

CASE NO.:
Appeal (crl.) 35 of 2004

PETITIONER:
The Special Director and Anr.

RESPONDENT:
Mohd. Ghulam Ghouse and Anr.

DATE OF JUDGMENT: 09/01/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
J U D G M E N T
(Arising out of SLP(Crl.)No. 2914 of 2003)

ARIJIT PASAYAT, J

Leave granted.

The interim order passed by a Division Bench of the Bombay High Court is under challenge by the Union of India and the Special Director, Enforcement Directorate, Ministry of Finance, Govt. of India. Respondent No.1 filed a writ petition before the Bombay High Court questioning legality of the show cause notice no.T-4/144/SDE/(AKB)/B/2002 dated 31st May, 2002 issued by the appellant No.1 and prayed that the same may be quashed and set aside, for allegedly being illegal, null and void. A prayer for interim relief was made to the effect that pending hearing and final disposal of the writ petition, the Court be pleased to pass an order of injunction restraining the respondents i.e. present appellants before this Court and the State of Maharashtra (respondent No.3 in the present appeal) and/or his subordinates or any other officer acting on his behalf from initiating any proceeding pursuant to the show cause notice referred to above, as issued by the present appellants. The High Court passed the following order on 11.9.2002:

"Rule. Status quo".

According to the appellants the writ petition is thoroughly misconceived as it challenges a show cause notice and in any event the final relief as sought for by respondent No.1-writ petitioner in relation to the show cause notice should not have been granted by an interim order of the nature passed by withholding any further action in this regard. It was pointed out that respondent No.1 is responsible for financial irregularities involving nearly Rupees 270 crores and documents have been forged, accounts have been manipulated; and in any event respondent No.1 was free to canvass all the points that were taken in the writ petition before the authority issuing the notice. Instead of doing that he rushed to the High Court and unfortunately the High Court not only entertained the writ application but also granted interim relief which was in effect allowing the

writ petition even before it was heard on merits. The final relief sought for itself, in substance, was granted by the interim order. There was clear violation of the provisions of Foreign Exchange Regulation Act, 1973 (in short the 'FERA') and Foreign Exchange Management Act, 1999 (in short the 'FEMA'). The Enforcement Directorate has clearly indicated in the notice the various infractions which led to such large scale illegal transactions of more than Rupees 270 crores. Respondent No.1 (writ petitioner) was clearly guilty of various provisions of FERA and FEMA. The High Court should have thrown out the writ petition at the threshold.

Per contra, learned counsel for respondent No.1 submitted that the show cause notice is clearly unfounded in law, cannot stand the test of legal scrutiny and the High Court was justified not only in entertaining writ petition but also in granting the interim protection.

This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court. Further, when the Court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is accorded to the writ petitioner even at the threshold by the interim protection, granted.

In the instant case, the High Court has not indicated any reason while giving interim protection. Though, while passing interim orders, it is not necessary to elaborately deal with the merits, it is certainly desirable and proper for the High Court to indicate the reasons which has weighed with it in granting such an extra ordinary relief in the form of an interim protection. This admittedly has not been done in the case at hand.

While issuing notice on 7.7.2003, this Court had granted interim stay of the impugned interim order. The respondent had entered appearance and we have heard the learned senior counsel on either side. In the fitness of things, taking into account the above circumstances, we dispose of the appeal with a direction that the proceedings emanating from the show cause notice shall be continued, but the final order passed pursuant thereto shall not be communicated to the respondent No.1 (writ petitioner) without leave or further orders of the High Court. The writ petition shall be disposed of on merits in accordance with

law. Any observation made in this appeal shall not be construed to be expression of any opinion on the merits of the matter pending before the High Court. Since the controversy is of a very limited as well as serious nature, the High Court may explore the possibility of early disposal of the writ petition. The appeal is allowed to the extent indicated with no order as to costs.

JUDIS