted, if possible, so as to respect such rights and if there is any ambiguity, the construction which is in favour of the freedom of the individual should be adopted; they must be given a strict construction. It was further reiterated that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the Act are only creature of statute and must act within the four corners thereof. As reference to various precedents was made in this judgment, I would like to quote paragraph 107 of the same:-

"107. Article 300A of the Constitution provides that nobody can be deprived of the property and right of residence otherwise in the manner prescribed by law. When the statute prescribes a mode, the property's deprivation cannot be done in other modes since this Court did not authorize the Committee to take action in the matter. An action could have been taken in no other manner except in accordance with the procedure prescribed by law as laid down in the decisions referred to at the Bar thus:

(a) *State of Rajasthan v. Basant Nahata*, (2005) 12 SCC 77, wherein this Court observed:

"59.In absence of any substantive provisions contained in a parliamentary or legislative act, he cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one's right of property as envisaged under Article 300-A of the Constitution."

(b) *K.T. Plantation Pvt. Ltd. v. State of Karnataka*, (2011) 9 SCC 1 in which it was opined:

"168. Article 300-A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. The expression "property" in Article 300-A confined not to land alone, it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognized by law.

*169. This Court in *State of W.B. v. Vishnunarayan and Associates (P) Ltd.*, while examining the provisions of the West Bengal Great Eastern Hotel (Acquisition of Undertaking) Act, 1980, held in the context of Article 300-A that the State or executive officers cannot interfere with the right of others unless they can point out the specific provisions of law which authorizes their rights."*

(emphasis supplied)

(c) In *T.Vijayalakshmi vs. Town Planning Member*, (2006) 8 SCC 502, the Court observed:

"13. Town Planning legislations are regulatory in nature. The right to property of a person would include a right to construct a building. Such a right, however, can be restricted by reason of a legislation. In terms of the

provisions of the Karnataka Town and Country Planning Act, a comprehensive development plan was prepared. It indisputably is still in force. Whether the amendments to the said comprehensive development plan as proposed by the Authority would ultimately be accepted by the State or not is uncertain. It is yet to apply its mind. Amendments to a development plan must conform to the provisions of the Act. As noticed hereinbefore, the State has called for objection from the citizens. Ecological balance no doubt is required to be maintained and the Courts while interpreting a statute should bestow serious consideration in this behalf, but ecological aspects, it is trite, are ordinarily a part of the town planning legislation. If in the legislation itself or in the statute governing the field, ecological aspects have not been taken into consideration keeping in view the future need, the State and the Authority must take the blame therefor. We must assume that these aspects of the matter were taken into consideration by the Authority and the State. But the rights of the parties cannot be intermeddled with so long as an appropriate amendment in the legislation is not brought into force.

15. The law in this behalf is explicit. Right of a person to construct residential houses in the residential area is a valuable right. The said right can only be regulated in terms of a regulatory statute but unless there exists a clear provision the same cannot be taken away."

(emphasis supplied)

(d) In the matter of State of U.P. v. Manohar, (2005) 2 SCC 126, this Court observed:

"7. Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(f) was deleted by the Forty-fourth

Amendment to the Constitution, Article 300-A has been placed in the Constitution, which reads as follows:

"300-A. Persons not to be deprived of property save by authority of law.-

No person shall be deprived of his property save by authority of law."

8. *This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities....."*

(e) In Delhi Airtech Services (P) Ltd. v. State of U.P. (2011) 9 SCC 354, this Court held:

"83. The expression "law" which figures both in Article 21 and Article 300-A must be given the same meaning. In both the cases the law would mean a validly enacted law. In order to be valid law it must be just, fair and reasonable having regard to the requirement of Articles 14 and 21 as explained in Maneka Gandhi. This is especially so, as "law" in both the Articles 21 and 300-A is meant to prevent deprivation of rights. Insofar as Article 21 is concerned, it is a fundamental right whereas in Article 300-A it is a constitutional right which has been given a status of a basic human right."

(f) It was further argued that planning laws are expropriatory and should be strictly construed, and any ambiguity is to be construed in favour of the property owner as laid down in Delhi Airtech Services (P) Ltd. v. State of U.P. (supra) thus:

"129. Statutes which encroach upon rights, whether as regards person or property, are subject to strict construction in the same way as penal Acts. It is a recognised rule that they should be interpreted, if possible, so as to respect such rights and if there is any ambiguity, the construction which is in favour of the freedom of the individual should be adopted. (See

Maxwell on The Interpretation of Statutes, 12 Edn. by P. St. J. Langan.)

130. This Court in *Devinder Singh* held that the Land Acquisition Act is an expropriatory legislation and followed the case of *Hindustan Petroleum Corpn. v. Darius Shapur Chenai*. Therefore, it should be construed strictly. The Court has also taken the view that even in cases of directory requirements, substantial compliance with such provision would be necessary.”

(emphasis supplied)

(g) In *Ramchandra Ravindra Waghmare v. Indore Municipal Corporation*, (2017) 1 SCC 667, it was opined:

“67. It was also submitted that town planning and municipal institutes are regulating and restricting the use of private property under the aforesaid Acts. They are “expropriatory legislation”. Thus they are liable to be construed strictly as laid down in *Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd.*”

(h) In *Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd.*, (2007) 8 SCC 705, it was held:

“57. The Act being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction. An owner of land ordinarily would be entitled to use or develop the same for any purpose unless there exists certain regulation in a statute or statutory rules. Regulations contained in such statute must be interpreted in such a manner so as to least interfere with the right to property of the owner of such land. Restrictions are made in larger public interest. Such restrictions, indisputably must be reasonable ones. (See *Balram Kumawat v. Union of India* ; *Krishi Utpadan Mandi Samiti v. Pilibhit Pantnagar Beej Ltd.* and *Union of India v. West Coast Paper Mills Ltd.*) The statutory scheme contemplates that a person and owner of land

should not ordinarily be deprived from the user thereof by way of reservation or designation.

58. Expropriatory legislation, as is well-known, must be given a strict construction.”

(i) In *State of Gujarat v. Shantilal Mangaldas*, (1969) 1 SCC 509, it was held:

“55. Once the draft town-planning scheme is sanctioned, the land becomes subject to the provisions of the Town Planning Act, and on the final town-planning scheme being sanctioned, by statutory operation the title of the various owners is readjusted and the lands needed for a public purpose vest in the local authority. Land required for any of the purposes of a town planning scheme cannot be acquired otherwise than under the Act, for it is a settled rule of interpretation of statutes that when power is given under a statute to do a certain thing in a certain way the thing must be done in that way or not at all.”

(emphasis supplied)

(j) In *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.*, (2003) 2 SCC 111, it was opined:

“40. The statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof.”

(emphasis supplied)

(k) In *Shrirampur Municipal Council v. Satyabhamabai Bhimaji Dawkher*, (2013) 5 SCC 627 it was held:

“43. This is the reason why time-limit of ten years has been prescribed in Section 31(5) and also under Sections

126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice under Section 127 or steps are not commenced for acquisition, reservation of the land will be deemed to have lapsed. Shri Naphade's interpretation of the scheme of Sections 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300-A of the Constitution."

(emphasis supplied)

25. In the present case, the Act clearly deprives the person against whom the Provisional Attachment Order is passed of his right to deal in the property against which the attachment is ordered. Such deprivation can therefore, be for a maximum of 180 days and no further, except where such order is confirmed by the Adjudicating Authority prior thereto under Section 8(3) of the Act. Once the 180 day period has lapsed without such order being passed under Section 8(3) of the Act, the Provisional Attachment Order ceases to have effect and therefore, there is no order before the Adjudicating Authority to confirm under Section 8(3) of the Act. The Adjudicating Authority therefore, becomes *functus officio*.

26. As noted hereinabove, there is no power with any Authority or the Court to relax or extend the validity of the Provisional Attachment Order. In *New India Assurance* (supra), the Constitution Bench of the Supreme

Court while considering Section 13(2) of the Consumer Protection Act, 1986, providing for the time to file response to the complaint by the respondent/opposite party and the power of the District Forum to extend such time beyond 15 days, observed as under:-

"21. The legislature in its wisdom has provided for filing of complaint or appeals beyond the period specified under the relevant provisions of the Act and Regulations, if there is sufficient cause given by the party, which has to be the satisfaction of the concerned authority. No such discretion has been provided for under Section 13(2)(a) of the Consumer Protection Act for filing a response to the complaint beyond the extended period of 45 days (30 days plus 15 days). Had the legislature not wanted to make such provision mandatory but only directory, the provision for further extension of the period for filing the response beyond 45 days would have been provided, as has been provided for in the cases of filing of complaint and appeals. To carve out an exception in a specific provision of the statute is not within the jurisdiction of the Courts, and if it is so done, it would amount to legislating or inserting a provision into the statute, which is not permissible."

27. It was further held that there may be some hardship or inconvenience caused to either party with strict compliance with a statutory provision, however, the Court has no choice but to enforce it in full rigor, so as to achieve the object of the statute; law prevails over equity, as equity can only supplement the law, and not supplant it. Paragraphs 23 to 29 of the judgment can be usefully quoted hereinunder:-

"23. This Court in the case of Lachmi Narain v. Union of India, (1976) 2 SCC 953 has held that "if the provision is couched in prohibitive or negative language, it can rarely be directory, the use of peremptory language in a negative form is per se indicative of

the interest that the provision is to be mandatory”. Further, hardship cannot be a ground for changing the mandatory nature of the statute, as has been held by this Court in Bhikraj Jaipurai v. Union of India, AIR 1962 SC 113=(1962) 2 SCR 880 and Fairgrowth Investments Ltd. v. Custodian, (2004) 11 SCC 472. Hardship cannot thus be a ground to interpret the provision so as to enlarge the time, where the statute provides for a specific time, which, in our opinion, has to be complied in letter and spirit.

24. *This Court, in the case of Rohitash Kumar v. Om Prakash Sharma, (2013) 11 SCC 451 has, in paragraph 23, held as under:*

“23. There may be a statutory provision, which causes great hardship or inconvenience to either the party concerned, or to an individual, but the Court has no choice but to enforce it in full rigor. It is a well settled principle of interpretation that hardship or inconvenience caused, cannot be used as a basis to alter the meaning of the language employed by the legislature, if such meaning is clear upon a bare perusal of the statute. If the language is plain and hence allows only one meaning, the same has to be given effect to, even if it causes hardship or possible injustice.”

25. *While concluding, it was observed “that the hardship caused to an individual, cannot be a ground for not giving effective and grammatical meaning to every word of the provision, if the language used therein, is unequivocal.”*

26. *Further, it has been held by this Court in the case of Popat Bahiru Govardhane v. Special Land Acquisition Officer, (2013) 10 SCC 765 that the law of limitation may harshly affect a particular party but it has to be applied with all its vigour when the statute so prescribes and that the Court has no power to extend the period of limitation on equitable grounds, even if the statutory provision may cause hardship or inconvenience to a particular party.*

27. *The contention of the learned Counsel for the respondent is that by not leaving a discretion with the District Forum for extending the period of limitation for filing the response before it by the opposite party, grave injustice would be caused as there*

could be circumstances beyond the control of the opposite party because of which the opposite party may not be able to file the response within the period of 30 days or the extended period of 15 days. In our view, if the law so provides, the same has to be strictly complied, so as to achieve the object of the statute. It is well settled that law prevails over equity, as equity can only supplement the law, and not supplant it.

28. This Court, in the case of Laxminarayan R. Bhattad v. State of Maharashtra, (2003) 5 SCC 413, has observed that “when there is a conflict between law and equity the former shall prevail.” In P.M. Latha v. State of Kerala, (2003) 3 SCC 541, this Court held that “Equity and law are twin brothers and law should be applied and interpreted equitably, but equity cannot override written or settled law.” In Nasiruddin v. Sita Ram Agarwal, (2003) 2 SCC 577, this Court observed that “in a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom.” In E.Palanisamy v. Palanisamy, (2003) 1 SCC 123, it was held that “Equitable considerations have no place where the statute contained express provisions.” Further, in India House v. Kishan N. Lalwani, (2003) 9 SCC 393, this Court held that “The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from by equitable considerations.”

29. It is thus settled law that where the provision of the Act is clear and unambiguous, it has no scope for any interpretation on equitable ground.”

28. In view of the above dicta, the submission of the learned counsel for the respondents that as the delay in proceedings before the Adjudicating Authority cannot be blamed on the respondents, the respondents must not be penalized and the time period should be extended, cannot be accepted. It is not a question of penalization of the

respondents for the delay, but of application of the mandate of law from which there is no escape. Equally, the principle of *Actus Curiae Neminem Gravabit* can also have no application.

29. The reliance of the learned counsel for the respondents on the orders passed by the Supreme Court in *Suo Motu Writ Petition (Civil) No. 3/2020*, is also unfounded. The Supreme Court, in its order dated 23.03.2020, directed as under:-

"This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities."

30. Clearly, the above order extended the period of limitation. In the present case, Section 5(1) and 5(3) do not provide the period of

limitation, but the period of validity of the Provisional Attachment Order. The same would not stand extended due to the above order of the Supreme Court. This becomes more evident from the order dated 06.05.2020 passed by the Supreme Court in I.A. 48411/2020, whereby it was pleased to extend the period of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under Section 138 of the Negotiable Instruments Act, 1881, observing as under:-

"IA No.48411/2020 – FOR DIRECTIONS

By way of filing this application for directions, the applicant has made the following prayer:

“To issue appropriate directions qua (i) arbitration proceedings in relation to section 29A of the Arbitration and Conciliation Act, 1996 and (ii) initiation of proceedings under section 138 of the Negotiable Instruments Act, 1881;”

In view of this Court’s earlier order dated 23.03.2020 passed in Suo Motu Writ Petition (Civil) No.3/2020 and taking into consideration the effect of the Corona Virus (COVID 19) and resultant difficulties being faced by the lawyers and litigants and with a view to obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunal across the country including this Court, it is hereby ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881 shall be extended with effect from 15.03.2020 till further orders to be passed by this Court in the present proceedings.

In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the

cause of action arises shall be extended for a period of 15 days after the lifting of lockdown.

In view of the above, the instant interlocutory application is disposed of."

31. In fact, the most relevant in this series of orders to the present controversy is the order dated 10.07.2020, which clearly shows that the above referred two orders of the Supreme Court were only in relation to the period of limitation and did not extend the period to do something required under a Statute or the period of validity of an order, as in the present case. Realizing such difference, the Supreme Court extended the period to pass an Arbitral Award under Section 29A and for completion of pleadings under Section 23(4) of the Arbitration and Conciliation Act, 1996 as also for completing the process of compulsory pre-litigation, mediation and settlement under Section 12A of the Commercial Courts Act, 2015, however, refused to extend the period of validity of a cheque. This itself shows that the orders of the Supreme Court are not a universal extension of time across the board, be it limitation or period prescribed for doing a particular thing, or as in the present case, the period of validity of an order. For ready reference, the order dated 10.07.2020 is quoted hereinbelow:-

"Parties have prayed to this Court for extending the time where limitation is to expire during the period when there is a lockdown in view of COVID-19 or the time to perform a particular act is to expire during the lockdown.

I.A. No. 49221/2020 -Section 29A of the Arbitration and Conciliation Act, 1996

Taken on Board.

In Suo Moto Writ Petition (C) No. 3/2020, by our order dated 23.03.2020 and 06.05.2020, we ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 shall be extended w.e.f. 15.03.2020 till further orders.

Learned Attorney General has sought a minor modification in the aforesaid orders.

Section 29A of the Arbitration and Conciliation Act, 1996 does not prescribe a period of limitation but fixes a time to do certain acts, i.e. making an arbitral award within a prescribed time. We, accordingly, direct that the aforesaid orders shall also apply for extension of time limit for passing arbitral award under Section 29A of the said Act. Similarly, Section 23(4) of the Arbitration and Conciliation Act, 1996 provides for a time period of 6 months for the completion of the statement of claim and defence. We, accordingly, direct that the aforesaid orders shall also apply for extension of the time limit prescribed under Section 23(4) of the said Act.

The application is disposed of accordingly.

Pre-Institution Mediation and Settlement under Section 12A of the Commercial Courts Act, 2015.

Under Section 12A of the Commercial Courts Act, 2015, time is prescribed for completing the process of compulsory pre-litigation, mediation and settlement. The said time is also liable to be extended. We, accordingly, direct that the said time shall stand extended from the time when the lockdown is lifted plus 45 days thereafter. That is to say that if the above period, i.e. the period of lockdown plus 45 days has expired, no further period shall be liable to be excluded.

I.A. No. 48461/2020- Service of all notices, summons and exchange of pleadings

Service of notices, summons and exchange of pleadings/documents, is a requirement of virtually every legal proceeding. Service of notices, summons and pleadings etc. have not been possible during the period of lockdown because this involves visits to post offices, courier companies or physical delivery of notices, summons and pleadings. We, therefore, consider it appropriate to direct that such services of all the above may be effected by e-mail, FAX, commonly used instant messaging services, such as WhatsApp, Telegram, Signal etc. However, if a party intends to effect service by means of said instant messaging services, we direct that in addition thereto, the party must also effect service of the same document/documents by e-mail, simultaneously on the same date.

Extension of validity of Negotiable Instruments Act, 1881- I.A. Nos. 48461 and 48672/2020 (IA. No. 48671/2020, 48673/2020)

I.A. No. 48671/2020 for impleadment is allowed.

With reference to the prayer, that the period of validity of a cheque be extended, we find that the said period has not been prescribed by any Statute but it is a period prescribed by the Reserve Bank of India under Section 35-A of the Banking Regulation Act, 1949. We do not consider it appropriate to interfere with the period prescribed by the Reserve Bank of India, particularly, since the entire banking system functions on the basis of the period so prescribed.

The Reserve Bank of India may in its discretion, alter such period as it thinks fit. Ordered accordingly.

The instant applications are disposed of accordingly.”

(Emphasis supplied)

32. The above distinction is also apparent to the Government of India as it promulgated The Taxation and Other Laws (Relaxation of Certain

Provisions) Ordinance, 2020 on 31.03.2020, extending the time limit for completion of any proceedings or passing of any order etc. specified in the Acts specified therein. However, the Prevention of Money Laundering Act, 2002 is not one of the “specified Acts” under the Ordinance. Therefore, the respondents cannot take benefit of even this Ordinance. On the other hand, the Ordinance clearly shows that the reliance of the respondents on the orders of the Supreme Court is liable to be rejected.

33. The reliance of the learned counsel for the respondents on Section 8(1) of the Act to contend that the orders of Supreme Court would apply to extend the validity of the Provisional Attachment Order, is also unfounded and is liable to be rejected. Section 8(1) does not again, provide for any period of limitation but for a period of notice. It 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 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."

(Emphasis supplied)

34. At this stage reference to the judgment of the Supreme Court in **S. Kasi** (supra) would also be apposite. The Supreme Court while considering the effect of the order dated 23.03.2020 passed in Suo Moto W.P.(C) No. 3/2020 on the right of the accused under Section 167(2) of the Code of Criminal Procedure to be released on bail on non-submission of charge sheet within the prescribed period by the prosecution, held as under:-

"16. The reason for passing the aforesaid order for extending the period of limitation w.e.f. 15.03.2020 for filing petitions/applications/suits/ appeals/all other proceedings are indicated in the order itself. Two reasons, which are decipherable from the order of this Court dated 23.03.2020 for passing the order are :-

i) The situation arising out of the challenge faced by the country on account of Covid-19 virus and resultant difficulties that are being faced by the litigants across the country in filing their petitions/applications /suits /appeals/ all other proceedings within the period of limitation prescribed.

ii) To obviate such difficulties and to ensure that lawyers /litigants do not have to come physically to file such proceedings

in respective Courts/Tribunals across the country including this Court.

17. The limitation for filing petitions/ applications/ suits/appeals/all other proceedings was extended to obviate lawyers /litigants to come physically to file such proceedings in respective Courts/Tribunals. The order was passed to protect the litigants/lawyers whose petitions/ applications/ suits/appeals/all other proceedings would become time barred they being not able to physically come to file such proceedings. The order was for the benefit of the litigants who have to take remedy in law as per the applicable statute for a right. The law of limitation bars the remedy but not the right. When this Court passed the above order for extending the limitation for filing petitions/ applications/ suits/appeals/all other proceedings, the order was for the benefit of those who have to take remedy, whose remedy may be barred by time because they were unable to come physically to file such proceedings. The order dated 23.03.2020 cannot be read to mean that it ever intended to extend the period of filing charge sheet by police as contemplated under Section 167(2) of the Code of Criminal Procedure. The Investigating Officer could have submitted/filed the charge sheet before the (Incharge) Magistrate. Therefore, even during the lockdown and as has been done in so many cases the charge-sheet could have been filed /submitted before the Magistrate (Incharge) and the Investigating officer was not precluded from filing/submitted the charge-sheet even within the stipulated period before the Magistrate(Incharge)

18. If the interpretation by the learned Single Judge in the impugned judgment is taken to its logical end, due to difficulties and due to present pandemic, Police may also not produce an accused within 24 hours before the Magistrate's Court as contemplated by Section 57 of the Code of Criminal Procedure, 1973. As noted above, the provision of Section 57 as well as Section 167 are supplementary to each other and are the provisions which recognizes the Right of Personal Liberty of a person as enshrined in the Constitution of India. The order of this Court dated 23.03.2020 never meant to curtail any provision of

Code of Criminal Procedure or any other statute which was enacted to protect the Personal Liberty of a person. The right of prosecution to file a charge sheet even after a period of 60 days /90 days is not barred. The prosecution can very well file a charge sheet after 60 days /90 days but without filing a charge sheet they cannot detain an accused beyond a said period when the accused prays to the court to set him at liberty due to non-filing of the charge sheet within the period prescribed. The right of prosecution to carry on investigation and submit a charge sheet is not akin to right of liberty of a person enshrined under Article 21 and reflected in other statutes including Section 167, Cr.P.C. Following observations of Madras High Court in the impugned judgment are clearly contrary to the order dated 23.03.2020 of this Court:-

"...The Supreme Court order eclipses all provisions prescribing period of limitation until further orders. Undoubtedly, it eclipses the time prescribed under Section 167 (2) of the Code of Criminal Procedure also...."

35. The above judgment clearly highlights the reason and the limit of the order dated 23.03.2020 passed by the Supreme Court. It also highlights that the said order was never meant to curtail any provision of other statute which is enacted to protect the personal liberty of a person. In my opinion, in a similar manner, the order dated 23.03.2020 was not meant to deny any person his/her property rights.

36. I may also usefully refer to the order of the Calcutta High Court in ***Knight Riders Sports Pvt. Ltd. vs. Adjudicating Authority (PMLA) and Ors.***, 2020 SCC OnLine Cal 1311, wherein allowing the petitioner therein to withdraw his petition, the High Court observed as under:-

"5. On hearing learned counsel, this Court is of the view that under Section 5(1)(b) of the PMLA, an order of provisional attachment remains in force only for a period of 180 days from the date of the order passed by the Director with regard to the proceeds of crime which the concerned Director has reasons to believe are likely to be concealed, transferred or dealt with in a manner which may frustrate any proceedings relating to confiscation of such proceeds of crime under Chapter III of the PMLA. Section 5(3) further provides that every order of attachment made under Section 5(1) shall cease to have effect after the expiry of 180 days or on the date of an order made under Section 8(3) or whichever is earlier. Section 8(3) deals with a situation where the Adjudicating Authority makes an order in writing confirming the attachment of the property made under Section 5(1) or for retention of the property etc. Admittedly, no such order has been passed by the Adjudicating Authority against the petitioner under Section 8(3). It should be mentioned that the Adjudicating Authority has been served with copies of the petition.

6. If the concerned Act provides certain windows to a party in relation to a provisional order of attachment expressed in the clear language of Section 5(1)(b), this Court cannot come in the way of the petitioner taking advantage of the said exit route. Needless to say, allowing withdrawal of this petition will not prejudice any of the rights or contentions of the parties in the event of future proceedings before this Court or any other forum."

37. In view of the above, the 180 days from the date of the Provisional Attachment Order dated 13.11.2019 having expired without any order under Section 8(3) of the Act being passed by the Adjudicating Authority, it is held that the Adjudicating Authority has been rendered *functus officio* and cannot proceed with the Original Complaint, being O.C. No. 1228/2019 pending before it. The Notice/Summons dated 26.05.2020 is accordingly set aside.

38. In the present case I have intentionally refrained myself from making any comment on whether the period of total lockdown declared by the Central Government, that is from 24.03.2020 to 20.04.2020, can be excluded for computation of the 180 days, as it is not disputed that even on exclusion of this period, the 180 days would have expired on 16.06.2020, the returnable date of the notice issued by the Adjudicating Authority.

39. Accordingly, the petition is allowed. There shall be no order as to costs.

NOVEMBER 18, 2020
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NAVIN CHAWLA, J

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