(2010) 12 MAD CK 0283

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 10573 of 2010 and M.P. (MD) No''s. 1 and 2 of 2010

A.J.K. Fernandez		APPELLANT
	Vs	
The Secretary-Finance, Reserve Bank of India - Operating Dept, Ministry of Finance, Govt. of India, Reserve Bank of India, Foreign Exchange Department, Fort Glacis and The General Manager (RBI), Department of Payment and Settlement System		RESPONDENT

Date of Decision: Dec. 2, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226, 226(2), 32
- Payment and Settlement Systems Act, 2007 - Section 38, 4, 5, 6, 7
- Penal Code, 1860 (IPC) - Section 120B, 420, 465, 467, 468

Citation: (2010) 6 CTC 745

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: Kalyanasundaram, for N. Sundareshan, for the Appellant; A.R.L. Sundaresan, for K. Ramamoorthy, Advocate for Respondent Nos. 2 and 3; K.K. Senthilvelan, Assistant Solicitor General for Respondent No. 1., for the Respondent

Final Decision: Dismissed

Judgement

K. Chandru, J.

The Petitioner, claiming to be the Chairman of one St. Mary Forex Bureau Pvt. Ltd., having its office at London (U.K.), has come forward to file the present Writ Petition seeking for the issuance of a Writ in the nature of Mandamus forbearing the Second and Third Respondents from refusing/ rejecting the Application of the Petitioner-Company under the Payment and Settlement Systems and also the

Second Respondent from refusing/rejecting the issuance of the Full-fledged Money Changer License on the ground of pendency of the Criminal prosecution against the Petitioner in his individual capacity and to pass an appropriate order. The Writ Petition was admitted on 13.08.2010. Pending the Writ Petition, this Court granted an interim injunction restraining the Second and Third Respondents from implementing the order of the Third Respondent, dated 5.7.2010 and also to extend the Full-fledged Money Changer License pending disposal of either Writ Petitioner or the Appeal lying with the Secretary, Ministry of Finance, Government of India, New Delhi or on reaching a finality in the Supreme Court.

2. It was noted by this Court while granting an interim injunction that the Reserve Bank had granted an authorization for setting up payment system on installment basis. While considering the fact that a Criminal case has been launched against the Petitioner on a Private Complaint filed by a person hailing from Delhi they have forgotten the reality that a case has been launched against the Petitioner only in his individual capacity. Thereafter, this Court went on to make the following findings for the purpose of grant of interim injunction, dated 13.8.2010, which are as follows:

4. It is submitted that the disputed signatures found in the documents seized in the Criminal case were sent for expert opinion and the expert has opined that the disputed, signatures found in those documents tallied with the signatures of the complainant and not with the signatures of the Petitioner herein. Based on the said revelation, the Petitioner, in fact, moved a petition before the Supreme Court of India and got the entire criminal case pending against the Petitioner stayed. Though the Petitioner has given an undertaking that he will see to it that the case pending before the Supreme Court is terminated by September, 2010, as rightly pointed out by the learned Counsel for the Petitioner, termination of the case before the Supreme Court is not definitely in the hands of the Petitioner.

5. At any rate, the Reserve Bank of India has given weightage to the Criminal case, which was already stayed by the Supreme Court of India while giving authorisation for setting up of payment system by the Petitioner-Company. I find that there is merit in the contention that the Criminal case which has been launched against the Petitioner in his individual capacity and was stayed by the Supreme Court should not have been considered by the Reserve Bank of India.

3. Aggrieved by the interim order, the Second and Third Respondents have filed a vacate interim injunction application in M.P.(MD) No. 2 of 2010 together with a supporting Counter Affidavit, dated 28.9.2010. The Petitioner has also filed a Reply Affidavit, dated 24.10.2010. When the Vacate Stay Application came up, with the consent of both sides, the main Writ Petition was directed to be posted. Accordingly, the matter was taken up for final hearing.

4. Heard the arguments of Mr. Kalyanasundaram, learned Senior Counsel leading Mr. N. Sundareshan, learned Counsel appearing for the Petitioner, Mr. A.R.L.

Sundaresan, learned Senior Counsel leading for Mr. K. Ramamoorthy, learned Counsel appearing for Second and Third Respondents and Mr. K.K. Senthilvelan, learned Assistant Solicitor General appearing for the First Respondent.

5. Before proceeding to deal with the rival contentions, it is necessary to refer to the provisions of the Act in question. The Parliament has enacted the Payment and Settlement Systems Act, 2007 (Central Act 51 of 2007) (for short PASSA). The said Act was brought into force with effect from 12.08.2008. The object of the Act is to provide for the regulation and supervision of payment systems in India and to designate the Reserve Bank of India as the authority for that purpose and for matters connected therewith or incidental thereto.

6. Under PAASA, no person is authorised other than the Reserve Bank to commence and operate the payment systems except under and in accordance with an authorisation issued by the Reserve Bank of India. u/s 5, any person desirous of commencing or carrying on a payment system should apply to the Reserve Bank for an authorisation. Section 7 authorizes the Reserve Bank that if it is satisfied after any inquiry made and the Application is complete in all respects and that if it conforms to the provisions of this Act and the regulations, can issue an authorisation for operating the payment system under this Act having regard to several considerations which are set out in Section 7(1)(i) to (ix). It is relevant to extract 7(1)(vi), which is as follows:

7. Issue or refusal of authorisation.-- (1) The Reserve Bank may, if satisfied, after any inquiry u/s 6 or otherwise, that the Application is complete in all respects and that it conforms to the provisions of this Act and the Regulations issue an authorisation for operating the payment system under this Act having regard to the following considerations, namely:

(i) to (v) omitted

(vi) the financial status, experience of management and integrity of the Applicant;

(vii) to (ix) omitted

7. u/s 8, the Reserve Bank can revoke the authorisation if a system provider contravenes any provisions of the Act and for other reasons set out therein. Section 9 provides for an Appeal to the Central Government, which reads as follows:

9. Appeal to the Central Government.-- (1) Any Applicant for an authorisation whose Application for the operation of the payment system is refused under sub-section (3) of Section 7 or a system provider who is aggrieved by an order of revocation u/s 8 may, within thirty days from the date on which the order is communicated to him, Appeal to the Central Government.

(2) The Central Government shall endeavour to dispose of an Appeal under subsection (1) within a period of three months.

(3) The decision of the Central Government on the Appeal under sub-section (1) shall be final.

Under Section 38, the Reserve Bank has been authorised to make Regulations by a Notification consistent with the Act to carry out the provisions of the Act.

8. It is seen from the records that the Foreign Company by name St. Mary Forex Bureau Ltd., London, which is a registered private limited Company under the U.K. Companies Act, submitted an Application on 11.2.2009 for an authorisation to continue to operate a payment system under PASSA. The said Foreign Company having registered under the Companies Act at London is a juristic person. When the Reserve Bank noticed from the audited financial statements of the Foreign Company for the years 2006, 2007 and 2008, it revealed significant erosion in its capital. The Company''s financial position was informed by the RBI''s letter dated 12.12.2009. During the aforesaid period, the Foreign. Company registered continuous loss and the accumulated loss also rose from August, 2006 to August, 2008. Its net worth level also came down.

9. The RBI also noticed that charges were also framed by the Chief Metropolitan Magistrate, Delhi against the Petitioner under various provisions of the IPC including Sections 120-B, 420, 465, 467, 468 and 471, IPC. It also came to note that the Petitioner A.J.K. Fernandez was arrested in the case registered by the CBI on 03.11.2003 and was released on bail on 2.1.2004. Therefore, the RBI in terms of the power vested u/s 7(1) of PASSA and after noting the financial status, experience of management and integrity of the Petitioner, summoned him. The Petitioner had appeared before the Committee of Chief General Managers of RBI on 18.5.2010. It was recorded by the RBI that he himself stated before them that the Company will come out clean from the on going Court case. Therefore, he was advised that his continuance of business beyond September 30, 2010 cannot be permitted and he should apply afresh and his Application will be considered on merits.

10. The communication sent by the RBI to the London based Company vide its letter dated 5.7.2010 and which was injuncted from acting upon in M.P.(MD) No. 1 of 2010 reads as follows:

Please refer to the correspondence resting with your letter SMFB/LON/RF-4E1/96 dated November 14, 2009 and your subsequent submissions made before the Committee of Chief General Managers of the Reserve Bank of India on May 18, 2010 in Mumbai. In the light of the request made by you before the Committee and to ensure that the existing activities are carried out in a non-disruptive manner, you are permitted to continue the business of cross border inbound money transfer to India upto September 30, 2010. Further continuation of the business operations in India will be considered on submission of a fresh Application to the Reserve Bank. The Reserve Bank would then consider such Application on merits, taking into account all relevant facts, including the Net Worth Level and the status of

investigation/Criminal proceedings against Shri A.J.K. Fernandes. Unless the Reserve Bank communicates otherwise, the Company has to stop its business forthwith from 1st October, 2010 onwards till a decision is taken on the fresh Application so submitted.

(Emphasis added)

11. As against the decision of the RBI, the Petitioner preferred an Appeal to the First Respondent, Government of India u/s 9 of PASSA. The Central Government had also issued notice to the RBI calling for its remarks. It is at the stage of Appeal, the Petitioner has filed the present Writ Petition and got an interim order as noted above.

12. The Petitioner in his Original Affidavit contended that the letter of the Respondent, dated 5.7.2010 is illegal and non-application of mind. It is claimed that the Company is a juristic person. On the basis of the allegation against an individual, no order can be passed against the Company. The Company is not facing any prosecution. The preliminary report of the hand-writing expert found that the so-called forged signatures tallied with that of the complainant. Further, in respect of the prosecution, the Petitioner had approached the Supreme Court. The Supreme Court in the Special Leave to Appeal (Criminal) No. 6124 of 2009, granted stay of further proceedings in the Criminal case pending before the Chief Metropolitan Magistrate, Delhi, vide its order, dated 01.02.2010. It is also claimed that the Petitioner never contravened the provisions of the Act so as to have the license cancelled.

13. Further, in the Writ Petition anticipating objection regarding his locus standi, it was stated that the Foreign Company had entered into an agreement with St. Mary Forex Bureau Ltd., Nagercoil, which is a public limited Company. The Petitioner was an Ex-Chairman of the same. It is claimed that the London Company and the Indian Company are one and the same. Therefore, he has filed the Writ Petition in his individual capacity as well as the Chairman of the U.K. based Company and also as Ex-Chairman of the Indian Company.

14. In the Counter Affidavit of the RBI filed along with the vacate Interim Injunction Application, a preliminary objection was raised regarding the maintainability of the Writ Petition. It was claimed that the U.K. based Company had preferred an Appeal to the Central Government u/s 9. It is a juristic person and only the Company by its authorised representative alone can file a Writ Petition. The Petitioner claiming to be the Chief Executive cannot file any Suit or Writ in the name of the Company. His authorisation to file the Writ Petition is not stated in the Affidavit. It is also claimed that the Application by a Foreign Company was submitted to the RBI Payment and Settlement Systems at Mumbai. The Foreign Company never had any correspondents with the RBI, Chennai and that no part of the cause of action arose within the jurisdiction of the Madurai Bench of the High Court. It is not merely the

company, but persons operating a Company can also be relevant in considering an authorisation. Certainly persons getting involved in Criminal cases can also be a relevant factor. Besides, the financial position of the Company also became the relevant factor in considering the continuance of the authorisation.

15. In the reply Affidavit filed by the Petitioner, it is stated that the Foreign Company and the Indian Company are in a position of principal and agent. The Writ Petition is maintainable since the Petitioner is having Company at Nagercoil. Hence the Writ Petition can be filed in the Madurai Bench.

16. Mr. Kalyanasundaram, learned Senior Counsel submitted that in the Appeal u/s 9, the Central Government has no power to grant an interim order. They having availed the Appellate remedy, should not be made to suffer. They have got good case to succeed. Besides, the Supreme Court had granted an interim stay of the Criminal prosecution. As such, as on record, there is no stigma against the Petitioner. Further, the Company''s financial position are bound to increase. Therefore, until such time the Appeal is decided in one way or other or until any final order passed by the Supreme Court, the interim order passed by the learned Judge should be allowed to continue.

17. The Supreme Court vide its judgment in M.P. State Agro Industries Development Corporation Ltd. and Another Vs. Jahan Khan, has held that power under Article 226 is so wide and it can grant an appropriate relief. The learned Senior Counsel referred to the following passage found in paragraph 12 of the said judgment, which is as follows:

12....There is no gainsaying that in a given case, the High Court may not entertain a Writ Petition under Article 226 of the Constitution on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. The rule of exclusion of Writ jurisdiction due to availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of the availability of an alternative remedy, a Writ Court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies, namely, (i) where the Writ Petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of Principles of Natural Justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In these circumstances, an alternative remedy does not operate as a bar. (See Whirlpool Corpn. v. Registrar of Trade Marks, Harbanslal Sahnia v. Indian Oil Corpn. Ltd., State of H.P. v. Gujarat Ambuja Cement. Ltd. and Sanjana M. Wig v. Hindustan Petroleum Corpn. Ltd.)

Therefore, he prayed for the relief claimed in the Writ Petition.

18. However, one can understand if the Petitioner sought for the disposal of his Statutory Appeal u/s 9 pending before the Central Government and thereafter, worked out remedies in terms of the said order. But, on the other hand, the

Petitioner without reference to the pending Appeal had independently filed the present Writ Petition and sought for the continuance of his authorisation through the Court order even before the main Writ Petition could be disposed of. The Petitioner had practically secured an order which would amount to allowing the main Writ Petition itself and that too without notice to RBI.

19. In this context, the learned Senior Counsel Mr. A.R.L. Sundaresan referred to the judgment of the Supreme Court in Union of India and Others Vs. Adani Exports Ltd. and Another, and contended that the Petitioner is indulging in forum shopping. Since no part of the cause of action arose, the Court should not entertain the Writ Petition before this Bench. It is necessary to refer to the following passages found in paragraphs 17 and 18 from the said judgment, which reads as follows:

17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a Writ Petition or a Special Civil Application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the Court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the Respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court''s territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the Courts at Ahmedabad.

18. As we have noticed earlier, the fact that the Respondents are carrying on the business of export and import or that they are receiving the export and import orders at Ahmedabad or that their documents and payments for exports and imports are sent/made at Ahmedabad, has no connection whatsoever with the dispute that is involved in the applications. Similarly, the fact that the credit of duty claimed in respect of exports that were made from Chennai were handled by the Respondents from Ahmedabad have also no connection whatsoever with the actions of the Appellants impugned in the Application. The non-granting and denial of credit in the passbook having an ultimate effect, if any, on the business of the Respondents at Ahmedabad would not also, in our opinion, give rise to any such cause of action to a Court at Ahmedabad to adjudicate on the actions complained against the Appellants.

20. The learned Senior Counsel also referred to the judgment of the Supreme Court in Alchemist Limited and Another Vs. State Bank of Sikkim and Others, wherein the Supreme Court considered as to whether in the absence of any cause of action

within the territorial jurisdiction of the High Court, can a Writ Petition be entertained? He referred to the following passages found in paragraphs 37 and 38 of the said judgment, which reads as follows:

37. From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the Appellant-Petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the Suit/Petition. Nevertheless it must be a "part of cause of action", nothing less than that.

38. In the present case, the facts which have been pleaded by the Appellant Company, in our judgment, cannot be said to be essential, integral or material facts so as to constitute a part of "cause of action" within the meaning of Article 226(2) of the Constitution. The High Court, in our opinion, therefore, was not wrong in dismissing the Petition.

Therefore, the learned Senior Counsel pleaded for dismissal of the Writ Petition on that short ground.

21. The learned Senior Counsel for RBI also submitted that having filed the Statutory Appeal before the Central Government, only for the purpose of securing an interim order, he cannot come to this Court. In this context, the learned Senior Counsel referred to the judgment of the Supreme Court in Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others, and referred to the following passages found in paragraph 22, which reads as follows:

Court cannot be used only for interim relief:

22. It is a settled legal proposition that the forum of the Writ Court cannot be used for the purpose of giving interim relief as the only and the final relief to any litigant. If the Court comes to the conclusion that the matter requires adjudication by some other appropriate forum and relegates the said party to that forum, it should not grant any interim relief in favour of such a litigant for an interregnum period till the said party approaches the alternative forum and obtains interim relief. (Vide The State of Orissa Vs. Madan Gopal Rungta, Amarsarjit Singh Vs. The State of Punjab, State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo, The State of Bihar Vs. Rambalak Singh and Others, and The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others,

(Emphasis added)

22. Further, the Supreme Court in U.P. Junior Doctors'' Action Committee and Others Vs. Dr. B. Sheetal Nandwani and Others, held as follows:

8. It is a well known rule of practice and procedure that at interlocutory stage a relief which is asked for and is available at the disposal of the matter is not granted....

Therefore, even if the Appellate Authority (in the present case the Central Government) had power for granting an interim order, the relief claimed by the Petitioner could not have been granted pending passing final orders in the Appeal. Hence, the Petitioner could not have approached this Court for getting an order which the Appellate Authority themselves could not have granted to the Petitioner.

23. The contentions raised by the learned Senior Counsel appearing for the RBI are well founded. First of all, a perusal of the averment made in the Affidavit does not disclose any cause of action for the Petitioner to move this Court. The authorisation stands in the name of the U.K. based Company. There is no record to show either the Company had decided to file such a Writ Petition or it had authorised any one in India including the Petitioner to approach this Court. Even otherwise, the entire events that led to the RBI''s communication arose within Mumbai in the State of Maharashtra. Therefore, the Petitioner could not have created a cause of action on the plea that he has an office at Nagercoil and that he was the Ex-Chairman of the Indian company and that the Indian Company and the U.K. Company are one and the same.

24. It is seen from the Appeal memo pending before the Central Government that the Appeal itself was filed by the U.K. based Company. Therefore, the Petitioner''s filing the present Writ Petition in the name of the U.K. based Company or as the Chief Executive of the U.K. based Company is clearly impermissible. The attempt made by the Petitioner is nothing but an abuse of the process of law. Even otherwise, he has no right to move this Court for getting any order to have his authorisation to continue through Court order. As already seen, it is not his case to have the Appeal pending before the Central Government to be disposed of within a time frame. The Section itself provides the Central Government should endeavour to dispose of Appeals within three months. But, on the contrary by instituting an independent proceedings before this Court seeking for continuance of his authorisation without regard to the outcome of the Appeal, he got an interim order for his authorisation. Even in the impugned communication, the Reserve Bank of India had taken into account all circumstances including the integrity of persons and decided that the authorisation can be continued till 30th September, 2010. The RBI directed a fresh Application to be made so that they can consider the same on its merit and credentials of such Application. The mere fact that the Petitioner had secured stay of further proceedings of the Criminal case pending before the Chief Metropolitan Magistrate, Delhi will not enure to his benefit. At the maximum, the stay order can only save him from attending the trial, but that will not erase any perception that may be taken by the RBI about the conduct of the Company or its leading lights.

25. In the present case, since the authorisation had come to an end by 30th September, 2010 and under Sections 4, 5 and 6 it is only the Reserve Bank of India can decide further authorisation and the Reserve Bank having taken a stand which is the subject matter of Appeal before the Central Government, this Court has got no role to play in such matters. Merely because the Appeal provision do not provide for power to grant an interim relief, that will not make an Appeal provision invalid. On the other hand, it is the intention of the Parliament that the Appellate Authority should not have any power to grant any interim relief without deciding the merits of the main Appeal.

26. Even on the question whether this Court has discretionary power to entertain any Writ Petition notwithstanding the alternative remedy, it is necessary to refer to the recent judgment of the Supreme Court i Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and Another, . In that case, on the question of Appellate remedy, the Supreme Court in paragraphs 29 to 31 had observed as follows:

29. By referring to the aforesaid schemes under different statutes, this Court wants to underline that the right of Appeal, being always a creature of a statute, its nature, ambit and width has to be determined from the statute itself. When the language of the statute regarding the nature of the order from which right of Appeal has been conferred is clear, no statutory interpretation is warranted either to widen or restrict the same.

30. The argument that Writ jurisdiction of the High Court under Article 226 of the Constitution is a basic feature of the Constitution and cannot be ousted by parliamentary legislation is far too fundamental to be questioned especially after the judgment of the Constitution Bench of this Court in L. Chandra Kumar Vs. Union of India and others, However, that does not answer the question of maintainability of a Writ Petition which seeks to impugn an order declining dispensation of pre-deposit of penalty by the Appellate Tribunal.

31. When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a Writ Petition should not be entertained ignoring the statutory dispensation. In this case the High Court is a statutory forum of Appeal on a question of law. That should not be abdicated and given a go-by by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction. The High Court, with great respect, fell into a manifest error by not appreciating this aspect of the matter. It has however dismissed the Writ Petition on the ground of lack of territorial jurisdiction.

27. In the very same case, on the question of discretion under Article 226 it has been held in paragraphs 34, 36 and 38, which are as follows:

34. Again in Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, , in the background of taxation laws, a Three-Judge Bench of this Court apart from

reiterating the principle of exercise of Writ jurisdiction with the time-honoured self imposed limitations, focused on another legal principle on right and remedies. In para 11, at AIR p.607 of the Report, this Court laid down: (SCC pp. 440-41, para 11)

11.... It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford, 1859 (6) CBNS 336, in the following passage: (ER p.495)

... There are three classes of cases in which a liability may be established founded upon a statute... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it.... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.'' The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspapers Ltd, 1919 AC 368, and has been reaffirmed by the Privy Council in AIR 1940 105 (Privy Council) . It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the Writ Petitions in limine.

36. Again another Constitution Bench of this Court in Mafatlal Industries Ltd. v. Union of India 14 speaking through B.P. Jeevan Reddy, J. delivering the majority judgment, and dealing with a case of refund of Central excise duty held: (SCC p.607e-f, para 77)

77.....So far as the jurisdiction of the High Court under Article 226- or for that matter, the jurisdiction of this Court under Article 32 - is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.

In the concluding portion of the judgment it was further held: (Mafatlal Industries Ltd. case 14, SCC p. 635c, para 108)

(x).... The power under Article 226 is conceived to serve the ends of law and not to transgress them.

38. The learned Counsel for the Respondents relied on a judgment of this Court in Seth Chand Ratan Vs. Pandit Durga Prasad (D) by Lrs. and Others, . The learned Counsel relied on para 13 of the said judgment which, inter alia, lays down the principle, namely, when a right or liability is created by a statute, which itself

prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before seeking the discretionary remedy under Article 226 of the Constitution. However, the aforesaid principle is subject to one exception, namely, where there is a complete lack of jurisdiction of the tribunal to take action or there has been a violation of rules of natural justice or where the tribunal acted under a provision of law which is declared ultra vires. In such cases, notwithstanding the existence of such a tribunal, the High Court can exercise its jurisdiction to grant relief.

28. In view of the above factual matrix and the legal precedents, it can clearly be held that the Petitioner''s attempt in securing an interim order from this Court and continuing the same until the Appeal is disposed of is clearly an abuse of the process of the Court. The Petitioner had tried to create a cause of action only to come before this Court. The Petitioner had also not filed the Writ Petition after being authorised by the U.K. based Company. Hence, he has no locus standi to file the present Writ Petition. The Writ Petition is clearly misconceived and amounting to abuse of process of law. In view of the above, the Writ Petition will stand dismissed with costs of Rs. 10,000/- (Rupees ten thousand only) to be paid to the Second Respondent - Reserve Bank of India within four weeks. Consequently, connected M.P. (MD) No. 1 of 2010 stands dismissed. M.P. (MD) No. 2 of 2010 to vacate the interim order stands closed as having become infructuous in view of the final order passed by this Court.