

AMINA AHMED DOSSA AND ORS.

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v.

STATE OF MAHARASHTRA

JANUARY 15, 2001

[K.T. THOMAS AND R.P. SETHI, JJ.]

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Terrorists and Disruptive Activities (Prevention) Act, 1987 Sections 8 and 19—Claim of rights and interests by third party in properties of proclaimed person sought to be attached under law—Order of Designated Court rejecting the claims—Interlocutory order or final order—Held, it is an interlocutory order for third party claimants.

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Words and Phrases:

Interlocutory Order—Meaning of—In the context of Code of Criminal Procedure, 1973—Sections 82 to 84.

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Appellants claimed rights and interests before Designated Court in properties of a proclaimed person under Section 84 Cr.P.C., which were sought to be attached under Section 8 of Terrorists and Disruptive Activities (Prevention) Act, 1987. The Designated Court rejected the claims of the appellants. Hence the appeal.

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Respondent-State contended that the order of the Designated Court is only an interlocutory order and therefore the remedy of appeal is not available to the appellants.

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The appellants, on the other hand, contended that the order of the Designated Court is a final order and therefore an appeal lies under the Act.

Dismissing the appeal, the Court

HELD: 1.1. A combined reading of Sections 8 and 19 of the Terrorists and Disruptive Activities (Prevention) Act, 1987 and Section 84(4) of the Code makes it abundantly clear that the person not being a proclaimed offender against whom an order is passed under Section 8 of the Act read with Section 84 of the Code has remedy of filing a suit which reflects the intention of the Legislature to treat the order of the Designated Court, in

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A so far as it affects the third party claimant, to be an interlocutory order. Such an order would, however, be deemed to be a final order so far as the prosecution, the State and the proclaimed offender are concerned particularly in view of the provisions of Section 96 of the Code. Interlocutory order in law means, not that which decides the cause but which only settles intervening matter relating to the cause. Such an order is made pending the cause and before

B the final hearing on merits. It is made to secure some end and purpose necessary and essential to the progress of the case and generally collateral to the issues to be settled by the court in the final judgment. Orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports, attaching the properties (with the exception of Section 86) and such

C other steps in the aid of pending proceedings shall amount to be interlocutory orders against which no appeal can be preferred with the aid of Section 19 of the Act. As the order attaching the property in so far as it relates to the claimant third party, is subject to the decision of the civil court, it cannot be held to be a final order. [349-F-G-H; 350-A-B]

D 1.2. The order impugned herein has not, in any manner, finally adjudicated the rights of the appellants entitling them to file the appeal on the ground of their claim of the impugned order being final. Having regard to the scheme of the Act, read with relevant provisions of the Code, the expression “interlocutory order” appearing in Section 19 of the Act would

E have to be understood to be not deciding the rights of the claimants finally and thus are interlocutory orders. Giving any other interpretation would defeat the dominant purpose of the Act and result in not only multiplicity of litigation but ultimately conflicting verdicts. If the impugned order is held to be not an interlocutory order and subject to appeal, the consequence would be that despite dismissal of the appeal by this Court, the aggrieved claimant

F would be entitled to resort to the remedy of filing the suit with the aid and under the cover of the mandate of sub-section (4) of Section 84 of the Code. In that event a fresh litigation would commence, not only unnecessarily burdening the parties and wasting the public time of the courts but also creating embarrassing positions for the civil courts to adjudicate afresh the claims of the parties as finally determined by this Court in proceedings

G under the Act. Such could not be the intention of the Legislature. Upon a harmonious interpretation of the various provisions of the Act and the Code, there is no escape from the position that the order passed by the Designated Court under Section 84 of the Code in so far as it relates to the third party rights of the claimant is only an interlocutory order and not final order for

H which an appeal could be filed under Section 19 of the Act. But if such

aggrieved claimant does not choose to challenge the order by way of a suit, such order would become final so far as the State is concerned. A suit can be filed only at the instance of the person whose claims or objections are disallowed. Hence, when the claims or objections are upheld, the aggrieved party can avail himself of the remedy under Section 19 of the Act. A

[350-C-D-E-F-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 757, 760 and 763 of 2000. B

From the Judgment and Order dated 05.11.1999 passed by the Hon'ble Designated Judge, Mumbai at Mumbai on Notice No. 283/94 in BBC Case No. 1/93. C

P.K. Dhakepalkar, S.K. Srivastava, Pramit Saxena, Yash Pal Dhingra, T.C. Sharma, P. Parmeswaran and Mukul Rohatgi, ASG for the appearing parties.

The Judgment of the Court was delivered by D

SETHI, J. Appearing for the respondent Mr. Mukul Rohtagi, Additional Solicitor General has raised a preliminary objection regarding the maintainability of the appeals in terms of Section 18 of the Terrorists and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as "the Act") in this Court on the ground that as the order impugned is not a judgment, sentence or final order passed by the Designated Court, the remedy of appeal is not available to the appellants. In support of his contention he has referred to the provisions of Section 8 of the Act read with Sections 82 to 84 of the Code of Criminal Procedure (hereinafter referred to as "the Code"). E

In proceedings for attachment of properties under Section 8 of the Act, the appellants herein along with some other persons preferred claims, claiming rights and interests in the properties sought to be attached on the prayer of the prosecution. In a lengthy and detailed judgment, spread over 559 pages, the Designated Court rejected their claims and passed orders against them in terms of Section 8 of the Act read with Section 84 of the Code. F G

It is conceded before us that the impugned order is neither a judgment nor a sentence. The controversy is with respect to the nature of the order impugned as the respondent-State submits that the said order passed under Section 8 of the Act read with Section 84 of the Code is an interlocutory order whereas the appellants submit that the order is a final order so far as parties H

A in the appeals are concerned.

Section 8 of the Act provides:

B *"Forfeiture of property of certain persons - (1)* Where a person has been convicted of any offence punishable under this Act or any rule made thereunder, the Designated Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the Government free from all encumbrances.

C (2) Where any person is accused of any offence under this Act or any rule made thereunder, it shall be open to the Designated Court trying him to pass an order that all or any properties, movable or immovable or both belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the properties so attached shall stand forfeited to the Government free from all encumbrances.

D (3)(a) If upon a report in writing made by a police officer or an officer referred to in sub-section (1) of Section 7, any Designated Court has reason to believe that any person, who has committed an offence punishable under this Act or any rule made thereunder, has absconded or is concealing himself so that he may not be apprehended, such court may, notwithstanding anything contained in Section 82 of the Code, publish a written proclamation requiring him to appear at a specified place and at a specified time not less than fifteen days but not more than thirty days from the date of publication of such proclamation.

E (b) The Designated Court issuing a proclamation under clause (a) may, at any time, order the attachment of any property, movable or immovable or both, belonging to the proclaimed person, and thereupon the provisions of sections 83 to 85 of the Code shall apply to such attachment as if such attachment were made under that Code.

F (c) If, within six months from the date of the attachment, any person, whose property is, or has been, at the disposal of the Government under sub-section (2) of Section 85 of the Code, appears voluntarily or is apprehended and brought under the Designated Court by whose order the property was attached, or the Court to which such Court is

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subordinate, and proves to the satisfaction of such court that he did not abscond or conceal himself for the purpose of avoiding apprehension and that he had not received such notice of the proclamation as to enable him to attend within the time specified therein, such property or, if the same has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying therefrom all costs incurred in consequence of the attachment, be delivered to him.

(4) Where any shares in a company stand forfeited to the Government under this Section, then, the company shall notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the articles of association the company, forthwith register the Government as the transferee of such shares."

Section 82 of the Code authorises the Court to declare a person absconding on existence of the circumstances specified therein. The Court issuing a proclamation under Section 82 may, for reasons to be recorded in writing, at any time after the issue of proclamation, order the attachment of any property, movable or immovable or both, belonging to the proclaimed person in exercise of Section 83 of the Code. Any person feeling that he has a claim with respect to the properties attached under Section 83 of the Code can prefer claims and objections in terms of Section 84 of the Code within the time specified and if the claim or objection is disallowed in whole or in part, such aggrieved person may, within a period of one year from the date of such order, institute a suit to establish the rights which he claims in respect of the property in dispute. Subject to the result of such suit, if any, the order shall be conclusive.

Right of appeal under Section 19 is conferred against such orders which are not interlocutory orders. A combined reading of Sections 8 and 19 of the Act and Section 84(4) of the Code makes it abundantly clear that the person not being a proclaimed offender against whom an order is passed under Section 8 of the Act read with Section 84 of the Code has the remedy of filing a suit which reflects the intention of the Legislature to treat the order of the Designated Court, in so far as it affects the third party claimant, to be an interlocutory order. Such an order would, however, be deemed to be a final order so far as the prosecution, the state and the proclaimed offender are concerned particularly in view of the provisions of Section 86 of the Code. Interlocutory order in law means, not that which decides the cause but which only settles intervening matter relating to the cause. Such an order is made

A pending the cause and before the final hearing on the merits. It is made to secure some end and purpose necessary and essential to the progress of the case and generally collateral to the issues to be settled by the court in the final judgment. Orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports, attaching the properties (with the exception of Section 86) and such other steps in the aid of pending proceedings shall amount to be interlocutory orders against which no appeal can be preferred with the aid of Section 19 of the Act. As the order attaching the property in so far as relates to the claimant third party, is subject to the decision of the civil court, it cannot be held to be a final order.

C The order impugned herein has not, in any manner, finally adjudicated the rights of the appellants entitling them to file the appeal on the ground of their claim of the impugned order being final. Having regard to the scheme of the Act, read with relevant provisions of the Code, the expression "interlocutory order" appearing in Section 19 of the Act would have to be understood to be not deciding the rights of the claimants finally and thus are interlocutory orders. Giving any other interpretation would defeat the dominant purpose of the Act and result in not only multiplicity of litigation but ultimately conflicting verdicts. If the impugned order is held to be not an interlocutory order and subject to appeal, the consequence would be that despite dismissal of the appeal by this Court, the aggrieved claimant would be entitled to resort to the remedy of filing the suit with the aid and under the cover of the mandate of Sub-section (4) of Section 84 of the Code. In that event a fresh litigation would commence, not only unnecessarily burdening the parties and wasting the public time of the courts but also creating embarrassing positions for the civil courts to adjudicate afresh the claims of the parties as finally determined by this Court in proceedings under the Act. Such could not be the intention of the Legislature. Upon a harmonious interpretation of the various provisions of the Act and the Code, there is no escape from the position that the order passed by the Designated Court under Section 84 of the Code in so far as it relates to the third party rights of the claimant is only an interlocutory order and not final orders for which an appeal could be filed under Section 19 of the Act. But if such aggrieved claimant does not choose to challenge the order by way of a suit, such order would become final so far as the State is concerned. It may be noted in this context that a suit can be filed only at the instance of the person whose claims or objections are disallowed. Hence, when the claims or objections are upheld the aggrieved party can avail himself of the remedy under Section 19 of the Act.

H It has been stated at the Bar that after the impugned order the claimants

have in fact filed civil suits which are still pending. Filing of the civil suits indicates the proper understanding of the position of law by the appellants. There is no gainsaying that the civil suits filed by the claimants shall be decided on merits and in accordance with the procedure established by law. A

We have noted with concern that the Special Court has unnecessarily spent valuable public time in writing the lengthy judgment for disposing of the claims of the appellants which, we feel, could have been decided by a brief but speaking orders. Brevity of orders on application of mind and not the length of the order is the criterion for adjudicating the rights of the parties which are otherwise subject to the decision of a civil court. It would be appreciated that the Designated Courts which are otherwise over-burdened shall refrain themselves from writing such unnecessary lengthy judgments and pass appropriate brief orders, surely dealing with all points, while adjudicating the claims of all the parties. At any rate we do not appreciate such lengthy orders for deciding interlocutory matters. B C

Agreeing with the preliminary objection of the Additional Solicitor General, we hold that the present appeals are not maintainable and are accordingly dismissed. D

B.S.

Appeals dismissed.