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

% ***Judgment reserved on: 08.08.2025***
Judgment pronounced on:24.09.2025

\+ LPA 362/2020, CM APPL. 11287/2021 (For disposing off the appeal, CM APPL. 17382/2023 (Seeking permission to represent the respondent through resolution professional) & CM APPL. 67564/2024 (Seeking intervention)

DIRECTORATE OF ENFORCEMENT & ANR. ...Appellants

Through: Mr. Zoheb Hossain, Special Counsel, Mr. Vivek Gurnani, Panel Counsel, Mr. Kartik Sabharwal, Mr. Kanishk Maurya and Mr. Satyam, Advocate.

versus

M/S VIKAS WSP LTD & ORS. ...Respondents

Through: Mr. I.P.S. Oberoi, Mr. R.K. Srivastava and Ms. Dhwani Shrivastava, Advocates for Respondent No. 1.
Mr. Arshdeep Singh Khurana, Mr. Harsh Srivastava, Mr. Sidak Singh and Ms. Dikksha Ashok Ramnani, Advocates for Respondent No. 3.

\+ W.P.(CRL) 86/2022, CRL.M.A. 911/2022 (Stay), CRL.M.A. 13185/2022 (Quash/set aside the provisional attachment order No. 06/2021 dt. 01.12.2021) & CRL.M.A. 13186/2022 (Stay)

GEM INTERNATIONAL & ORS. ...Petitioners

Through: Mr. Shantanu Parashar, Mr. Rohan Malik and Mr. Shaurya

Chourasiya, Advocates for Petitioner No. 2 to 4.

versus

UNION OF INDIA & ORS. ...Respondents

Through: Mr. N. Hariharan, Senior Advocate, Dr. Sushil Kumar Gupta, Ms. Sunita Gupta, Mr. Sakshit Bhardwaj, Ms. Punya Rekha Angara, Ms. Vasundhara N, Mr. Aman Akhtar, Ms. Sana Singh, Mr. Vinayak Gautam, Advocates for Respondent No. 1.

Mr. Zoheb Hossain, Special Counsel, Mr. Vivek Gurnani, Panel Counsel, Mr. Kartik Sabharwal, Mr. Kanishk Maurya and Mr. Satyam, Advocate.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. By the present Judgment, we intend to dispose of two proceedings, one being a Letters Patent Appeal against the Judgment of the learned Single Judge of this Court and another being a Writ Petition preferred against a **Provisional Attachment Order**[1].

[1] PAO

2. The Letters Patent Appeal, being LPA 362/2020, has been filed by the **Directorate of Enforcement**[2] under Clause 10 of the Letters Patent, assailing the **Judgment dated 18.11.2020**[3] passed by the learned Single Judge. By the said judgment, the learned Single Judge allowed W.P.(C) No. 3551/2020 filed by the Respondents herein and, consequently, set aside the Notice/ Summons dated 26.05.2020 issued by the learned Adjudicating Authority in Original Complaint No. 1228/2019 dated 05.12.2019. The learned Single Judge has held that, the said Notice/ Summons was beyond the period of 180 days, as prescribed under Section 5(3) of the **Prevention of Money Laundering Act, 2002**[4], from the date of the PAO dated 13.11.2019 and thereby, had expired without any order being passed by the learned Adjudicating Authority under Section 8(3) of the PMLA.

3. The Writ Petition, being W.P.(CRL) 86/2022, challenges, *inter alia*, PAO No. 6/2021 dated 01.12.2021 passed by the ED. During the pendency of the writ petition, the Petitioners therein filed an application, being CRL.M.A. 13185/2022, seeking quashing of the aforesaid PAO. The grounds urged in support of the application were, in essence, similar to those which had constituted the foundation of the Impugned Judgment dated 18.11.2020, against which LPA 362/2020 has been filed by the ED.

4. Shorn of unnecessary details, as asserted by the Appellants in LPA 362/2020 and the Petitioners in W.P.(CRL) 86/2022, the sole question arising for consideration in the present matters, is whether, in light of COVID-19 pandemic, the orders passed by the Hon'ble

[2] ED
[3] Impugned Judgment dated 18.11.2020
[4] PMLA

Supreme Court in ***In re: Cognizance for Extension of Limitation***[5], extending limitation periods, would also apply to proceedings under Section 5 of the PMLA, which mandates that a provisional attachment must be confirmed within a maximum period of 180 days by the learned Adjudicating Authority under Section 8(3) of the PMLA.

5. The submissions advanced by learned counsel for both sides, in both matters, were confined to the aforesaid question. Accordingly, we propose to examine the said issue and dispose of both, the Appeal and the Writ Petition, by this Judgment. For the sake of uniformity and convenience, we shall hereinafter refer to the Government/ Directorate of Enforcement as "**ED**", and the opposite parties in both proceedings collectively as the "**private parties**".

SUBMISSIONS OF THE ED:

6. Learned special counsel for the ED, Mr. Zoheb Hossain, would submit that the contention of the private parties that the PAO ceased to have effect after 180 days is legally unsustainable, because the Hon'ble Supreme Court, through *suo motu* orders, had extended and later excluded limitation periods in respect of all proceedings under both general and special laws, including quasi-judicial proceedings, and these extensions squarely apply to proceedings under the PMLA, which interpretation has also been consistently affirmed by several High Courts, including the Telangana High Court in ***Hygro Chemicals Pharmtek (P) Ltd. v. Union of India & Anr***[6].

7. He would contend that the private parties were themselves responsible for the repeated delays in the adjudication proceedings, as they initially sought adjournments before the learned Adjudicating

[5] Suo Motu W.P. (C) No. 3/2020
[6] 2023 SCC OnLine TS 4457

Authority instead of filing replies to the show-cause notice, which resulted in multiple postponements, and subsequently, the proceedings could not progress due to the nationwide lockdown. Relying on the principle laid down in ***Kusheshwar Prasad Singh v. State of Bihar***[7], *namely*, that a wrongdoer cannot take advantage of his own wrong, he would further argue that the private parties, having themselves caused the delay, cannot now claim that the provisional attachment automatically lapsed after 180 days.

8. Counsel for the ED would seek to distinguish the Judgment of the Hon'ble Supreme Court in ***S. Kasi vs State***[8], which has been relied upon by the learned Single Judge and the private parties, by submitting that it dealt with default bail and the question of personal liberty under the **Code of Criminal Procedure, 1973**[9], whereas attachment of property under the PMLA cannot be equated with deprivation of personal liberty.

9. He would submit that since the complaint was filed within the prescribed period and the delay thereafter arose only due to restrictions imposed during Covid-19, the attachment continued to remain valid under the extended limitation declared by the Hon'ble Supreme Court.

10. He would further contend that the reliance of the learned Single Judge on the **Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020**[10], at paragraph 32 of the Impugned Judgment dated 18.11.2020 is misplaced, because the Ordinance did not list the PMLA as one of the specified Acts, but the Supreme

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[7] (2007) 11 SCC 447
8 (2021) 12 SCC 1
[9] CrPC
[10] TOL Ordinance, 2020

Court's directions in ***In re: Cognizance for Extension of Limitation*** *(supra)* operated under Article 142 to fill the vacuum, and wherever legislative measures already cover the field there would be no need to invoke the Court's orders, while in their absence, such directions must necessarily apply.

11. He would also refer to proceedings under Section 138 of the Negotiable Instruments Act, 1881, and point out that even the period for issuing a notice within 30 days of the dishonour of a cheque, as well as the obligation of the drawer to make payment within 15 days, stood excluded for the period between 15.03.2020 and 14.03.2021, and therefore it is beyond doubt that the Hon'ble Supreme Court intended to extend all statutory time limits by way of its orders under Article 142 of the **Constitution of India**[11].

12. He would next rely on the doctrine that no party should suffer for the act or delay of a court, citing ***Atma Ram Mittal v. Ishwar Singh Punia*** [12], and contend that since the adjournments and suspension of proceedings occurred solely due to lockdowns and the closure of the learned Adjudicating Authority, the ED cannot be prejudiced by circumstances beyond its control. He would emphasize that, as repeatedly held by the Hon'ble Supreme Court, acts of court should not cause detriment to either party, and therefore, the non-conclusion of proceedings within 180 days owing to pandemic restrictions cannot render the attachment invalid.

13. He would argue that, for the purposes of the PMLA, the learned Adjudicating Authority was a Tribunal as it performed the function of adjudication and thereby a Quasi-Judicial body. He would submit that

[11] Constitution
[12] (1988) 4 SCC 284

the requirements under Section 8(1) and 8(2) were unable to be carried out for the purpose of an adjudication under 8(3) and for that reason too, the reasoning of the learned Single Judge is erroneous.

14. With respect to the Impugned Judgment dated 18.11.2020, he would submit that it was premised only on the initial order dated 23.03.2020 passed in ***In re: Cognizance for Extension of Limitation*** *(supra)*, but subsequent orders dated 08.03.2021, 27.04.2021, 23.09.2021 and 10.01.2022 categorically clarified that limitation in all judicial and quasi-judicial proceedings stood excluded during the pandemic, and these later pronouncements impliedly overruled the reasoning of the learned Single Judge, while Articles 141 and 142 of the Constitution make the law declared by the Hon'ble Supreme Court binding on all authorities, so the exclusion of limitation must extend to PMLA proceedings as well.

15. Learned counsel for ED would also argue that the legislative intent of Section 5 of the PMLA is to ensure urgent and preventive attachment of proceeds of crime so that offenders cannot frustrate the process of law, and while Section 5(3) prescribes a 180-day period for confirmation, such provision must be read in light of the extraordinary circumstances created by the pandemic, which rendered physical hearings impossible, and to release attached property on a mere technical lapse would defeat the statute as well as India's international commitments under the UN Conventions and FATF framework, particularly when the Hon'ble Supreme Court in ***Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors.***[13] has upheld the emergent and preventive nature of attachment.

[13] 2022 SCC OnLine SC 929

16. He would further contend that no individual can claim any legitimate right, title, or interest in the proceeds of crime, for such property must vest in the State for confiscation, and this principle of public policy ensures that offenders cannot disguise or legitimize tainted property through transactions or mortgages, and since the PMLA is a special law with overriding effect, it prioritizes confiscation over the claims of private creditors, a position reinforced by the Hon'ble Supreme Court, in ***Biswanath Bhattacharya v. Union of India & Ors***[14], which recognizes that property derived from crime cannot be treated as lawful.

17. He would also submit that even if a PAO lapses or is quashed, the adjudicatory process under Section 8 of the PMLA continues independently, and referring to ***Kaushalya Infrastructure Development Corpn. Ltd. v. Union of India***[15], he would argue that quashing of a provisional attachment does not preclude adjudication, which may still culminate in confirmation and confiscation, and therefore, the private parties cannot avoid adjudication merely by relying on the plea of lapse.

SUBMISSIONS OF THE PRIVATE PARTIES:

18. Mr. N. Hariharan, learned Senior Counsel, leading the arguments for the private parties, would argue that under the statutory scheme of the PMLA, the life of a PAO is strictly circumscribed, since Section 5(1) permits attachment only for a period not exceeding 180 days, while Section 5(3) mandates that such attachment shall cease to have effect automatically upon expiry of that period unless it is

[14] (2014) 4 SCC 392
[15] (2023) 18 SCC 526

confirmed under Section 8(3) of the PMLA, and this safeguard, being absolute in nature, requires no further order for its operation.

19. He would further submit that once the 180-day period lapses without confirmation, the learned Adjudicating Authority becomes *functus officio* and is divested of jurisdiction to adjudicate or confirm a non-existent attachment, with the attached property necessarily standing released, and in support of this proposition, placed reliance on the judgment of the Karnataka High Court in ***Shri Prahlada. vs. Deputy Director of Enforcement Directorate & Ors.***[16], which unequivocally held that the 180-day ceiling is a statutory embargo, as well as on the ruling of the Supreme Court in ***Vijay Madanlal Choudhary*** *(supra)*, where, while upholding the validity of PMLA, the Court emphasized that the short duration of a PAO constitutes one of the key procedural safeguards protecting individuals against prolonged deprivation of property without adjudication, and therefore, in the present case, since the PAO was not confirmed within 180 days, it automatically lapsed and the learned Adjudicating Authority lacked jurisdiction to proceed further.

20. Learned Senior Counsel would strongly contend that the ED's reliance on the Hon'ble Supreme Court's orders in ***In re: Cognizance for Extension of Limitation*** *(supra)*, is misplaced, as the ED itself had filed an interlocutory application before the Hon'ble Supreme Court specifically seeking extension of timelines including Sections 5, 8, 26, and 42 under the PMLA, yet the Court's order dated 08.03.2021, while expressly including statutes such as the Arbitration and Conciliation Act, 1996, the Commercial Courts Act, 2015, and the Negotiable Instruments Act, 1881, made no mention of the PMLA,

[16] W.P. No. 12413/2024

and the omission, despite the ED's specific request, amounts to rejection of that prayer, because in law, a relief expressly sought but not granted in the final order is deemed refused.

21. He would further stress that the statutory timelines prescribed under Sections 5 and 8 of the PMLA do not operate as "limitation periods" available to litigants for initiating proceedings but rather as substantive statutory checks curbing the executive's power to continue attachment, and these limits, by design, safeguard property owners' rights by ensuring that attachments cannot extend beyond 180 days without confirmation; thus, the Hon'ble Supreme Court's Covid extension orders, intended to preserve litigants' rights to institute proceedings despite lockdown restrictions, cannot be construed to dilute substantive protections against executive overreach, for extending PMLA timelines under the guise of such orders would in fact deprive property owners of vested rights guaranteed by the statute.

22. In further support, he would rely on judicial precedents such as ***Hiren Panchal v. Union of India***[17] decided by the Calcutta High Court and ***Shri Prahlada*** *(supra)* decided by the Karnataka High Court, both of which held that the Hon'ble Supreme Court's *suo motu* orders could not extend the 180-day limit of a PAO under the PMLA, and in ***Hiren Panchal*** *(supra)*, it was explicitly clarified that those orders were designed to protect litigants' access to justice at the "starting point" and not to strip them of statutory rights accruing on expiry of time, just as the Hon'ble Supreme Court in ***S. Kasi*** *(supra)* preserved the accused's right to default bail during the pandemic.

[17] 2022 SCC OnLine Cal 4618

23. Learned Senior Counsel would also emphasize that, in any event, neither the ED nor the learned Adjudicating Authority was prevented from functioning during the relevant period, since both remained operational and continued conducting proceedings despite the pandemic, and therefore, having chosen to act within the ordinary statutory framework, the ED cannot now retrospectively invoke the Hon'ble Supreme Court's Covid extension orders as a means to secure additional time.

24. By way of analogy, he would further submit that if a plaintiff were to institute a suit during the extended period and the defendant filed a written statement within the prescribed time, the plaintiff could not later invoke the Hon'ble Supreme Court's Covid orders to seek further time for filing a rejoinder, and in the same manner, once the ED elected to proceed under the statutory framework during the pandemic, it cannot selectively "pause the clock" for its convenience. This reasoning, he would contend, is fortified by this Court's decision in ***HT Media Limited v. Brainlink International***[18], wherein it was held that a party choosing to act within time during the extension period cannot later claim exclusion of time, a view subsequently affirmed by the Hon'ble Supreme Court in ***Brainlink International, Inc. v. HT Media Ltd.***[19].

25. He would then assert that acceptance of the ED's argument would result in anomalous and unjust consequences, for it would permit the ED to indefinitely delay confirmation of provisional attachments while claiming protection under the Covid extension orders, thereby allowing attachments to remain in force far longer than

[18] 2021 SCC OnLine Del 5398
[19] 2022 SCC OnLine SC 980

Parliament intended, which would defeat the statutory safeguard, upset the balance between enforcement powers and individual rights, erode the rule of law, and reduce Section 5(3) of the PMLA to an empty formality, besides creating the dangerous precedent of enforcement agencies using exceptional reliefs intended to protect litigants as a device to curtail substantive rights of individuals.

ANALYSIS:

26. We have heard the learned counsel for the parties at considerable length, carefully perused the records pertaining to the Appeal and the Writ Petition, examined the written submissions filed by both sides, and considered the judicial precedents cited before us.

27. At the outset, before entering into the merits of the rival submissions, it is necessary to note that the controversy before us essentially turns on the interpretation of the series of orders passed by the Hon'ble Supreme Court in ***In Re: Cognizance for Extension of Limitation*** (*supra*). For this purpose, it would be appropriate first to refer to the guiding authorities on the construction of judgments. The Hon'ble Supreme Court in ***P.S. Sathappan v. Andhra Bank Ltd.***[20] made certain pertinent observations, which state as follows:

> *"**Precedent***
> **144.** While analysing different decisions rendered by this Court, an attempt has been made to read the judgments as should be read under the rule of precedents. A decision, it is trite, should not be read as a statute.
> **145.** A decision is an authority for the questions of law determined by it. While applying the ratio, the court may not pick out a word or a sentence from the judgment divorced from the context in which the said question arose for consideration. A judgment, as is well known, must be read in its entirety and the observations made therein should receive consideration in the light of the questions raised before it. **[See *Haryana Financial Corpn.* v. *Jagdamba Oil***

[20] (2004) 11 SCC 672

> ***Mills*** **[(2002) 3 SCC 496 : JT (2002) 1 SC 482] ,** ***Union of India*** **v.** ***Dhanwanti Devi*** **[(1996) 6 SCC 44] ,** ***Nalini Mahajan (Dr.)*** **v.** ***Director of Income Tax (Investigation)*** **[(2002) 257 ITR 123 (Del)] ,** ***State of U.P.*** **v.** ***Synthetics and Chemicals Ltd.*** **[(1991) 4 SCC 139] ,** ***A-One Granites*** **v.** ***State of U.P.*** **[(2001) 3 SCC 537 : 2001 AIR SCW 848]** and ***Bhavnagar University*** **v.** ***Palitana Sugar Mill (P) Ltd.*** **[(2003) 2 SCC 111]]**
>
> **146.** Although decisions are galore on this point, we may refer to a recent one in ***State of Gujarat*** **v.** ***Akhil Gujarat Pravasi V.S. Mahamandal*** **[(2004) 5 SCC 155: AIR 2004 SC 3894]** wherein this Court held: (SCC p. 172, para 19)
>
> > "It is trite that any observation made during the course of reasoning in a judgment should not be read divorced from the context in which it was used."
>
> **147.** It is further well settled that a decision is not an authority for the proposition which did not fall for its consideration."

28. Similarly, in ***Goan Real Estate & Construction Ltd. v. Union of India***[21], the Hon'ble Supreme Court elaborated upon certain principles relating to the interpretation of judicial orders, which read as under:

> "**31.** It is well settled that an order of a court must be construed having regard to the text and context in which the same was passed. For the said purpose, the judgment of this Court is required to be read in its entirety. A judgment, it is well settled, cannot be read as a statute. Construction of a judgment should be made in the light of the factual matrix involved therein. What is more important is to see the issues involved therein and the context wherein the observations were made. Observation made in a judgment, it is trite, should not be read in isolation and out of context…."

29. In light of the principles enunciated in the above judgments, we now turn to the series of orders passed by the Hon'ble Supreme Court in ***In Re: Cognizance for Extension of Limitation*** (*supra*). In view of the sudden outbreak of Covid-19 pandemic and the urgent necessity to address the unprecedented disruption caused in judicial functioning, the Hon'ble Supreme Court, exercising jurisdiction in Suo Motu Writ

[21] (2010) 5 SCC 388

Petition (Civil) No. 3/2020, passed a series of significant orders. These include the following orders, which read as under:

(a). Order dated 23.03.2020:

> "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.
>
> This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.
>
> Issue notice to all the Registrars General of the High Courts, returnable in four weeks."

(b). Order dated 06.05.2020:

> "**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.

IA No.48375/2020 – CLARIFICATION/DIRECTION AND IA No.48511/2020 – CLARIFICATION/DIRECTION AND IA No.48461/2020 – CLARIFICATION/DIRECTION AND IA No.48374/2020 - INTERVENTION APPLICATION AND IA No.48416/2020 - INTERVENTION APPLICATION AND IA No.48408/2020 - INTERVENTION APPLICATION

Issue notice.

Waive service on behalf of the respondent – Union of India since Mr. K. K. Venugopal, learned Attorney General for India and Mr. Tushar Mehta, learned Solicitor General, appear on its behalf.

Let notice be issued to other respondents."

(c). Order dated 10.07.2020:

"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.

I.A. Nos. 48374/2020 and 48375/2020

List after six weeks."

(d). Order dated 08.03.2021:

"**1.** Due to the onset of COVID-19 pandemic, this Court took suo motu cognizance of the situation arising from difficulties that might be faced by the litigants across the country in filing petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central or State). By an order dated 23.03.2020 this Court extended the period of limitation prescribed under the general law or special laws whether compoundable or not with effect from 15.03.2020 till further orders. The order dated 23.03.2020 was extended from time to time. Though, we have not seen the end of the pandemic, there is considerable improvement. The lockdown has been lifted and the country is returning to normalcy. Almost all the Courts and Tribunals are functioning either physically or by virtual mode. We are of the opinion that the order dated 23.03.2020 has served its purpose and in view of the changing scenario relating to the pandemic, the extension of limitation should come to an end.

2. We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions: -

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

> **4.** The Government of India shall amend the guidelines for containment zones, to state.
> "Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements."

3. The Suo Motu Writ Petition is disposed of accordingly."

30. Noting a gradual return to normalcy after the first wave of the pandemic, the Hon'ble Supreme Court, *vide* a separate order dated 08.03.2021, disposed of Suo Motu Writ Petition (Civil) No. 3/2020 by passing a comprehensive order.

31. However, with the onset of the second wave of Covid-19 and in view of the fresh difficulties that arose, the Supreme Court Advocate-on-Record Association moved Miscellaneous Application No. 665/2021 in the said Suo Motu Writ Petition.

32. Upon consideration, the Hon'ble Supreme Court issued further directions in continuation of its earlier orders. The significant orders and contents thereof are as follows:

(a). Order dated 27.04.2021:

> "This Court took 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 could be faced by the litigants across the country. Consequently, it was directed vide order dated 23rd March, 2020 that the period of limitation in filing petitions/ applications/ suits/ appeals/ all other proceedings, irrespective of the period of limitation prescribed under the general or special laws, shall stand extended with effect from 15th March, 2020 till further orders.
> Thereafter on 8th March, 2021 it was noticed that the country is returning to normalcy and since all the Courts and Tribunals have started functioning either physically or by virtual mode, extension of limitation was regulated and brought to an end. The suo motu proceedings were, thus, disposed of issuing the following directions:
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> *****

Supreme Court Advocate on Record Association (SCAORA) has now through this Interlocutory Application highlighted the daily surge in COVID cases in Delhi and how difficult it has become for the Advocates-on-Record and the litigants to institute cases in Supreme Court and other courts in Delhi. Consequently, restoration of the order dated 23rd March, 2020 has been prayed for.

We have heard Mr. Shivaji M. Jadhav, President SCAORA in support of the prayer made in this application. Learned Attorney General and Learned Solicitor General have also given their valuable suggestions.

We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant–public in all the states. We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.

It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall be a binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in 6 weeks.

List the Miscellaneous Application on 19th July, 2021."

(b). Order 23.09.2021

"**1.** Due to the outbreak of COVID-19 pandemic in March, 2020, this Court took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing petitions/ applications/ suits/ appeals/ all other proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State). On 23.03.2020, this Court directed extension of the period of limitation in all proceedings

before the Courts/Tribunals including this Court w.e.f. 15.03.2020 till further orders.

2. Considering the reduction in prevalence of COVID-19 virus and normalcy being restored, the following order was passed in the Suo Motu proceedings on 08.03.2021:

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3. Thereafter, there was a second surge in COVID-19 cases which had a devastating and debilitating effect. The Supreme Court Advocates on Record Association (SCAORA) intervened in the Suo Motu proceedings by filing Miscellaneous Application No.665 of 2021 seeking restoration of the order dated 23.03.2020. Acceding to the request made by SCAORA, this Court passed the following order on 27.04.2021:

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4. In spite of all the uncertainties about another wave of the deadly COVID-19 virus, it is imminent that the order dated 08.03.2021 is restored as the situation is near normal.

5. We have heard learned Attorney General for India, Mr. Vikas Singh, learned Senior Counsel for the Election Commission of India, Mr. Shivaji M. Jadhav, learned counsel for the SCAORA and other learned Advocates. There is consensus that there is no requirement for continuance of the initial order passed by this Court on 23.03.2020 and relaxation of the period of limitation need not be continued any further. The contention of Mr. Vikas Singh is that the order dated 08.03.2021 can be restored, subject to a modification. He submitted that paragraph No.2 of the order dated 08.03.2021 provides that the limitation period of 90 days will start from 15.03.2021 notwithstanding the actual balance of period of limitation in cases where limitation has expired between 15.03.2020 and 14.03.2021. According to him, the period of limitation prior to 15.03.2020 has to be taken into account and only the balance period of limitation should be made available for the purpose of filing cases.

6. The order dated 23.03.2020 was passed in view of the extraordinary health crisis. On 08.03.2021, the order dated 23.03.2020 was brought to an end, permitting the relaxation of period of limitation between 15.03.2020 and 14.03.2021. While doing so, it was made clear that the period of limitation would start from 15.03.2021. As the said order dated 08.03.2021 was only a one-time measure, in view of the pandemic, we are not inclined to modify the conditions contained in the order dated 08.03.2021.

7. The learned Attorney General for India stated that paragraph No.4 of the order dated 08.03.2021 should be continued as there are certain containment zones in some States even today.

8. Therefore, we dispose of the M.A. No.665 of 2021 with the following directions: -

I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 03.10.2021.

II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.

III. The period from 15.03.2020 till 02.10.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

IV. The Government of India shall amend the guidelines for containment zones, to state.

"Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements.""

33. By the order dated 23.09.2021, after noting the return of normalcy in the prevailing circumstances, the Hon'ble Supreme Court disposed of Miscellaneous Application No. 665/2021 in Suo Motu Writ Petition (Civil) No. 3/2020.

34. Thereafter, two further Miscellaneous Applications, being M.A. Nos. 21/2022 and 29/2022, were filed in the disposed of Miscellaneous Application No. 665/2021 in the same Suo Motu Writ Petition. After hearing the parties, the Hon'ble Supreme Court passed its final order dated 10.01.2022, which reads as under:

"**1.** In March, 2020, this Court took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing petitions/ applications/ suits/ appeals/ all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the COVID19 pandemic.

2. On 23.03.2020, this Court directed extension of the period of limitation in all proceedings before Courts/Tribunals including this Court w.e.f. 15.03.2020 till further orders. On 08.03.2021, the order dated 23.03.2020 was brought to an end, permitting the relaxation of period of limitation between 15.03.2020 and 14.03.2021. While doing so, it was made clear that the period of limitation would start from 15.03.2021.

3. Thereafter, due to a second surge in COVID¬19 cases, the Supreme Court Advocates on Record Association (SCAORA) intervened in the Suo Motu proceedings by filing Miscellaneous Application No. 665 of 2021 seeking restoration of the order dated 23.03.2020 relaxing limitation. The aforesaid Miscellaneous Application No.665 of 2021 was disposed of by this Court vide Order dated 23.09.2021, wherein this Court extended the period of limitation in all proceedings before the Courts/Tribunals including this Court w.e.f. 15.03.2020 till 02.10.2021.

4. The present Miscellaneous Application has been filed by the Supreme Court Advocates-on-Record Association in the context of the spread of the new variant of the COVID¬19 and the drastic surge in the number of COVID cases across the country. Considering the prevailing conditions, the applicants are seeking the following:

i. allow the present application by restoring the order dated 23.03.2020 passed by this Hon'ble Court in Suo Motu Writ Petition (C) NO. 3 of 2020; and
ii. allow the present application by restoring the order dated 27.04.2021 passed by this Hon'ble Court in M.A. no. 665 of 2021 in Suo Motu Writ Petition (C) NO. 3 of 2020; and
iii. pass such other order or orders as this Hon'ble Court may deem fit and proper.

5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the

purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

6. As prayed for by learned Senior Counsel, M.A. No. 29 of 2022 is dismissed as withdrawn."

35. By the said order dated 10.01.2022, the Hon'ble Supreme Court disposed of the aforesaid Miscellaneous Applications. This order constitutes the last in the series of *suo motu* directions in ***In Re: Cognizance for Extension of Limitation*** (*supra*).

36. A careful examination of this series of orders of the Hon'ble Supreme Court reveals certain clear and undisputed conclusions, which may be summarized as follows:

(a). Covid-19 pandemic was an extraordinary and unprecedented crisis that posed severe challenges not only for the citizens and the government but also for litigants and the judicial institutions across the country.

(b). Recognising the extraordinary difficulties faced by litigants, advocates, and other stakeholders, the Hon'ble Supreme Court

considered it essential to obviate such hardships during the pandemic, particularly since Covid-19 was a communicable disease and required restrictions on physical appearances in courts and tribunals.

(c). In the absence of specific legislation to meet the emergent situation, the Hon'ble Supreme Court deemed it necessary to step in and bridge the legal vacuum by exercising its extraordinary powers under Articles 141 and 142 of the Constitution.

(d). In the series of orders, the Hon'ble Supreme Court progressively modified and supplemented its directions wherever necessary, both *suo motu* and upon applications filed by stakeholders, in order to address the evolving circumstances.

(e). The initial order dated 23.03.2020 came to be supplemented by various subsequent orders, *inter alia*, orders dated 06.05.2020 and 10.07.2020, which clarified the applicability of limitation extensions to particular statutes, *for instance*, the Arbitration and Conciliation Act, 1996, the Commercial Courts Act, 2015, and the Negotiable Instruments Act, 1881.

(f). By its comprehensive order dated 08.03.2021, noticing improvement in the situation, the Hon'ble Supreme Court disposed of Suo Motu Writ Petition (Civil) No. 3/2020.

(g). With the second surge of the pandemic, the Hon'ble Supreme Court intervened afresh and passed orders dated 27.04.2021 and 23.09.2021 in continuation of the earlier directions.

(h). Ultimately, by its order dated 10.01.2022, the Hon'ble Supreme Court issued the final set of clarifications and relaxations in this line of *suo motu* orders.

(i). The true object and context of this series of orders was to alleviate the difficulties caused by the pandemic in relation to limitation periods across judicial and quasi-judicial proceedings.

(j). These orders are intended to be seen in their correct perspective and spirit, and not in a narrow or restrictive manner.

(k). The intent of the Hon'ble Supreme Court was to safeguard the rights of litigants, including the government, by ensuring that limitation periods prescribed under general law as well as under special statutes (both Central and State) were not prejudicially affected due to the pandemic.

(l). Importantly, the benefit of these directions extended to all proceedings, whether or not the statute concerned permitted condonation of delay.

(m). The Hon'ble Supreme Court eventually directed that the entire period from 15.03.2020 to 28.02.2022 shall stand excluded for the purpose of computing limitation, and the balance period of limitation available on 15.03.2020 would commence from 01.03.2022.

(n). Further, in cases where the limitation expired between 15.03.2020 and 28.02.2022, the Court granted all persons a fresh limitation period of 90 days from 01.03.2022, irrespective of the actual balance period otherwise available.

(o). If, however, the balance period of limitation available on 01.03.2022 exceeded 90 days, then such longer period would apply.

(p). The scope of these directions was not confined to any particular statute, forum, or authority, but extended widely to all general

and special laws in respect of all judicial and quasi-judicial proceedings.

(q). The relaxations were not intended for any specific category of litigants but were broad-based and comprehensive.

(r). The applicability of these orders extended equally to all courts, tribunals, and authorities exercising judicial or quasi-judicial functions, without any exclusions.

(s). Although specific statutory provisions such as Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015, and provisos (b) and (c) to Section 138 of the Negotiable Instruments Act, 1881 were expressly mentioned in certain orders, the Hon'ble Supreme Court simultaneously clarified that the directions would apply to "all other laws" as well.

(t). The Hon'ble Supreme Court's wide and unambiguous directions were intended to cover the entire spectrum of statutes without leaving any law outside their ambit. However, the applicability of these directions was subject to the condition that the proceedings concerned must fall within the realm of judicial or quasi-judicial proceedings.

37. Turning now to the controversy concerning the PMLA, it is necessary to examine the statutory framework governing provisional attachment and adjudication, as contained in Section 5 and Section 8(1) to (3) of the PMLA, which are reproduced hereunder:

> "**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.;

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(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.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation. - For the purposes of this sub-section, "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) 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."

"**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.

(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.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under subsection (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—

(a) continue during investigation for a period not exceeding three hundred and sixty-five days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country,

before the competent court of criminal jurisdiction outside India, as the case may be; and

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court;

Explanation. — For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.

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….."

38. Section 5(1) of the PMLA provides that, if the Director or an authorised officer of at least Deputy Director rank has, on written reasons to believe, based on evidence, that a person possesses property earned through crime and that such property is likely to be hidden, transferred, or otherwise dealt with in a way that could prevent its confiscation, the officer may provisionally attach such property for up to 180 days. Such attachment is generally allowed only after a charge sheet has been filed before a Magistrate for the scheduled offence, or a complaint has been filed in court by an authorised officer to investigate the offence mentioned in that Schedule, or a similar report has been filed under foreign law.

39. However, where immediate action is required to prevent frustration of proceedings, the ED has discretion to attach the property even before such filing before the competent court. Further, while calculating the 180-day period, any period during which proceedings remain stayed by the High Court is to be excluded, and a further 30 days may be added after the stay is vacated.

40. Under Section 5(2), once a property is provisionally attached, the Director or authorised officer must immediately forward a copy of the attachment order, along with the supporting material, to the learned Adjudicating Authority in a sealed envelope, in the manner

prescribed. The learned Adjudicating Authority is required to preserve such records for the prescribed duration.

41. As per Section 5(3), the order of attachment shall cease to have effect on expiry of the 180-day period or upon the passing of an order by the learned Adjudicating Authority under Section 8(3), whichever is earlier.

42. Section 5(4) of the PMLA clarifies that even if a property is attached, the person who has an interest in that immovable property is not barred from using or enjoying it. The term "person interested" covers anyone who has a claim or entitlement to the property.

43. Section 5(5) mandates that within 30 days of provisional attachment, the Director or authorised officer must file a complaint before the learned Adjudicating Authority, stating the facts and circumstances of the attachment.

44. The complaint under Section 5(5) is adjudicated in accordance with Section 8 of the PMLA. Upon such filing, the learned Adjudicating Authority is empowered under Section 8(1) to issue a notice of not less than 30 days to the concerned person(s), requiring them to explain the source of income, assets or means by which the attached property was acquired, produce supporting evidence, and show cause why such property should not be declared as involved in money laundering and consequently confiscated. If the property is jointly held or claimed on behalf of another, notice must be issued to all concerned persons.

45. Section 8(2) prescribes the procedure for adjudication. The learned Adjudicating Authority must: (a) consider the reply, if any, to the notice, (b) provide an opportunity of hearing to both the aggrieved party and the ED, and (c) evaluate all relevant material placed on

record. Only thereafter can it record a finding on whether all or any of the properties referred to in the notice are involved in money laundering. Further, if a third party (not originally served with notice) claims the property, such person must also be given an opportunity of hearing.

46. Under Section 8(3), where the learned Adjudicating Authority concludes that a property is involved in money laundering, it shall, by written order, confirm the attachment. Such confirmation ensures that the attachment continues during investigation, for a maximum of 365 days, or during the pendency of proceedings relating to any offence under the PMLA before a competent Court in India or abroad. Ultimately, such attachment becomes final only upon the Special Court's confiscation order under Section 8(5), Section 8(7), Section 58B, or Section 60(2A) of the PMLA.

47. The adjudication process envisaged under Section 8(1) to (3) is supplemented by the Adjudicating Authority (Procedure) Regulations, 2013. Once the concerned person is summoned and files a reply, Regulations 21 to 25 enable the learned Adjudicating Authority for examination of witnesses, recording depositions, numbering and classification of witnesses, payment of witness expenses, and marking of documents. Regulations 21 to 25 of the Adjudicating Authority (Procedure) Regulations, 2013, state as follows:

> "**21. Examination of witness and the issue of commissions.** The provisions of the Code of Civil Procedure, 1908 (5 of 1908) relating to the issuing of commissions for examination of witnesses and documents shall, as far as may be applicable, apply in the matters of summoning and enforcing attendance of any person as witness and issuing a commission for examination of such witness.
>
> **22. Recording of deposition.** The deposition of the witness whenever necessary shall be recorded in Form 8. A Certificate of attendance, if requested for, will be issued in Form 9.

> **23. Numbering of witness.** The witness called by the applicant shall be numbered consecutively as P.Ws and those by the defendant or any other persons not being applicants as D.Ws. and any witness examined at the instance of the complainants shall be numbered consequently as C.Ws, and the witness called by the Adjudicating Authority shall be numbered as A.Ws.
>
> **24. Witness expenses payable.** The Adjudicating Authority may, if it considers necessary, direct the concerned party for the payment of expenses to the witness, as the case may be.
>
> **25. Marking of documents.** Every document filed by the applicant shall be marked as Ex. A1 and the document filed by the complainant shall be marked as Ex. C1 and the documents filed by the defendants or other person not being applicant shall be marked as Ex. Dl and so on."

48. The statutory framework under Sections 5 and 8 of the PMLA, as appears from the above, leaves no manner of doubt that the PMLA contemplates a carefully balanced, two-stage mechanism. In the first stage, the ED may, upon recording cogent "reasons to believe" on the basis of material in its possession, provisionally attach property suspected to be proceeds of crime. In the second stage, the learned Adjudicating Authority is entrusted with an independent and judicially-structured scrutiny, which ensures that such attachment is not left solely to the discretion of the executive but is tested through notice and a response thereto, hearing, evidence, and a reasoned determination either confirming or rejecting the attachment.

49. The power of provisional attachment vested in the ED is undoubtedly wide, but it is also strictly conditioned. The ED can exercise such power only when it believes, based on credible material, that a person possesses proceeds of crime and that such property is in danger of being concealed, transferred, or dealt with in a manner that may frustrate confiscation. Such an order is subject to the power of confirmation under Section 8(3) of the PMLA and any such

attachment, given the circumstances, would ultimately be subject to confiscation under Section 8(5) or 8(7), as the case may be.

50. It would be apposite to refer to the provisions of Section 5 of the PMLA. Section 5 talks of an attachment that is "Provisional" in nature. "Provisional" is not defined in the PMLA. The Shorter Oxford English Dictionary, 6th Edition, defines Provisional to mean something which is *"of the nature of a temporary provision or arrangement; provided or adopted for present needs or temporarily; supplying the place of something regular, permanent, final, or better; tentative"*.

51. The term "Provisional Attachment" would thus imply that it is a provision which provides for a thing to be held as a temporary measure, and in the context of the PMLA, for a specific purpose.

52. It then poses a question as to what is the purpose of provisionally attaching anything? This is apparent from a reading of Section 5(1)(b) and the Second proviso to Section 5(1), which is that, the said "provisional attachment" is to ensure that any proceeds of crime in the hands of any person are not dealt with in any manner "which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter" [***Under Section 5(1)(b)***] or that, "any proceeding under this act" are not frustrated [***Second proviso***].

53. The Second proviso is, of course, more sweeping in nature and we are consciously refraining from expressing any opinion with respect to the sweeping nature of the same in the present *lis*. We limit ourselves to an examination of the provisions of Section 8 *vis-à-vis* Section 5(1)(b) alone.

54. Assuming only Section 5(1)(b) is considered, in that event, given a restrictive reading, the purpose of any provisional attachment is stated to be for ensuring that "any proceedings relating to confiscation of such proceeds of crime under this Chapter" are not frustrated.

55. As is apparent, the provisions relating to confiscation of proceeds of crime are a subject matter of Section 8 and for the purpose of which, the entire procedure prescribed therein would have to necessarily be pursued. The provisional attachment, thus, is the enabler for the exercise of the adjudication under Section 8, being the first step in what we have held is a two-step procedure in respect of proceedings for attachment (provisional and confirmatory).

56. The provisions of Section 8(1) also make it clear that, within a period of 30 days from provisional attachment under Section 5(1), the Officer specified in Section 5(5) would have to mandatorily file a complaint with the learned Adjudicating Authority.

57. Thus, the provisions of Section 8 are triggered almost immediately upon the event of a provisional attachment under Section 5(1) and upon the receipt of the procedural complaint under Section 5(5); the provisions of Section 8 are rendered operational and are the immediate point of contact post the provisional attachment.

58. The confirmatory exercise by the learned Adjudicating Authority under Section 8(3)(b) is a necessary precondition for initiating confiscation of property. If the learned Adjudicating Authority is unable to discharge its function under this provision, the power of confiscation cannot be exercised, thereby defeating the very object of a provisional attachment under Section 5(1).

59. Undoubtedly, Section 5(3) provides that every order of attachment made under Section 5(1) shall cease to have effect upon the expiry of the period specified therein or on the date of an order made under Section 8(3), whichever is earlier, but this provision would have to be read contextually and particularly in view of the situation prevalent. If the learned Adjudicating Authority was precluded from exercising its functions, the very object of providing for provisional attachment would be rendered meaningless. The said Section would have to be construed in a manner such as to ensure that the object and rationale of the provisional attachment are not defeated. Not doing so, would lend itself to the Court permitting something to be done which the provisions in the first place sought to curtail or prohibit. We reiterate our caveat to this conclusion that the same is in light of the peculiar circumstances that prevailed and do not seek to propound it as a general proposition.

60. The purpose and purport of the Provisional Attachment, as discussed above, being the ensuring of the non-frustration of the proceedings under the PMLA, for confiscation, would, to our mind, be rendered otiose and fruitless if the learned Adjudicating Authority is unable to carry out its functions.

61. The argument of the Private Parties, in effect, would require us to read the provisions of Section 5 as a stand-alone provision in respect of a purported stand-alone event (that of provisional attachment). This, to our mind, does not appear to be the intent or the structure of the PMLA architecture. This then divorces the second step, which in our opinion is the necessary concomitant to the first step of "provisional attachment", namely the confirmation of the

same, for the purpose of proceeding thereafter to the confiscation stage.

62. The act of the concerned authorities in provisionally attaching what is believed to be "proceeds of crime" is an intermediate step provided for the learned Adjudicating Authority to meaningfully exercise its adjudicatory powers and in the present case, due to the advent and prevalence of Covid-19, the learned Adjudicating Authority was clearly unable to undertake this exercise.

63. The learned Adjudicating Authority, constituted under Section 6, is not a mere extension of the ED's functioning but an independent, expert, statutory forum vested with the solemn responsibility of scrutinising the ED's action. Its duty is to assess whether the attachment has been validly made in law and fact. For this purpose, it considers replies, examines the materials placed before it, and may even call for further evidence. It is, therefore, clear that the learned Adjudicating Authority performs adjudicatory functions of a quasi-judicial nature.

64. A Constitution Bench of the Hon'ble Supreme Court in ***Shivji Nathubha v. Union of India***[22] laid down the test for determining whether the functions of a statutory authority are quasi-judicial in nature. Referring to earlier precedents, the Court held that three conditions must be satisfied: (i) the authority must be vested with legal power, (ii) such power must relate to the determination of questions affecting the rights of subjects, and (iii) the authority must have a statutory duty to act judicially. The relevant paragraph of the said judgment is produced hereinbelow:

[22] 1960 SCC OnLine SC 32

6. This Court had occasion to consider the nature of the two kinds of acts, namely, judicial which includes quasi-judicial and administrative, a number of times. In ***Province of Bombay* v. *Kushaldas S. Advani*** **[1950 SCC 551: (1950) SCR 621]** it adopted the celebrated definition of a quasi-judicial body given by Atkin, L.J. in ***R.* v. *Electricity Commissioners*** **[(1924) 1 KB 171]** which is as follows:

> "Whenever any body of persons having legal authority to determine questions affecting rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

This definition insists on three requisites each of which must be fulfilled in order that the act of the body may be a quasi-judicial act, namely, that the body of persons (*1*) must have legal authority, (*2*) to determine questions affecting the rights of subjects, and (*3*) must have the duty to act judicially. After analysing the various cases, Das, J. (as he then was) laid down the following principles as deducible therefrom in ***Khushaldas S. Advani case*** **[1950 SCC 551: (1950) SCR 621]** at p. 725:

> "(*i*) That, if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by any party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie, and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and
>
> (*ii*) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially."

(Emphasis supplied)

65. Similarly, in ***Associated Cement Companies Ltd. v. P.N. Sharma***[23], another Constitution Bench reiterated and elaborated upon these principles. The Court emphasized that the true test is not the

[23] 1964 SCC OnLine SC 62

nomenclature of the body but the nature of the power it exercises. If an authority or tribunal, though not a court in the strict sense, is empowered to decide disputes affecting the rights of parties or is required to act judicially while exercising powers that may prejudicially affect individuals, then its function is quasi-judicial. The relevant paragraphs of the said judgment state as follows:

> "**10.** This problem has been considered by this Court on several occasions and judicial decisions show that it arises in two different forms. Sometimes, the question which is posed for the decision of this Court is whether a particular decision reached by an authority or a body can be corrected by the issue of a writ of certiorari by the High Courts in exercise of their jurisdiction under Article 226; and in dealing with this question, it becomes necessary to enquire whether the impugned decision is a judicial or quasi-judicial decision and whether in reaching it, the authority concerned was required to adopt a judicial approach and follow the principles of natural justice. We will very briefly indicate how this question has been considered by this Court by referring to some important decisions in that behalf. In the ***Province of Bombay* v. *Kusaldas S. Advani*** **[1950 SCC 551: (1950) SCR 621**] this Court had to consider whether the powers given to the Provincial Government under Sections 10 and 12 of the Bombay Land Requisition Ordinance (V of 1947) required that in exercising them, the Government had to act judicially in the matter of making an order of requisition under Section 3. According to the majority decision, the relevant powers and the scheme of the Ordinance did not make it incumbent on the State Government to act judicially in exercising its powers under Section 3. Dealing with this question, Das J., as he then was, deduced two principles from an elaborate examination of the relevant decisions cited before the Court. **He held that if a statute empowers an authority not being a court in the ordinary sense to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie, and in the absence of anything in the statute to the contrary, it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act. The second principle which he deduced was that if a statutory body has power to do any act which will prejudicially affect the subject, then although there are not two parties apart from the authority, and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the**

authority is required by the statute to act judicially (p. 725). Kania, C.J., on the other hand, observed that the true position was that "when the law under which the authority is making a decision itself requires a judicial approach, the decision would be a quasi-judicial decision. Prescribed forms are not necessary to make an inquiry judicial, provided in coming to the decision well-recognised principles of approach are required to be followed". (p. 633).

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18. Let us now refer to some of the decisions which deal with the problem with which we are concerned. The first decision where this question was elaborately considered was pronounced in the case of ***Bharat Bank Ltd., Delhi* v. *Employees of the Bharat Bank Ltd., and the Bharat Bank Employees' Union, Delhi*** **[1950 SCC 470]**. In that case, an award pronounced by an Industrial Tribunal under the provisions of the Industrial Disputes Act, 1947, was brought to this Court in appeal by special leave under Article 136(1), and the respondents' preliminary objection that the appeal was incompetent, raised the problem as to whether the Industrial Tribunal was a tribunal under Article 136(1) or not. The majority decision was in favour of the view that the Industrial Tribunal is a tribunal within the meaning of Article 136(1). Mahajan, J., who delivered the principal judgment in support of the majority view on this point, held that "Industrial Tribunals though they are not full-fledged Courts, yet exercise quasi-judicial functions and are within the ambit of the word 'tribunal' in Article 136 of the Constitution". (p. 476). "The condition precedent", said Mahajan, J., "for bringing a tribunal within the ambit of Article 136 is that it should be constituted by the State. Again, a tribunal would be outside the ambit of Article 136 if it is not invested with any part of the judicial functions of the State but discharges purely administrative or executive duties", (p. 478). It is in this connection that the learned Judge added that tribunals, however, which are found invested with certain functions of a Court of justice and have some of its trappings also would fall within the ambit of Article 136, because, according to the learned Judge, the intention of the Constitution by the use of the word "tribunal" in the article seems to have been to include within the scope of Article 136 tribunals adorned with similar trappings as court but strictly not coming within that definition (p. 474). The fact that awards pronounced by Industrial Tribunals become enforceable under Section 17-A subject to the conditions therein prescribed, did not make any difference to the legal position that the Industrial Tribunals were tribunals within the meaning of Article 136(1).

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26. We have referred to the three essential attributes of a sovereign State and indicated that one of these attributes is the legislative power and legislative function of the State, and we have also seen that in determining the status of an authority dealing with disputes,

> we have to enquire whether the power conferred on the said authority or body can be said to be judicial power conferred on it by the State by means of a statute or statutory rule. The use of the expression "judicial power" in this context proceeds on the well-recognised concept of political science that along with legislative and executive powers, judicial power vests in a sovereign State. In countries where rigid separation of powers has been effected by written Constitutions, the position is very different. Take, for instance, the Australian Constitution. Section 71 of the Commonwealth of Australia Constitution Act (63 & 64 Vict. Chapter 12) provides that the judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as Parliament creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as Parliament prescribes. It is clear that the scheme of Sections 71 to 80 which form part of Chapter III of the said Constitution, is that the judicial power of the State can be conferred only on courts recognised by the provisions of the said Chapter. In other words, it is not competent to the legislature in Australia to confer judicial power properly so-called on any body or authority other than or apart from the courts recognised by Chapter III and so, the use of the expression "judicial power" or its conferment in regard to tribunals which are not courts properly so-called, would under the Australian Constitution be wholly inappropriate. If any tribunals other than courts are established and power is given to them to deal with and decide special disputes between the parties, the power which such tribunals would exercise cannot be described as judicial power, but would have to be called quasi-judicial power."
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> ***(Emphasis supplied)***

66. Further clarity on this issue was provided by another Constitution Bench in ***A.K. Kraipak v. Union of India***[24], wherein the Hon'ble Supreme Court noted the determining factor is not the form but the substance of the power conferred. If the exercise of power has consequences for the rights of individuals and if the authority is expected to act fairly, justly, and without arbitrariness, the function assumes a quasi-judicial character. The relevant portion of the said judgment is produced below:

[24] (1969) 2 SCC 262

"**13.** The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For deter-mining whether a power is an administrative power or a *quasi-judicial* power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power. The following observations of Lord Parker C.J., in ***R.* v. *Criminal Injuries Compensation Board Ex parte Lain*** **[(1967) 2 QB 864** at p. 881] are instructive.

> "With regard to Mr Bridge's second point I cannot think that Atkin L.J., intended to confine his principle to cases in which the determination affected rights in the sense of enforceable rights. Indeed, in the *Electricity Commissioners case* the rights determined were at any rate not immediately enforceable rights since the scheme laid down by the commissioners had to be approved by the Minister of Transport and by resolutions of Parliament. The Commissioners nevertheless were held amenable to the jurisdiction of this court. Moreover, as can be seen from ***R.* v. *Postmaster-General Ex parte Carmichael*** **[(1928) 1 KB 291]** and ***Rex* v. *Boycott Ex parte Kesslay*** **[(1939) 2 KB 651]** the remedy is available even though the decision is merely a step as a result of which legally enforceable rights may be affected.
>
> The position as I see it is that the exact limits of the ancient remedy by way of certiorari have never been and ought not to be specifically defined. They have varied from time to time being extended to meet changing conditions. At one time the writ only went to an inferior court, later its ambit was extended to statutory tribunals determining a lis inter partes. Later again it extended to cases where there was no lis in the strict sense of the word

> but where immediate or subsequent rights of a citizen were affected. The only constant limits throughout were that it was performing a public duty. Private or domestic tribunals have always been outside the scope of certiorari since their authority is derived solely from contract, that is, from the agreement of the parties concerned.
> Finally, it is to be observed that the remedy has now been extended, See ***R.* v. *Manchester Legal Aid Committee, Ex parte R.A. Brand & Co. Ltd.*** **[(1952) 2 QB 413]** to cases in which the decision of an administrative officer is only arrived at after an inquiry or process of a judicial or quasi-judicial character. In such a case this court has jurisdiction to supervise that process.
> We have as it seems to me reached the position when the ambit of certiorari can be said to cover every case in which a body of persons of a public as opposed to a purely private or domestic character has to determine matters affecting subjects provided always that it has a duty to act judicially. Looked at in this way the board in my judgment comes fairly and squarely, within the jurisdiction of this court. It is, as Mr Bridge said, 'a servant of the Crown charged by the Crown, by executive instruction, with the duty of distributing the bounty of the Crown.' It is clearly, therefore, performing public duties".
>
> ***(Emphasis supplied)***

67. In view of these authoritative pronouncements, and considering the nature of the powers, functions, and responsibilities entrusted to the learned Adjudicating Authority, we have no hesitation in holding that under Section 8 of the PMLA, it exercises a quasi-judicial function. It determines questions affecting valuable rights in property, it is vested with legal authority under the statute, and it is bound to act judicially by ensuring notice, hearing, evaluation of evidence, and reasoned decision-making. Its role, therefore, is not administrative or executive but clearly quasi-judicial in nature.

68. Coming now to the contention of the private parties, it is argued that since the ED had filed an interlocutory application in ***In re: Cognizance for Extension of Limitation*** (*supra*) before the Hon'ble Supreme Court, specifically seeking extension of timelines under the

PMLA, including Sections 5, 8, 26, and 42, the omission of the PMLA from the Court's order dated 08.03.2021, despite express reference to certain other statutes, must be construed as rejection of that prayer of the ED. The submission is that, in law, when a relief is expressly sought but not granted in the final order, it is deemed to have been refused.

69. On examining the record of ***In re: Cognizance for Extension of Limitation*** (*supra*), we find no merit in the contention of the private parties.

70. As already noted, the initial order dated 23.03.2020 was general in nature. Further orders supplementing the same came to be passed from time to time.

71. Between April 2020 and December 2020, nearly two dozen applications of varied nature, such as intervention, declaration, and clarification, were filed in the said *suo motu* writ petition. The Hon'ble Supreme Court disposed of some of these applications by orders dated 06.05.2020 and 10.07.2020. Thereafter, the matter was not listed again until March 2021, though numerous applications were filed in the meantime, including I.A. 91204/2020 filed by the ED seeking clarification regarding PMLA timelines.

72. Upon noticing improvement in Covid-19 situation, the Hon'ble Supreme Court, by a comprehensive order dated 08.03.2021, disposed of Suo Motu Writ Petition (Civil) No. 3/2020 along with all pending applications, rather than passing separate orders on each of them.

73. In our considered view, once the main petition itself was disposed of on 08.03.2021 in light of the changed circumstances, there was no necessity for the Hon'ble Supreme Court to pass separate orders either accepting or rejecting the reliefs sought in the pending

interlocutory applications. Consequently, there was no requirement to specifically deal with I.A. 91204/2020 filed by the ED. As noted earlier, after 10.07.2020, the matter itself was not listed until March 2021, leaving no occasion for the Court to issue any specific clarification in that application.

74. It is also significant to note that the comprehensive order dated 08.03.2021 was intended to cover all aspects arising from the pandemic-related extensions. Subsequently as well, on 24.07.2021, 23.09.2021, and 10.01.2022, the Hon'ble Supreme Court passed similar orders, with necessary modifications, further reinforcing the position.

75. The private parties have sought to place reliance on the judgment of the Hon'ble Supreme Court in ***S. Kasi*** *(supra)*. That reliance, with respect, is wholly misplaced. The decision in ***S. Kasi*** *(supra)* dealt with the extension of limitation vis-à-vis the right of an accused to default bail under Section 167(2) of the CrPC, a provision that directly concerns the deprivation of personal liberty. The issue before this Court, however, relates to property rights under the PMLA and the functioning of the learned Adjudicating Authority, a domain altogether distinct both in constitutional footing and in legal consequence.

76. In our considered opinion, the judgment in ***S. Kasi*** *(supra)* has no application to the present controversy for the following reasons:

(a) Section 167 of the CrPC imposes a strict obligation on the police, an executive authority, that failure to file a charge sheet within the statutory period results in the automatic release of the accused. Extending the *suo motu* orders of limitation to this provision would have had the effect of prolonging

incarceration, thereby infringing upon the most sacrosanct right under Article 21 of the Constitution. By contrast, in the present case, extension of limitation concerns the adjudication of property attachment before a quasi-judicial authority. It neither arises from executive inaction by the ED nor does it touch upon the liberty of the individual.

(b) The orders in ***In re: Cognizance for Extension of Limitation*** *(supra)* were intended to cover judicial and quasi-judicial proceedings across courts, tribunals and authorities. They were never meant to enlarge the time available for purely administrative acts of the executive, such as the filing of charge sheets under Section 167 of the CrPC.

(c) Unlike Section 167 of the CrPC, where the failure of the police alone triggers the consequence of bail, proceedings before the learned Adjudicating Authority under the PMLA require the participation of both parties. The Hon'ble Supreme Court's pandemic-related directions were intended precisely to safeguard such adjudicatory processes from being defeated by logistical impossibilities faced by courts, tribunals, litigants and lawyers across the country.

(d) Extending the limitation under Section 167 of the CrPC would have handed arbitrary power to the police to continue detaining individuals. In contrast, applying the extension to proceedings under Section 8 of the PMLA does not create arbitrariness. The process remains under judicial scrutiny, ensuring fairness for all concerned.

(e) The right to property under Article 300A, though a constitutional right of significance, does not stand on par with

Article 21 of the Constitution. Even during a national emergency, Article 21 cannot be suspended, and the Judgment of the Hon'ble Supreme Court expressly notices the significance and importance of the same in Para 20. ***S. Kasi*** *(supra)* recognizes the avowed and undeniable nature of the constitutional guarantee of the right to personal liberty and the same cannot be compared to property-related proceedings under the PMLA. To our mind, these rights are incomparable.

(f) The Hon'ble Supreme Court in ***Prakash Corporates v. Dee Vee Projects Ltd.***[25] dealt with the applicability of ***In re: Cognizance for Extension of Limitation*** *(supra)* to the filing of written statements. While reiterating that the scope of the limitation extension orders should not be unduly narrowed, the Court distinguished ***S. Kasi*** *(supra)*, holding that it stood on an entirely different footing since it related to Article 21 of the Constitution and default bail under Section 167 of the CrPC. The relevant paragraphs of ***Prakash Corporates*** *(supra)* are extracted below:

> **32. *S. Kasi* v. *State*, (2021) 12 SCC 1: 2020 SCC OnLine SC 529** related to default bail plea of the accused-appellant for the reason that the charge-sheet had not been filed within the time permitted by Section 167(2) CrPC. The High Court took the view that the said order dated 23-3-2020 in ***Cognizance for Extension of Limitation, In re* [*Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801]** would eclipse all the provisions prescribing the period of limitation, including that prescribed under Section 167(2) CrPC. This Court referred to the reasons for passing the orders in the said *suo motu* petition and the difficulties sought to be taken care of; and found that an investigating officer was not prevented from such difficulties as were faced by the lawyers and litigants; and the investigating officer could

[25] (2022) 5 SCC 112

have submitted the charge-sheet before the Magistrate (Incharge).

32.1. This Court observed and held as under: **(*S. Kasi case* [*S. Kasi* v. *State*, (2021) 12 SCC 1: 2020 SCC OnLine SC 529],** SCC para 19)

> "*19.* 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 23-3-2020 **[*Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10: (2021) 3 SCC (Cri) 801]** 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/submitting the charge-sheet even within the stipulated period before the Magistrate (Incharge)."

32.2. In fact, in ***S. Kasi case* [*S. Kasi* v. *State*, (2021) 12 SCC 1 : 2020 SCC OnLine SC 529]**, this Court also noticed that a coordinate Bench of the same High Court had already held **[*Settu* v. *State*, 2020 SCC OnLine Mad 1026]** that the said order dated 23-3-2020 **[*Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10: (2021) 3 SCC (Cri) 801]** did not cover the offences for which Section 167 CrPC was applicable but, in the order **[*S. Kasi* v. *State*, 2020 SCC OnLine Mad 1244]** impugned, the other learned Single Judge of the same High Court took a view contrary to the earlier decision of the coordinate Bench; and that was found to be entirely

> impermissible. In any case, the said decision, concerning the matter of personal liberty referable to Article 21 of the Constitution of India and then, relating to the proceedings to be undertaken by an investigating officer, cannot be applied to the present case relating to the matter of filing written statement by the defendant in a civil suit."
>
> ***(emphasis supplied)***

(g) Article 300A of the Constitution provides that *no person shall be deprived of his property save by authority of law*. The *suo motu* orders passed by the Hon'ble Supreme Court under Articles 141 and 142 undoubtedly constitute "authority of law". Consequently, an extension of time flowing from those orders cannot be said to violate Article 300A.

(h) Further, unlike Section 167 of the CrPC, which imposes a complete embargo on personal liberty, attachment of property under the PMLA does not wholly deprive the concerned person of the enjoyment of such property. Section 5(4) of the PMLA expressly provides that nothing prevents the person interested from continuing to enjoy the attached property, even during attachment.

(i) We must also bear in mind that during the COVID-19 pandemic, several facets of Article 21 of the Constitution were subject to partial restrictions, for instance, curbs on travel. Consider a situation where the authorities sought to examine a person under the PMLA, but the individual was unable to travel for such examination, or was stranded elsewhere and could not even receive notice of the proceedings. Similarly, even if notice was served, the person might not have had access to the internet or any alternate means to participate in the proceedings. One may also imagine circumstances where the concerned authority

itself was unable to discharge its functions due to these very restrictions. Therefore, a broad-based contention that the ED was fully functional during this period may not be appropriate. In any case, there is no material on record to support the claim that the learned Adjudicating Authority was fully operational for the purpose of exercising its functions.

(j) The various restrictions and curbs on the facets of Article 21 of the Consitution were necessitated, keeping in mind the pandemic and its virulent nature. Curbs were imposed on travel and also on a person's liberty in cases where one was found to be infected. Such curbs, by their very nature, show that the Courts and public were well aware of the need for the same to be imposed.

77. We are also in agreement with the submissions of the learned counsel for the ED that once the ED files a complaint before the learned Adjudicating Authority within the prescribed period of 30 days under Section 5(5) of the PMLA, the responsibility for further proceedings squarely shifts to the learned Adjudicating Authority, which is statutorily mandated to conclude the matter within 180 days.

78. If, due to extraordinary circumstances, that of the Covid-19 pandemic, the learned Adjudicating Authority is unable to complete the adjudication within the stipulated period, the ED, being merely a party to those proceedings, cannot be made to suffer adverse consequences for a delay beyond its control. In such circumstances, the well-established principle of "*actus curiae neminem gravabit* - that no person should be prejudiced by an act of the court" applies with full force.

79. We now turn to the next contention, *namely*, the reliance placed on the TOL Ordinance, 2020, which was later enacted as the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.

80. This Ordinance was promulgated by the President for a limited and specific purpose. Its primary aim, as it appears, was to address statutory timelines governing taxing authorities, which are required to discharge their functions in a strictly time-bound manner. Any non-compliance by such authorities could result in serious consequences, including substantial loss of state revenue. Accordingly, the Ordinance was confined to the following specified statutes:

(i). Wealth-tax Act, 1957;

(ii). Income-tax Act, 1961;

(iii). Prohibition of Benami Property Transactions Act, 1988;

(iv). Chapter VII of the Finance (No. 2) Act, 2004;

(v). Chapter VII of the Finance Act, 2013;

(vi). The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015;

(vii). Chapter VIII of the Finance Act, 2016; or

(viii). Direct Tax Vivad se Vishwas Act, 2020.

81. The Ordinance was thus never intended to be exhaustive. Its scope was carefully tailored to certain fiscal statutes where timelines were critical for revenue collection. Therefore, the absence of reference to the PMLA cannot be interpreted adversely against the ED.

82. On this issue, we find ourselves in agreement with the submission of the learned counsel for the ED that while the Ordinance specifically dealt with taxation-related laws, the Hon'ble Supreme

Court's directions in ***In re: Cognizance for Extension of Limitation*** *(supra)*, issued under Articles 141 and 142 of the Constitution, operated in a wider field to ensure that justice was not defeated by procedural or logistical impossibilities during the pandemic. Wherever Parliament had already enacted legislative measures covering specific statutes, recourse to the Court's directions was not required. However, in areas not legislatively addressed, the Court's orders continued to apply with full force.

83. We are also unable to agree with the argument advanced by the private parties that acceptance of the ED's position in the present case would lead to anomalous and unjust consequences. It was contended that such an interpretation would allow the ED to indefinitely delay confirmation of provisional attachment orders under the PMLA by invoking Covid-related extension orders, thereby keeping attachments alive far beyond the period contemplated by the Parliament. According to them, this would dilute statutory safeguards, disturb the delicate balance between enforcement powers and individual rights, undermine the rule of law, render Section 5(3) of the PMLA nugatory, and set a dangerous precedent of enforcement agencies misusing exceptional reliefs meant for litigants as a tool to curtail substantive rights.

84. We find this concern misplaced. Covid-19 pandemic was not an ordinary occurrence; it was an unprecedented event in recent human history, one that may arise only once in generations. The relaxations granted by the Hon'ble Supreme Court during this extraordinary crisis cannot, and certainly should not, be equated with or exploited by authorities to claim undue advantage in normal circumstances. They

must be understood strictly in the exceptional context in which they were granted.

85. In the prevailing circumstances, to give an unexceptional interpretation to the Provisions of Section 5(3) would, to our mind render the entire exercise of provisional attachment nugatory particularly since we have already held that the provisional attachment is the enabling part of the first step of what is a two-step exercise in respect of attachment (Provisional and confirmatory) and the one cannot be dissected from the other, keeping in mind the object and rationale of the PMLA and in view of the inability of the learned Adjudicating Authority to enter into the exercise of its quasi-judicial function being the second step, thereby rendering the first step itself otiose.

CONCLUSION:

86. In light of the foregoing discussion, it is evident that the orders of the Hon'ble Supreme Court in ***In re: Cognizance for Extension of Limitation*** *(supra)* were intended to extend limitation periods prescribed under all general and special laws in relation to judicial and quasi-judicial proceedings, whether such limitation was condonable or not. Consequently, in the absence of any express exclusion, these directions would squarely apply to proceedings under the PMLA, including the limitation period prescribed for adjudication under Section 8 by the learned Adjudicating Authority, which indisputably exercises quasi-judicial functions.

87. For these reasons, and with great respect to the learned Single Judge, we are unable to concur with the view taken in the Impugned

Judgment dated 18.11.2020. Accordingly, ***LPA 362/2020*** is allowed, and the Impugned Judgment dated 18.11.2020 is hereby set aside.

88. In view of the findings recorded above, ***W.P. (CRL) 86/2022*** is without merit and is, therefore, dismissed.

89. The LPA and the Writ Petition, along with all pending applications, stand disposed of in the aforesaid terms.

90. There shall be no order as to costs.

ANIL KSHETARPAL
(JUDGE)

HARISH VAIDYANATHAN SHANKAR
(JUDGE)

SEPTEMBER 24, 2025/sm