16.04.2021
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(Via Video Conference)

WPA 11123 of 2020

Deific Abode LLP
Vs.
Union of India & Ors.

With
WPA 11127 of 2020

Oswell Conclave Pvt. Ltd.
Vs.
Union of India & Ors.

With
WPA 11132 of 2020

Oval Conclave Pvt. Ltd.
Vs.
Union of India & Ors.

With
WPA 11135 of 2020

Trinity Abode LLP
Vs.
Union of India & Ors.

With
WPA 11136 of 2020

Sunflower Synergies Pvt. Ltd.
Vs.
State of West Bengal & Ors.

With
WPA 7880 of 2021

Himalya Vyaapar Pvt. Ltd. & Anr.
Vs.
Union of India & Ors.

With
WPA 8532 of 2021

Shree Prakash Tracon Pvt. Ltd. & Anr.
Vs.
Union of India & Anr.

With

WPA 8906 of 2021

Himalya Vyapaar Pvt. Ltd. & Anr.
Vs.
Union of India & Ors.

Mr. J.P. Khaitan
Mr. Ratnanko Banerjee
Mrs. Manju Agarwal
Mr. Bajrang Manot
Mr. Sourab Seth
Mr. Kanishk Kejriwal
Mr. S. Chakraborty
Ms. Sweta Mohanty
....for the petitioners.

Mr. Y.J. Dastoor
Mr. Smarajit Roy Chowdhury
Mr. Soumen Bhattacharjee
...for the Union of India.

Mr. Dhiraj Kumar Trivedi
...for the Respondent.

1. For the purpose of stating the facts, I shall specifically refer to W.P.A No. 7880 of 2021. Needless to mention, all the petitioners are similarly placed, and the decision herein shall cover all the writ petitions. By taking the recourse of filing these writ applications under Article 226 of the Constitution of India, the writ petitioners have assailed a set of show cause notices issued under sub-section (3) of Section 24 of the Prohibition of *Benami* Property Transactions Act, 1988 (hereinafter referred to as the „1988" Act).

2. Shorn of unnecessary details, the petitioners contend that the impugned show cause notices have been issued under the 1988 Act. The said impugned notices under the 1988 Act, as per the contention of

the petitioners, do not record any reasons as mandated by law.

3. The fundamental point of contention, as advanced by Mr. Khaitan, learned Senior Advocate, appearing on behalf of the petitioners, is the unconscionable and illegal 'retrospective applicability' of the 1988 Act, leading to these proceedings.

4. As per the arguments advanced by Mr. Khaitan, the impugned proceedings could not have been initiated under the said 1988 Act as the amendment Act of 2016 to the said 1988 Act had come into force on November 1, 2016 and the immovable property, which has been designated as a *benami* property under the 1988 Act was purchased much prior to the coming into force of the said amendment Act on November1, 2016.

5. When the matter was last taken up, Mr. Khaitan had conspicuously drawn my attention to the Division Bench judgment of this Court rendered in ***M/s. Ganpati Dealcom Pvt. Ltd v. Union of India*** (WPO No. 687 of 2017) dated December 12, 2019, which **had interpreted the amendment Act of 2016 to the 1988 Act to be prospective in nature**, and hadalso

ruled that in the absence of enabling procedural rules under the 1988 Act when the immovable property was purchased, the respondent authorities could not initiate any proceedings in respect of the same. In other words, what was to be noted was the fact that while the 1988 Act entered the statute books, no procedural rules were framed under Section 8 of the 1988 Act for the declaration of the *benami* property, rendering the 1988 Act effective, merely on paper. As a result, in spite of the amendment Act of 2016 which introduced the definitions of "*benami property"* and *"benami transaction"*, in sub-sections of (8) and (9) of Section (2) of the 1988 Act, such amendment would not be applicable in respect of transactions pertaining to immovable properties, which predated the implementation of the amendment Act of 2016.

6. Mr. Khaitan had also placed his reliance on the judgment rendered by the Bombay High Court in ***Joseph Isharat v. Rozy Nishikant Gaikwad*** reported in **2017 (5) ABR 706** as well as the judgment rendered by the Rajasthan High Court in ***Niharika Jain v. Union of India & Ors.***, reported in **2019 SCC Online Raj 1640** to buttress that both these High Courts had returned similar findings of law as laid down in ***M/s. Ganpati Dealcom Pvt. Ltd (supra)***, in so far as the operation of the amendment Act of 2016 to

the 1988 Act was concerned, that is, such amendment Act of 2016 would apply **prospectively**.

7. However, Mr. Khaitan had fairly brought to my notice that the Division Bench ruling rendered in ***M/s. Ganpati Dealcom Pvt. Ltd (supra)*** had been assailed before the Hon'ble Supreme Court vide a Special Leave Petition bearing SLP (C) No. 2784/2020 wherein the Apex Court had passed the following order dated February 3, 2020:

> *"* ***ORDER***
>
> *Issue notice.*
>
> *Mr. Ankit Anandraj Shah. Learned counsel accepts notice on behalf of respondent.*
>
> ***In the meantime, the operation of the impugned order in so far as it holds the 2016 amendment of the Benami Transactions Act, 1988 was prospective in nature, shall remain stayed.****"*
>
> (Emphasis supplied)

8. I had accordingly requested Mr. Khaitan to place before me pertinent precedents elucidating the legally permissible procedure to be followed by me, when it came to the binding nature of the dictum rendered by the Division Bench in ***M/s. Ganpati Dealcom Pvt. Ltd (supra)*** and the resultant effect of the order of stay dated February 3, 2020, imposed by the Supreme Court on the same, in the SLP (C) No. 2784/2020.

9. Subsequent to my request, Mr. Khaitan placed his reliance on the followingprecedents:

i. ***Pijush Kanti Chowdhury v. State of West Bengal*** reported in ***(2007) 3 CHN 178***,

ii. ***Niranjan Chatterjee v. State of West Bengal*** reported in ***2007 SCC Online Cal 283***,

iii. ***Viswapriya (India) Limited v. Government of Tamil Nadu*** reported in ***(2015) 4 LW 33***, and

iv. ***Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, Madras, (1992) 3 SCC 1***.

10. Dealing with ***Shree Chamundi Mopeds Ltd. (supra),*** first, the Hon‟ble Supreme Court had explained the difference between an order of stay of operation of an impugned order and the quashment of an impugned order, in the following words:

> "10. ..[*W]hile considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed.* ***The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.*** *This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the*

Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. ***The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending****...*"

(Emphasis supplied)

11. Subsequently, a Division Bench of this Court in ***Pijush Kanti Chowdhury (supra)***, while framing the following question of law - simply because in an application for grant of special leave, the Supreme Court has stayed the operation of an order passed by the Division Bench of this Court declaring a statutory provision as *ultra vires* the Constitution of India as an interim measure imposing further conditions in those cases, whether a citizen who is not a party to the previous litigation can be deprived of the benefit of the doctrine of precedent in resisting the action of the State on the ground that it could not invoke the *ultra vires* provision of the Statute against him - noted *inter alia*, the above observation of the Supreme Court in ***Shree Chamundi Mopeds Ltd(supra)*** and finally laid down the law in the following terms:

"Therefore, the effect of the order of stay in a pending appeal before the Apex Court does not amount to „any declaration of law" but is only binding upon the parties to the said proceedings

and at the same time, such interim order does not destroy the binding effect of the judgment of the High Court as a precedent because while granting the interim order, the Apex Court had no occasion to lay down any proposition of law inconsistent with the one declared by the High Court which is impugned."

12. The same Division Bench comprising Bhaskar Bhattacharya and Kishore Kumar Prasad, JJ. which had laid down the law in ***Pijush Kanti Chowdhury (supra)*** reiterated the same view in ***Niranjan Chatterjee (supra)***. This case-law, therefore, does not require further elaboration.

13. The Madras High Court did have an occasion to consider the judgment rendered in ***Pijush Kanti Chowdhury (supra)*** in ***Viswapriya (India) Limited (supra)***. It had also noted the Supreme Court"s observation recorded in ***Shree Chamundi Mopeds Ltd. (supra)*** as well and had in its considered opinion chosen to follow the same, in contradistinction to the judgment of the Delhi High Court (discussed below) which had differed with the law laid down in ***Pijush Kanti Chowdhury (supra).***

14. The Delhi High Court in ***Alka Gupta v. Medical Council of India***, reported in ***(2014) 5 HCC (Del) 386***, had upon considering ***Pijush Kanti Chowdhury (supra)*** ruled the following:

> *"This Court with utmost humility would like to state that it is not in agreement with the view expressed by the Calcutta High Court in Pijush Kanti Chowdhury case, as* ***it is of the opinion that once a stay order has been passed by a superior court, the order of the lower court ceases to operate till the stay order is in effect. In fact, the judgment of the Supreme Court in Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn. itself lays down that stay of an operation of an order means that the order would not be operative.***"
>
> (Emphasis supplied)

15. From the above discussion what becomes abundantly clear is that while the law laid down by the Division Bench of this Court in ***Pijush Kanti Chowdhury (supra)*** has been followed by the Madras High Court in ***Viswapriya (India) Limited (supra)***, the Delhi High Court had differed with the same in ***Alka Gupta (supra)***. Needless to state that while both these High Courts were not bound by the law laid down by the Division Bench ruling of this Court as they were persuasive in nature considering the jurisdictions of both these constitutional courts and the operability of their judgments, the same does not apply to this Court, as the doctrine of precedent *strict sensu,* applies herein.

16. In ***Bijon Mukherjee v. State of West Bengal***, reported in ***(2018) 4 CHN 454***, I had the occasion to examine in detail the doctrine of precedent and

therefore, based on the same, I have no hesitation in stating that I am bound by the decision of the Division Bench rendered in ***Pijush Kanti Chowdhury (supra)*** and subsequently reiterated in ***Niranjan Chatterjee (supra)***. In pursuance of the decision of ***Pijush Kanti Chowdhury (supra)***, notwithstanding the operation of stay of the order of the Division Bench of this Court rendered in ***M/s. Ganpati Dealcom Pvt. Ltd (supra)***, I am bound to follow the same, as per the doctrine of precedent applicable.

17. Based on such understanding of the law, I shall now also proceed to consider the relevance of the decisions rendered in ***Joseph Isharat (supra)*** and ***Niharika Jain (supra)***.

18. The Bombay High Court in ***Joseph Isharat (supra)*** had considered the amendment Act of 2016 to the 1988 Act as **prospective** in its application on the following terms:

> "*7. What is crucial here is, in the first place, whether the change effected by the legislature in the Benami Act is a matter of procedure or is it a matter of substantial rights between the parties. If it is merely a procedural law, then, of course, procedure applicable as on the date of hearing may be relevant. If, on the other hand, it is a matter of substantive rights, then prima facie it will only have a prospective application unless the amended law speaks in a language "which expressly or by clear intention, takes in even pending matters". Short of such*

intendment, the law shall be applied prospectively and not retrospectively.

8. As held by the Supreme Court in the case of R. Rajagopal Reddy v. Padmini Chandrasekharan4, Section 4 of the Benami Act, or for that matter, the Benami Act as a whole, creates substantive rights in favour of benamidars and destroys substantive rights of real owners who are parties to such transaction and for whom new liabilities are created under the Act. Merely because it uses the word "it is declared", the Act is not a piece of declaratory or curative legislation. If one has regard to the substance of the law rather than to its form, it is quite clear, as noted by the Supreme Court in R. Rajagopal Reddy, that the Benami Act affects substantive rights and cannot be regarded as having a retrospective operation. ***The Supreme Court in R. Rajagopal Reddy also held that since the law nullifies the defences available to the real owners in recovering the properties held benami, the law must apply irrespective of the time of the benami transaction and that the expression "shall lie" in Section 4(1) or "shall be allowed" in Section 4(2) are prospective and apply to the present (future stages) as well as future suits, claims and actions only. These observations clearly hold the field even as regards the present amendment to the Benami Act. The amendments introduced by the Legislature affect substantive rights of the parties and must be applied prospectively.***"

(Emphasis supplied)

19. The decision of the Bombay High Court was assailed by way of a Special Leave Petition bearing SLP (C) No. 12328/2017 wherein by an order dated April 28, 2017, such SLP was dismissed at the threshold. Be that as it may, it does not mean that the judgment rendered in ***Joseph Isharat (supra)***, has been

affirmed as a result of such dismissal. It is axiomatic to state that such an order passed in a SLP at the threshold without detailed reasons does not constitute any declaration of law or constitute as a binding precedent. If any precedent be needed for such enunciation of law, one may refer to paragraph 4 of the Supreme Court‟s judgment rendered in ***Union of India v. Jaipal Singh*** reported in ***(2004) 1 SCC 121***.

20. Subsequently, the ruling rendered in ***Joseph Isharat (supra)*** was also considered by the learned Single Judge in ***Niharika Jain (supra)***. The Rajasthan High Court was also seized of a similar case as this Court wherein proceedings were initiated under Section 24 of the 1988 Act as amended by the amendment Act of 2016. Upon a detailed examination, the Court had ruled the following:

> *"93.* ***For the reason aforesaid and in the backdrop, of the settled legal proposition so also in view of singular factual matrix of the matters herein; this Court has no hesitation to hold that the Benami Amendment Act, 2016, amending the Principal Benami Act, 1988, enacted w.e.f. 1st November, 2016, i.e. the date determined by the Central Government in its wisdom for its enforcement; cannot have retrospective effect.***
>
> *94.* ***It is made clear that this Court has neither examined nor commented upon merits of the writ applications but has considered only the larger question of retrospective applicability of the Benami Amendment Act, 2016 amending the***

> ***original Benami Act of 1988. Thus, the authority concerned would examine each case on its own merits keeping in view the fact that amended provisions introduced and the amendments enacted and made enforceable w.e.f.1st November 2016; would be prospective and not retrospective.***"

21. The order of the learned Single Judge was subsequently appealed before the Division Bench in a cluster of intra-court writ appeals. These appeals, along with the intra-court writ appeal of ***Niharika Jain*** bearing D.B. Special Appeal Writ No. 1328/2019, were admitted by the Division Bench comprising Indrajit Mahanty, C.J. and Inderjeet Singh, J. by an order dated December 17, 2019 and was last heard on January 28, 2020. The records available on the e- courts server showcases that no further hearings have taken place since then and the appeals remain pending, awaiting the Division Bench‟s consideration. And therefore, the order of the learned Single Judge still stands on both limbs.

22. Thus, in my considered opinion, deciding the relevance of the applicability of the ratio of the decisions rendered in ***Joseph Isharat (supra)***, and ***Niharika Jain (supra)*** by the Bombay High Court and Rajasthan High Court respectively, on this Court is an important question which needs a comprehensive answer.

23. The law enunciated by Full Bench of the Supreme Court in ***Valliama Champaka Pillai v. Sivathanu Pillai*** reported in **(1979) 4 SCC 429**, has clearly laid down that the decision of one High Court is ***not*** a binding precedent on another High Court. The Court in that case, was seized of with the *lis* as to whether the decision of the erstwhile Travancore High Court could be made a binding precedent on the Madras High Court on the basis of the principle of *stare decisis*. The Apex Court had ruled definitively that such a decision can at best have ***persuasive value*** and such a decision does not enjoy the force of a binding precedent on the Madras High Court.

24. The Bombay High Court in ***Commissioner of Income Tax v. Thana Electric Supply Ltd.***, reported in (**1994) 206 ITR 727** had considered an important question in the interpretation of the Income Tax Act, 1961 which is worth consideration. The Division Bench, in ***Thana Electric Supply Ltd. (supra)*** was seized of with the question of interpreting if one High Court (in this case, the Bombay High Court), while interpreting an All-India Statute, was bound to follow the decision of any other High Court and to decide the question accordingly, even if its own view is considered contrary thereto, in view of the practice followed by the Court in such matters. The Division Bench had also

relied on ***Valliama Champaka Pillai (supra)***, and laid down some emerging propositions post analyzing some leading precedents dealing with the concept of *ratio decidendi* and *obiter dicta* as follows:

"20. From the foregoing discussion, the following propositions emerge:

(a) The law declared by the Supreme Court being binding on all courts in India, the decisions of the Supreme Court are binding on all courts, except, however, the Supreme Court itself which is free to review the same and depart from its earlier opinion if the situation so warrants. What is binding is, of course, the ratio of the decision and not every expression foundtherein.

(b) The decisions of the High Court are binding on the subordinate courts and authorities or Tribunals under its superintendence throughout the territories in relation to which it exercises jurisdiction. It does not extend beyond its territorial jurisdiction.

(c) The position in regard to the binding nature of the decisions of a High Court on different Benches of the same court may be summed up as follows:

(i) A single judge of a High Court is bound by the decision of another single judge or a Division Bench of the same High Court. It would be judicial impropriety to ignore that decision. Judicial comity demands that a binding decision to which his attention had been drawn should neither be ignored nor overlooked. If he does not find himself in agreement with the same, the proper procedure is to refer the binding decision and direct the papers to be placed before the Chief Justice to enable him to constitute a larger Bench to examine the question (see *Food Corporation of India* v. *Yadav Engineer and Contractor*, (1982) 2 SCC 499 : AIR 1982 SC 1302).

(ii) A Division Bench of a High Court should follow the decision of another Division Bench

of equal strength or a Full Bench of the same High Court. If one Division Bench differs from another Division Bench of the same High Court, it should refer the case to a larger Bench.

(iii) Where there are conflicting decisions of courts of co-ordinate jurisdiction, the later decision is to be preferred if reached after full consideration of the earlier decisions.

(d) ***The decision of one High Court is neither binding precedent for another High Court nor for courts or Tribunals outside its own territorial jurisdiction. It is well-settled that the decision of a High Court will have the force of binding precedent only in the State or territories on which the court has jurisdiction. In other States or outside the territorial jurisdiction of that High Court it may, at best, have only persuasive effect. By no amount of stretching of the doctrine of stare decisis, can judgments of one High Court be given the status of a binding precedent so far as other High Courts or Courts or Tribunals within their territorial jurisdiction are concerned. Any such attempt will go counter to the very doctrine of stare decisis and also the various decisions of the Supreme Court which have interpreted the scope and ambit thereof. The fact that there is only one decision of any one High Court on a particular point or that a number of different High Courts have taken identical views in that regard is not at all relevant for that purpose. Whatever may be the conclusion, the decisions cannot have the force of binding precedent on other High Courts or on any subordinate courts or Tribunals within their jurisdiction. That status is reserved only for the decisions of the Supreme Court which are binding on all courts in the country by virtue of article 141 of the Constitution.***"

(Emphasis supplied)

25. Therefore, the decisions rendered in ***Joseph Isharat (supra)***, and ***Niharika Jain (supra)*** by the Bombay High Court and Rajasthan High Court respectively, based on proposition (d) laid down in ***Thana Electric Supply Ltd. (supra)***, can at best be described to be **possessing a high persuasive value** before this Court but it does not possess the character of a binding precedent.

26. Accordingly, based on the extensive discussion in the foregoing paragraphs, these salient principles emerge:

i. As per the law laid down in ***Shree Chamundi Mopeds Ltd (supra)*** by the Supreme Court, the effect of an interim order staying the operation of an impugned order and the quashment of an impugned order are considerably different from one another. While the former merely ensures that the order impugned would not be operative from the date of the passing of the order of stay, without annihilating the said impugned order from existence, the latter ensures that such quashment results in the restoration of the position as it stood on the date the impugned order was passed, with the impugned order ceasing to exist in the eyes of the law.

ii. Quashment of such impugned order would revive the appeal before the appellate authority and would be considered pending before such appellate authority, awaiting the appellate authority‟s fresh consideration.

iii. As per the law laid down in ***Pijush Kanti Chowdhury (supra)*** and reiterated in ***Niranjan Chatterjee (supra)*** by the Division Bench of this Court, in cases where an appeal remains pending before the Supreme Court and an order of stay remains operative in such a pending appeal, such stay of order does not amount to any „declaration of law‟ under Article 141 of the Constitution of India but is merely binding upon the parties to the saidproceedings.

iv. Such an order of stay, which is interim in nature, does not obliterate the binding effect of the judgment of the concerned High Court as a precedent for the reason that while granting the interim order of stay of such order of the High Court, the Supreme Court had no opportunity to lay down any proposition of law which was in variance to the one declared by the High Court, which is impugned before the Supreme Court.

v. Accordingly, if a learned Single Judge of this Court is seized with the question of applicability of a Division Bench judgment which is subject

to an order of stay in a pending appeal before the Supreme Court, the learned Single Judge is to apply the ratio as laid down by the Division Bench of this Court, as per the doctrine of precedent.

vi. As per the law enunciated in ***Valliama Champaka Pillai (supra)***, the decision of one High Court is ***not*** a binding precedent on another High Court.

vii. As per the law laid down in ***Thana Electric Supply Ltd. (supra)***, the decision of one High Court is neither binding precedent for another High Court nor for courts or Tribunals outside its own territorial jurisdiction. It is well-settled that the decision of a High Court will have the force of binding precedent only in the State or territories on which the court has jurisdiction. In other States or outside the territorial jurisdiction of that High Court it may, at best, **have only persuasive effect**. By no amount of stretching of the doctrine of stare decisis, can judgments of one High Court be given the status of a binding precedent so far as other High Courts or Courts or Tribunals within their territorial jurisdiction are concerned. Any such attempt will go counter to the very doctrine of stare decisis and also the various decisions of

the Supreme Court which have interpreted the scope and ambit thereof.

27. Based on the above principles that emerge, I am of the view that the Bombay High Court judgment in ***Joseph Isharat (supra)*** and the Gujarat High Court decision in ***Niharika Jain (supra)*** are not binding on this Court even though they are having persuasive effect. As already concluded earlier, the Division Bench Judgment in ***M/s. Ganpati Dealcom Pvt. Ltd (supra)*** is binding upon this Court even though the operation of the said judgment has been stayed by the Supreme Court. Accordingly, I am *prima facie* of the opinion that the writ petitioners are entitled to interim orders at this stage. However, I am of the further view that the Revenue is to be protected as the matter is sub-judice before the Supreme Court. Accordingly, the following interim orders are passed:

A. The reference referred to in Section 24(5) of the 1988 Act shall not be treated as final and shall only be treated as provisional during the whole period, the writ applications are pending before this Court.

B. Subject to its result, the reference will be treated as final. Thereafter, time to pass the adjudication

order under Section 26(7) of the 1988 Act will start to run. Hence, it follows that the respondent authorities will not take any further steps in the matter till the disposal of these writ applications.

C. The writ petitioners shall not sell, otherwise transfer, deal with, encumber or part with possession of the subject properties till the disposal of these writ applications.

28. The respondent authorities are granted a period of six weeks to file their affidavits-in-opposition from date. Affidavits-in-reply, if desired to be submitted by the writ petitioners, be submitted within a period of two weeks thereafter.

29. All parties are to act on the official website copy of this order.

(Shekhar B. Saraf, J.)