

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 12.10.2022
Pronounced on: 18.10.2022

WP(C)No.2269/2022

Syed Akeel Shah ...Petitioner(s)

Through:- Mr. Salih Pirzada, Advocate

V/s

Directorate of Enforcement and another ...Respondent(s)

Through:- Mr. T.M.Shamsi, DSGI

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1. In this petition the petitioner has called in question the eviction notice dated 23rd September, 2022 [‘the impugned notice’] issued by the Directorate of Enforcement, Sub Zonal Office, Jammu purportedly under Section 8(4) of the Prevention of Money Laundering Act, 2002[‘the Act of 2002’]. The petitioner also prays for a direction to the respondents not to interfere with the peaceful enjoyment of the property subject matter of the impugned eviction notice.

2. The impugned notice is assailed on the ground that the order of attachment of the subject property confirmed by the Adjudicating Authority under Section 8(3) of the Act of 2002 is appealable before the Appellate Tribunal within a period of forty five (45) days from the date on which a copy of the impugned order of attachment is received by the

person aggrieved. This is so provided under Section 26 of the Act of 2002. The impugned eviction notice provides only ten days time to the petitioner to vacate the subject property, and in case the impugned eviction notice is given effect to before the petitioner is in a position to avail the remedy of appeal, the appeal under Section 26 of the Act of 2002, even if preferred within limitation, would be rendered otiose.

3. Mr. Salih Pirzada, learned counsel appearing for the petitioner, therefore, argues that with a view to enabling the petitioner to avail the remedy of appeal within the prescribed period of forty five (45) days, the eviction proceedings cannot be given effect to. In support of his submission Mr. Pirzada places strong reliance on the following judgments:-

- i) **Arun Kumar Saha v. Union of India** [WP(C) No.1207/2020 decided on 05.03.2020] passed by the Bombay High Court;
- ii) **B. Kamalam v. Joint Director, Directorate of Enforcement and another** [WP No.27451/2014 decided on 15.10.2014] passed by Madras High Court.

4. *Per contra*, Mr. T.M.Shamsi, learned Deputy Solicitor General of India, appearing for the respondents submits that Section 8(4) of the Act of 2002 clearly provides that owner/occupier of the attached property can be evicted forthwith after the order of attachment is confirmed by the Adjudicating Authority under Section 8(3) of the Act of 2002. Rule 5(2) of the Prevention of Money-laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules, 2013 [

‘the Rules of 2013’] provides ten days time to the owner/occupier of the attached property to vacate it and, therefore, it would not be correct to say that eviction proceedings can be initiated and the possession of the attached property can only be taken ten days after the expiry of the period of limitation provided for filing appeal against the order of confirmation of attachment passed by the Adjudicating Authority. He, therefore, argues that interpreting the provisions in the manner suggested by the learned counsel for the petitioner would be tantamount to rewriting the provisions of Section 8 of the Act and the Rules of 2013 framed thereunder. It is, thus, submitted by Mr. Shamsi that in the absence of any challenge to the vires of the provisions of the Act of 2002 and the Rules framed thereunder, the plea of the learned counsel for the petitioner that for fifty five (55) days i.e. 45 days prescribed for filing appeal under Section 26 and ten (10) days provided under Rule 5(2) of the Rules of 2013, no eviction proceedings can be initiated in terms of Section 8(4) of the Act of 2002 nor possession of the attached property can be taken over, cannot be accepted.

5. Having heard learned counsel for the parties and perused the material on record, a short question that arises for consideration can be stated as under:-

“Whether the Director or any other officer authorized by him in this behalf is entitled to take possession of the property attached under Section 5 or frozen under Sub Section 1-A of Section 17 after serving ten days notice under Rule 5(2) of the Rules of 2013 or should wait for ten days after the

expiry of 45 days period prescribed for filing appeal before the Appellate Tribunal against the order of Adjudicating Authority confirming the attachment of the property made under Sub Section 1 of Section 5 or retention of property or record seized or frozen under Section 17 or 18?

6. Section 5, which deals with attachment of the property involved in money laundering, reads thus:-

“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 him 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;

(b) such person has been charged of having committed a scheduled offence; and

(c) 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 exceeding⁹ [one hundred and fifty days] from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 (43 of 1961) and the Director or the other officer so authorised by him, as the case may be, shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule:

¹⁰ [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 the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be:

Provided further that, notwithstanding anything contained in clause (b), 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.]

(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 (2) 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.”

7. From a reading of Section 5, it clearly transpires that the Director Enforcement or any other officer not below the rank of Deputy Director authorized by him may provisionally attach properties acquired by the proceeds of crime for a period not exceeding 180 days from the date of

order provided such authority or officer has reasons to believe that any person is in possession of any proceeds of crime and 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.

8. In terms of Section 8 of the Act of 2002 and after following the procedure prescribed therein, Adjudicating Authority may confirm the attachment of the property made under Sub Section (1) of Section 5 of the Act of 2002 or retention of property or record seized or frozen under Section 17 or 18 of the Act of 2002. Once the provisional attachment made under Section 5(1) is confirmed by the Adjudicating Authority, the authorized officer is entitled to **forthwith** take possession of the attached property in the manner prescribed under the Rules of 2013.

9. Before we proceed, it would be appropriate to set out section 8 of the Act of 2002 and Rule 5(2) of the Rules of 2013 herein below:-

Section 8 of the Act of 2002 reads as under:-

“8. Adjudication.—(1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such

properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(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 sub-section (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 sub-section (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.

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.

(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.

(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered

the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering:

Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.”

[Underlined by me]

Rule 5(2) of the Rules of 2013 reads thus:-

“5(2) Where the immovable property confirmed by the Adjudicating Authority is in the form of a land building, house, flat etc. and is occupied by the owner, the authorized officer shall issue a notice of eviction of ten days so as to prevent the person from enjoying such property and after issuing of such notice if the premises is not vacated within the stipulated time, such occupant shall be evicted and the possession shall be taken by seeking the assistance of the local Authorities in terms of Section 54 of the Act;

10. From a conjoint reading of Section 8 of the Act of 2002 and Rule 5(2) of the Rules of 2013, it clearly comes out that in terms of Section 8(4) of the Act of 2002, authorized officer is empowered to forthwith take possession of the property attached under Section 5 of the Act of 2002 but before doing so, he is enjoined by Rule 5(2) of the Rules of 2013 to give ten days notice to the owner/occupier of the attached property to vacate it. It is, thus, beyond any pale of doubt that the moment the provisional order of attachment of the property made under Section 5(1) is confirmed by the Adjudicating Authority after following the prescribed procedure under Section 8 of the Act of 2002, authorized officer is competent to take over the possession of the attached property. It is only in terms of Rules 5(2) of the Rules of 2013, a provision is made for serving ten days notice to the owner/occupier of the attached property to vacate it, failing which the

eviction would be effected with the assistance of law enforcement authorities.

11. While the legal position with regard to the powers of the authorized officer to take over the attached properties after confirmation of the provisional attachment is clear and unambiguous and the same can be exercised after serving ten days notice to the owner/occupier of the attached properties under Rule 5(2) of the Rules of 2013, it is equally true and there could be no second opinion that the order of Adjudicating Authority confirming the provisional attachment under Section 8(3) of the Act of 2002 is appealable before the Appellate Tribunal and the party aggrieved is given 45 days to file such appeal. It is, however, not necessary that the person aggrieved must challenge the order of Adjudicating Authority passed under Section 8(3) of the Act of 2002 before the Appellate Tribunal on the last date of limitation. If he apprehends that notice of eviction in terms of Section 8(4) is likely to be issued under Rule 5(2) of the Rules of 2013, he is entitled to take immediate steps to file statutory appeal against the order of Adjudicating Authority confirming the provisional attachment under Sub Section 3 of Section 8 of the Act of 2002. Needless to say that taking over possession of the attached properties by the authorized officer under Section 8(4) depends upon the sustainability of the order of Adjudicating Authority passed under Sub Section 3 of Section 8 of the Act of 2002. If the Appellate Tribunal hearing appeal against the order of Adjudicating Authority passed under Section 8(3) of the Act of 2002 stays the operation of the impugned order, as a

necessary consequence thereof, eviction proceedings initiated in terms of Section 8(4) of the Act shall also come to a grinding halt.

12. The scope of Sub Section 4 of Section 8 of the Act of 2002 has been discussed by the Supreme Court in the case of **Vijay Madanlal Choudhary and others v. Union of India and others, 2002 SCC OnLine SC 929** and it is now trite law that Sub Section 4 of Section 8 providing for taking possession of the attached property ought to be invoked only in exceptional situation keeping in view the special circumstances of the case. Mere confirmation of the provisional attachment order by the Adjudicating Authority is not enough for the authorized officer to invoke Section 8(4) and take over the possession of the attached property irrespective of the facts and circumstances of the case. The Supreme Court while repelling challenge to the *vires* of Sub Section (4) of Section 8 of the Act of 2002 in paragraph Nos. 304 and 305 held thus:-

“304. The other grievance of the petitioners is in reference to the stipulation in sub-section (4) of Section 8 providing for taking possession of the property. This provision ought to be invoked only in exceptional situation keeping in mind the peculiar facts of the case. In that, merely because the provisional attachment order passed under Section 5(1) is confirmed, it does not follow that the property stands confiscated; and until an order of confiscation is formally passed, there is no reason to hasten the process of taking possession of such property. The principle set out in Section 5(4) of the 2002 Act needs to be extended even after confirmation of provisional attachment order until a formal confiscation order is passed. Section 5(4) clearly states that nothing in Section 5 including the order of provisional attachment shall prevent the person interested in the enjoyment of immovable property attached under sub-section (1) from such enjoyment. The need to take possession of the attached property would arise only for giving effect to the order of confiscation. This is also because sub-section (6) of Section 8 postulates that where on conclusion of a trial under the 2002 Act which is obviously in respect of offence of money-laundering, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to

the person entitled to receive it. Once the possession of the property is taken in terms of subsection (4) and the finding in favour of the person is rendered by the Special Court thereafter and during the interregnum if the property changes hands and title vest in some third party, it would result in civil consequences even to third party. That is certainly avoidable unless it is absolutely necessary in the peculiar facts of a particular case so as to invoke the option available under subsection (4) of Section 8.

305. Indisputably, statutory Rules have been framed by the Central Government in exercise of powers under Section 73 of the 2002 Act regarding the manner of taking possession of attached or frozen properties confirmed by the Adjudicating Authority in 2013, and also regarding restoration of confiscated property in 2019. Suffice it to observe that direction under Section 8(4) for taking possession of the property in question before a formal order of confiscation is passed merely on the basis of confirmation of provisional attachment order, should be an exception and not a rule. That issue will have to be considered on case-to-case basis. Upon such harmonious construction of the relevant provisions, it is not possible to countenance challenge to the validity of sub-section (4) of Section 8 of the 2002 Act.”

13. From the judgment of **Vijay Madanlal Choudhary** (supra), it is abundantly clear that Section 8(4) shall be resorted to by the authorized officer only by way of exception and not as a rule. The vires of Section 8 of the Act of 2002 have been upheld. In the face of clear exposition of law by the Supreme Court in the case of **Vijay Madanlal Choudhary** (supra), there is hardly any scope for the argument that Section 8(4) cannot be resorted to even in appropriate case without first waiting for the expiry of limitation provided for filing appeal under Section 26 of the Act of 2002. The contrary judgment relied upon by the learned counsel for the petition rendered by Madras High Court in the case of **B. Kamalam** (supra) does not take into consideration the relevant provisions of the Act of 2002 discussed herein above. As a matter of fact, **B. Kamalam** has been decided without there being a proper debate on the issue. Therefore, this Court is not in a position to borrow the view taken by Madras High Court and, therefore,

respectfully beg to differ. What is stated in B.Kamalam in paragraph-4 of the judgment reads thus:-

“4. The petitioner has even taken a demand draft on 10.10.2014 for a sum of Rs.10,000/- in favour of the Registrar, Appellate Tribunal for moving an appeal. The time limit for filing an appeal has not so far expired. What is provided by Section 26(3) is a statutory right of appeal. Therefore, such a right cannot be defeated by dispossessing the petitioner even before the expiry of the period of limitation.”

14. The observations of the Madras High Court sans any reasoning and, therefore, cannot be treated as binding law to be followed in identical cases in future. Besides, the judgment aforesaid is rendered prior to the judgment of the Supreme Court in Vijay Madanlal Choudhary (supra). The judgment of Bombay High Court in the case of Arun Kumar Saha and a judgment of Delhi High Court in the case of **Bliss Abode Private Limited v. Zonal Office, Directorate of Enforcement and others** [WP(C) No.301 of 2021 decided on 11.01.2021] do not lay down any proposition of law. Both the cases have been decided on their peculiar facts and the High Courts in exercise of their discretionary jurisdiction under Article 226 of the Constitution of India have extended the time for enforcing the order of eviction so as to give reasonable opportunity to the aggrieved petitioners to avail the remedy of appeal under Section 26(3) of the Act of 2002. Both the cases have been decided in the context of their peculiar facts and circumstances.

15. While I respectfully differ with the view taken by the Madras High Court in **B.Kamalam** (supra), I am firmly of the view that the duty of the Court is to interpret and understand the law as it is and must forbear from adding to or subtracting from the plain language of the statute in the garb of

an interpretative process when the language of the statute is clear, plain and unambiguous and reasonably susceptible to only one meaning than the Court must give to the statute that meaning alone irrespective of the consequences. The Court can enter in the interpretative process only when the language of the Statute is ambiguous and admits of more than one meaning or where plain language used in the Statute throws up absurd results. It is, thus, imperative that while interpreting a Statute, efforts should be made to give effect to each and every word used by the legislature. The Courts must presume that legislature has used each word in the Statute for a purpose. It hardly needs to be emphasized that we are a constitutional democracy and the three organs of the State i.e. Legislature, Executive and Judiciary work independently in their respective spheres earmarked by the Constitution. While it is the duty of the legislature to enact laws, the executive is enjoined to enforce these laws. Judiciary comes in where interpretation and understanding of the laws enacted by the legislature is called for. The doctrine of "separation of power" put an obligation on each one of the three organs to work within their defined sphere and try not to encroach upon each other's field. Judiciary ought not to venture into in the interpretative process, which has the effect of legislating on a subject matter. Need of the society for a particular law and the provision which such law should contain is best left to the wisdom of the legislature. In any case, legislature of the Country represents the will of the people and which will of the people is reflected in the legislations, those are made by the legislature for the welfare of the people and ensuring orderly society.

16. In the instant case, I do not find any absurdity or incongruity between Section 8 and Section 26 of the Act of 2002. Section 8(4) of the Act of 2002 clearly provides that the authorized officer can forthwith take over possession of the attached property once the order of provisional attachment is confirmed by the Adjudicating Authority. The expression ‘forthwith’ used in Section 8(4) of the Act of 2002 denotes clear intention of the legislature not to wait for the period of limitation prescribed for filing of appeal under Section 26 of the Act of 2002. Rule 5(2) of the Rules of 2013, however, relaxes the mandate of word ‘forthwith’ by providing for issuance of ten days notice to the owner/occupier of the attached property. The person aggrieved by the order of confirmation of provisional attachment made by the Adjudicating Authority is well within his/her right to file appeal under Section 26 of the Act of 2002 within this period of ten days and may persuade the Appellate Authority to intervene in the matter. Needless to say that in case Appellate Tribunal stays the order of confirmation of provisional attachment made by the Adjudicating Authority under Section 8(3) of the Act of 2002, the order or notice of eviction, if any, issued by the authorized officer under Rule 5(2) shall become ineffective. Let us not forget that a decree of civil court becomes effective and executable immediately and forthwith though code of civil procedure provides ninety days to file appeal against such decree. This is true of many other legislations. One may not come across any legislation where the effect and operation of decree, judgment or order is deferred till the expiry of period of limitation prescribed for filing appeal or revision against such decree, order or judgment, as the case may be. One would

rarely find a provision of automatic stay of decree, order or judgment appealable or revisable before higher forum or authority till the aggrieved person avails the remedy before such forum.

17. It is true that in some circumstances or in a given case, ten days time available to the aggrieved person to approach the Appellate Tribunal by way of an appeal may seem to be a bit short of reasonable time, yet this Court cannot in the disguise of interpretative process substitute ‘ten days’ time given under Rules 5(2) of the Rules of 2013 and the expression ‘forthwith’ used in Section 8(4) of the Act of 2002 by ‘forty five (45) days’ or (fifty five (55) days’, as is contended by the learned counsel for the petitioner. Notwithstanding the fact that in some cases ten days time prescribed for taking possession of the attached property may result into harsh results but this Court cannot help, more particularly, when the Supreme Court has already upheld the *vires* of Section 8(4) of the Act of 2002 and has not found fault with any of the provisions of the Act of 2002 and the Rules framed thereunder.

18. By accepting the plea of the petitioner on the basis of the observations made by Madras High Court in *B. Kamalam (supra)*, this Court would be rewriting the Statute by substituting ‘ten days’ by ‘forty five days’ plus ten days for taking over the possession of the attached property, which, I am afraid, is not the province of the Constitutional Court. Entering into such process of statutory interpretation, when language of the Statute is clear, unambiguous and admits of only one meaning, would be

tantamount to legislation and encroachment upon the sphere, which the constitution as earmarked for the legislature.

19. In the view, which I have taken herein, I am supported by various judgments of the Supreme Court. However, suffice it to refer to couple of judgments, which are relevant for the present discussion. The Supreme Court in paragraph No.8 of the judgment in the case of **Pritipal Singh Bedi v. Union of India, (1982) 3 SCC 140** has held as under:-

“8. The dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well recognised canons of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision the Court should adopt literal construction if it does not lead to an absurdity. The first question to be posed is whether there is any ambiguity in the language used in Rule 40. If there is none, it would mean the language used, speaks the mind of Parliament and there is no need to look somewhere leers discover the intention or meaning. If the literal construction leads to an absurdity, external aids to construction can be resorted to. To ascertain the literal meaning it is equally necessary first to ascertain the juxtaposition in which the rule is placed, the purpose for which it is enacted and the object which it is required to subserve and the authority by which the rule is framed. This necessitates examination of the broad features of the Act.

20. In **Nathi Devi v. Radha Devi Gupta, (2005) 2 SCC 271**, Hon'ble the Supreme Court in paragraph Nos. 13, 14, 15, 16, 17 and 18 held thus:-

“13. The interpretative function of the Court is to discover the true legislative intent. It is trite that in interpreting a statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When a language is plain and unambiguous and

admits of only one meaning no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the Court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional.

14. It is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the Legislature. The Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors. (See [State of U.P. and others vs. Vijay Anand Maharaj](#) : AIR 1963 SC 946 ; [Rananjaya Singh vs. Bajinath Singh and others](#) : AIR 1954 SC 749 ; [Kanai Lal Sur vs. Paramnidhi Sadhukhan](#) : AIR 1957 SC 907; [Nyadar Singh vs. Union of India and others](#) : AIR 1988 SC 1979 ; [J.K. Cotton Spinning and Weaving Mills Co. Ltd. vs. State of U.P.](#) : AIR 1961 S.C. 1170 and [Ghanshyam Das vs. Regional Assistant Commissioner, Sales Tax](#) : AIR 1964 S.C. 766).

15. It is well settled that literal interpretation should be given to a statute if the same does not lead to an absurdity.

16. [In Nasiruddin and others vs. Sita Ram Agarwal](#) : (2003) 2 SCC 577 this Court stated the law in the following terms :-

"37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract words to a

statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions should be mandatory in character."

17. Even if there exists some ambiguity in the language or the same is capable of two interpretations, it is trite the interpretation which serves the object and purport of the Act must be given effect to. In such a case the doctrine of purposive construction should be adopted. (See : : [Swedish Match AB and another vs. Securities & Exchange Board, India and another](#) : 2004 (7) Scale 158.)

18. In High Court of [Gujarat and another vs. Gujarat Kishan Mazdoor Panchayat and others](#) : (2003) 4 SCC 712 this Court held :-

"35. The Court while interpreting the provision of a statute, although, is not entitled to rewrite the statute itself, is not debarred from "ironing out the creases". The court should always make an attempt to uphold the rules and interpret the same in such a manner which would make it workable.

36. It is also a well-settled principle of law that an attempt should be made to give effect to each and every word employed in a statute and such interpretation which would render a particular provision redundant or otiose should be avoided."

21. In **Satheedevi Vs. Prasanna and another (2010) 5 SCC 622**, the Apex Court in paragraph Nos. 12 and 13 of the judgment held thus:-

"12. Before proceeding further, we may notice two well recognized rules of interpretation of statutes. The first and primary rule of

construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise Kanai Lal Sur v. Paramnidhi Sadhukhan: 1958 SCR 360.

13. The other important rule of interpretation is that the Court cannot rewrite, recast or reframe the legislation because it has no power to do so. The Court cannot add words to a statute or read words which are not therein it. Even if there is a defect or an omission in the statute, the Court cannot correct the defect or supply the omission. Union of India v. Deoki Nandan Aggarwal: 1992 Supp (1) SCC 323, Shyam Kishori Devi v. Patna Municipal Corporation: IR 1966SC 1678.”

[underlined to lay emphasis]

22. From the above, it is, thus, trite that principle of statutory interpretation that legislature is presumed to be careful in choice of language is well founded. First and primary Rule of construction, which is also known as literal rule of interpretation, is that the intention of the legislature must be found in the words used by the legislature itself. If the words used in the Statute are plain, clear, unambiguous and capable of only one construction then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction would make the Statute more consistent with its object and policy. The words used in the Statute must be interpreted in their plain grammatical meaning and it is only when there is two possible meaning of such construction then question

of giving effect to the legislative intent would legitimately arise. Let us not forget that the Courts having their delineated functions under the Constitution cannot add words to a Statute or read words which are not there in it. Even if there is a defect or omission in the Statute the Court cannot correct the defect or supply the omission. It is only in certain set of circumstances when the language of the Statute is not clear, ambiguous and throws up absurd results, the resort can be had to the principles of statutory interpretation to construe such statute. The domains of “reading into” and “reading down” the Statute may come into play.

23. For the foregoing reasons, I do not find that this Court is required to resort to the principles of statutory interpretation to construe and understand the otherwise plain, clear and unambiguous provisions of Section 8 of the Act of 2002 and the Rule 5(2) of the Rules of 2013 whatever be the difficulty and whatever be the consequences, the provisions of Section 8(4) of the Act of 2013 read with Rule 5(2) of the Rules of 2013 are required to be given effect to so long as these provisions exist on the Statute.

24. No other point was urged.

25. In the premise, this petition is found to be devoid of any merit and the same is accordingly, dismissed,

(Sanjeev Kumar)
Judge

SRINAGAR:
18.10.2022
Vinod.

Whether the order is speaking : Yes