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

+ **CRL.L.P. 184/2018, CRL.M.A. 15053/2023**

THE JOINT DIRECTOR, DIRECTORATE OF ENFORCEMENT

..... Petitioner

Through: Mr. Zoheb Hossain, Special counsel
for ED with Mr. Vivek Gurnani, Mr.
Kartik Sabharwal, Mr. H. Khwaja,
Advvs.

versus

A. RAJA & ORS.

..... Respondents

Through: Mr. Sandeep Kapur, Mr. Sahil Modi,
Ms. Kajal, Advvs. for R-6 and 13.
Mr. Sudarshan Rajan, Mr. Hitain
Bajaj, Mr. Rohit Bhardwaj, Mr.
Ramesh Rawat, Mr. Ramesh Rawat,
Mr. Mahesh Kumar, Advvs. for R-8,
10, 14
Ms. Tarannum Cheema, Mr. Akshay
Nagararjun, Advvs. for R-9.
Mr. Balaji Subaramanian, Mr. Akash
Kundu, Advvs. for R-16
Mr. Vijay Aggarwal, Mr. Hardik
Sharma, Mr. Mukul Malik, Mr.
Pankush Goyal, Mr. Kartik Kaushik,
Advvs. R-3, 4, 5, 13 & 14

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

20.09.2023

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CRL.M.A. 8235/2021

1. The present application has been moved under Section 482 of Cr. PC
on behalf of M/s Eversmile Construction Company Private Limited



(respondent No.16), and M/s Conwood Constructions and Developers Private Limited (respondent No.17) with a prayer to vacate the order dated 21.03.2018 vide which an order was passed for maintaining the status quo regarding the release of the attached property by this Court.

2. The order dated 21.03.2018 reads as under:

- 1. On taking steps, issue notice to the respondents by all the permissible modes, returnable on 25 May, 2018.*
- 2. Response shall be filed within four weeks.*
- 3. Rejoinder (if any) shall be filed within two weeks thereafter.*
- 4. Trial Court record be requisitioned along with e-record.*

Crl.M.A.5313/2018 (Stay)

- 1. On taking steps, issue notice to the respondents by all the permissible modes, returnable on 25 May, 2018.*
- 2. Response (if any) shall be filed before the next date of hearing.*
- 3. Renotify on 25th May, 2018.*
- 4. Relying upon the order dated 23.11.2015 in SLP No. 18015/2015 'Directorate of Enforcement New Delhi vs. Arun Kumar Mishra' and order dated 14.07.2017 in Crl.Rev.P. 493/2017 learned Addl. Solicitor General prayed for interim stay.*
- 5. Heard.*
- 6. In the meantime, status quo as obtains today shall be maintained by the parties regarding the release of attached property.*

3. Sh. Vijay Aggarwal, learned counsel for the petitioner has submitted that thereafter, he moved an application CRL M.A. 9402/2018 by respondent No.16 and 17 and CRL. M.A. 10885/2020 by respondent



No.17 which were taken up on 23.11.2020 and the Hon'ble Court was pleased to pass the following order;

“56. In view of the above discussion, this Court is of the opinion that it will be in the interest of justice if these applications are decided only after hearing arguments in criminal leave to appeal. However, if there is inordinate delay in disposal of leave to appeal, the applicants/respondents are at liberty to approach this Court by filing fresh application for release of attached properties, which will then be considered in accordance with law.”

4. Sh. Vijay Aggarwal, learned counsel for the petitioner submits that since sufficient time has lapsed, he moved the present application. Sh. Vijay Aggarwal, learned counsel for the petitioner submits that the properties attached of respondent No.16 and of respondent No.17- may be released. The attached properties are as follows:

Properties of respondent No.16

S.No.	Details of Property Attached	Date of Acquisition/ Construction	Appx. Value (in Rs.)
(i)	Unutilized Land at Vasant Vihar, Opp. Voltas, Pokhran Road No.2, Thane(W), Maharashtra	Acquired from Voltas Ltd in 1986	3,17,470
(ii)	Land at Hedutne, Panvel District, Maharashtra	Acquired in Feb 2000	69,71,243
(iii)	Land at Yerwada located at S.No. 191A/2A/1/2, Plot No.3, CTS No. 2175 (part) of Village, Yerwada, Pune	Acquired in June 2010. Note: This property stands conveyed by registered document in favour of State of Maharashtra [Police Department] much before Provisional Attachment Order.	12,60,30,000
(iv)	Flat No 113/Unit 13, B-Wing, Rashtriya Mazdoor	Acquired in November 2007	10,44,130

	Gokuldharm, CHSL, Goregaon (E), Mumbai		
(v)	50%- Flat No. 403, Yashodhara, CHSAI, Yashodham, Goregaon (E)- Mumbai- 63	Acquired in November 2007	10,70,800

TOTAL

13,75,54,989



Properties of respondent No.17

S.No.	Details of Property Attached	Date of Acquisition/ Construction	Appx. Value (in Rs.)
(i)	Unsold Units in Shagun Arcade	Self-Developed and Completed in 2005	22,45,94,892
(ii)	Purchased Unit (Shop No. 105) in Shagun Arcade	Acquired/Agreed to be Purchased from Third Parties on or prior to Aug 2010.	8,48,000
TOTAL			22,54,42,892

5. Sh. Vijay Aggarwal, learned counsel for the petitioner submits that though his request that he will furnish the bank guarantee if the properties are released.
6. Sh. Zoheb Hossain, learned Special counsel for E.D. has vehemently opposed the same. Learned special counsel submitted that since the order dated 23.11.2020, there has been no change in the circumstances. It has been submitted that the Supreme Court in *State of Uttar Pradesh & Ors. v. Harirender Pal Singh & Ors.* (2011) 5 SCC 305, has *inter-alia* discouraged the practice of deviating from the interim order except in the case of change of circumstances. Sh. Zoheb Hossain learned Special counsel for E.D. has also referred to sub Rule (5) of Rule 5 of the Prevention of Money Laundering (PMLA) (taking possession of attached or Frozen Properties Confirmed by the Adjudicating Authority), Rules, 2013 which provides acceptance of FDRs only in the eventuality when the attached confirmed immovable property is in the form of a land, building, house flat, etc., and is under joint ownership.
7. Sh. Zoheb Hossain learned Special counsel for E.D. has submitted that the present attached properties are in the name of the company and there is no joint ownership therefore, in view of the sub Rule (5) of Rule 5 of the Prevention of Money Laundering (PMLA) (taking



possession of attached or Frozen Properties Confirmed by the Adjudicating Authority), Rules, 2013 cannot be released. It has further been submitted that if a statute provides for a manner to do something, it can be done only in that manner or not done at all. Reliance has been placed upon ***Mackinnon Mackenzie & Co. Ltd. v. Mackinnon Employees Union*** (2015) 4 SCC 544.

8. Sh. Zoheb Hossain, learned Special counsel for E.D. has submitted that the delay if any, has been caused only on account of delay on the part of the applicants and merely on account of delay in the hearing on the part of the respondents and the respondents cannot be allowed to take benefit of their own wrong having been committed.
9. I have considered the submissions.
10. It is a matter of the record that the present CRL. L.P. 184/2018 is pending since 2018. The CRL. L.P. has been filed by the E.D. against the impugned order dated 21.12.2017 passed by the learned Special Judge whereby the judgment of acquittal was recorded. This Court is hearing on a day-to-day basis CRL.L.P. 185/2018 and CRL.L.P. 257/2018. The CRL L.P 184/2018 of the Directorate of Enforcement shall only be taken up after the CRL.L.P. 185/2018 and CRL.L.P. 257/2018 of CBI are disposed of.
11. The properties mentioned above of respondents No.16 and 17 are in the form of land and buildings. It has been submitted that even maintenance charges, the energy bill, and property tax have also not been paid. The properties seized must also be deteriorating as being lying unused. The applicant in this case have offered to substitute thus attached properties as referred above with the bank guarantee of an



equivalent amount. It is not the case of the ED that the properties attached were proceeds of crime. The properties attached are the properties of equivalent value of the proceeds of crime. In I.A. Nos. 1/2021 and 2/2021 in IA No. 2/2019 in CSMA No. 15/2019 titled as ***Enforcement Directorate v. Y.S. Bharathi Reddy***, passed by the High Court for the State of Telangana at Hyderabad on an application being moved for release of the properties of equivalent valued allowed the same. The SLP (CRL) No. 2285/2023 titled as ***Enforcement Directorate v. Y.S. Bharathi Reddy*** filed against the same was dismissed vide order dated 14.07.2023.

12. It is to be noted that there is a difference between “proceeds of crime” and “amount equivalent to proceeds of crime”. In case of attachment of proceeds of crime, the Court may not agree to the request for substitution of the attached property, but in case of attachment being on account of equivalent value of proceeds of crime, the Court may allow substitution of such attached property.
13. Thus, I consider that it would be in the interest of justice if the properties mentioned above of Respondent No.16 and 17 are released on furnishing an FDR in the name of Applicant Company by the Respondent No.16 and 17. The applicant shall furnish the FDR in the name of the Company of the amount equivalent to the property to be released and deposit the same with the Additional Director, Enforcement Directorate, HIU with an undertaking that on such FDR there shall have a lien of the Additional Director, Enforcement Directorate, HIU and in case of ED Succeeds in appeal, the Additional Director, Enforcement Directorate, HIU shall be at liberty



to encash the same. The company shall execute an undertaking that they shall not take any loan or create any mortgage on the said FDRs.

14. The FDRs shall be renewed time to time in accordance with the law.

No expression made herein shall tantamount to be an expression on the merits of the case.

15. In view of the above directions, the present application stands disposed of.

CRL.L.P. 184/2018

16. List on 10.01.2024.

DINESH KUMAR SHARMA, J

SEPTEMBER 20, 2023

Pallavi