

(2025) 12 DEL CK 1887

In the Delhi High Court

Case No : Letters Patent Appeal No. 793 Of 2025

Ajay Narain

APPELLANT

Vs

Reserve Bank Of India & Ors

RESPONDENT

Date of Decision : 24-12-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Code of Civil Procedure, 1908 — Section 96
Foreign Exchange Regulation Act, 1973 — Section 31, 31(1)

Citation : (2025) 12 DEL CK 1887

Hon'ble Judges : Devendra Kumar Upadhyaya, CJ;Tushar Rao Gedela, J

Bench : Division Bench

Advocate : J. Sai Deepak, Ashutosh Nagar, Purnima Vashishtha, Palkriti N Pande, Abhinav Sharma, Snehashish, Bharat Arora, Himangi Arora

Final Decision : Dismissed

Judgement

Tushar Rao Gedela, J

1. Present Letters Patent Appeal has been filed challenging the judgment dated 02.12.2025 (hereafter referred to as "impugned judgment") passed by the learned Single Judge in W.P.(C) 10832/2025, whereby the underlying writ petition was dismissed on the ground that the issues sought to be agitated by the appellant therein had already been considered and decided by the Division Bench in RFA(OS) 13/2025 and RFA(OS) 14/2025, and therefore, could not be reopened in writ proceedings under Article 226 of the Constitution of India, 1950.

2. The facts of the case have been set out in the impugned judgment and the same read thus:

"4. Case of the Petitioner, as set out in the writ petition is that Respondent No.2/ Shri Kanwar Raj Singh relinquished Indian citizenship and became a US citizen in 1993. Between 1996 to 1998, Petitioner took loans of approximately Rs.50 to 60 lakhs from Respondent No.2 and his wife and as security he offered 1st and 2nd

floors of property bearing no. 110, Jor Bagh, New Delhi ('Jor Bagh property') with an understanding between the parties that the property will not be sold to recover the loan amount and was only to underwrite the loan taken by the Petitioner. On 30.03.1998, Petitioner signed a fresh set of documents including Agreement to Sell ('ATS') and Power of Attorneys ('POAs') in respect of 2nd floor of the Jor Bagh property. On 30.04.1998, Petitioner returned a sum of Rs.45 lakhs as part repayment of the loans taken and since an amount of Rs.15 lakh was outstanding, Respondent No.2 withheld the original ATS, GPAs and SPAs and promised to return the documents upon repayment of the pending loan amount.

5. It is stated in the petition that on 23.06.1998, Petitioner revoked the GPAs and SPAs and after cancelling the documents informed Land & Development Office that all documents pertaining to the loan agreement stood cancelled, in light of the revocation deeds. On 09.07.1998, Petitioner filed a suit for declaration and permanent injunction being CS(OS) No.1336/1998 before this Court. On 13.07.1998, Court issued summons and granted injunction restraining Respondents No.2 and 3 from dealing with, alienating or parting with the 1st and 2nd floors of the Jor Bagh property. On 18.08.1998, Respondent No.2 sent a letter to Respondent No.1 claiming to have purchased 2nd floor of the subject property and submitted the ATS and GPA, both dated 30.03.1998 along with Form IPI-7 in compliance with reporting obligation under Foreign Exchange Regulation Act, 1973 ('FERA'), after a delay of 51 days.

6. It is stated that Respondent No.1/Reserve Bank of India ('RBI') decided on 14.12.1998 to accept the Form IPI-7, without condoning the delay in declaring the purchase of the property and without conducting a preliminary enquiry into the validity of the documents given in support of the claim that the property was purchased. In 2000, Respondent No.2 filed a cross suit being CS (OS) No. 2273/2000 inter alia seeking specific performance of ATS dated 30.03.1998. On 15.09.2011, Court framed an additional issue in CS (OS) No. 2273/2000 "whether the transaction in favour of plaintiff No.2 is hit by Section 31 of the Foreign Exchange Regulation Act, 1973? OPP". Both the suits were decided by common judgment dated 02.12.2024. CS (OS) No. 2273/2000 was decreed in favour of Respondent No.2 directing specific performance of ATS dated 30.03.1998 in respect of 2nd floor of Jor Bagh property with a further direction to execute the Sale Deed within 60 days while the suit filed by the Petitioner i.e., CS (OS) No. 1336/1998 was dismissed. Petitioner filed two appeals against the judgment and decree being RFA (OS) 13/2025 and RFA (OS) 14/2025, which were pending when this writ petition was filed in July, 2025."

3. Essentially, Mr. J. Sai Deepak, learned senior counsel contends that while the grievances raised by the appellant in the underlying writ petition was predicated on violation of statutory conditions within the statutory framework of the Foreign Exchange Regulation Act, 1973 (hereafter referred to as "FERA"), the learned Single Judge relying upon the findings and the conclusions reached by the learned Single Judge exercising Ordinary Original Civil Jurisdiction in CS (OS)

1336/1998 and CS (OS) 2273/2000 as also by the learned Division Bench in RFA (OS) 13/2025 and 14/2025, has dismissed the writ petition deeming that the issues sought to be raised by the appellant had duly been considered and decided in the suit proceedings.

4. Learned senior counsel submits that the violation of a statutory enactment or the rules framed thereunder can be agitated by a party before a constitutional Court by invoking writ jurisdiction under Article 226 of the Constitution of India, 1950. He states that there is neither any bar nor any prohibition which would preclude redressal by way of a petition under Article 226 of the Constitution of India, 1950. He further states that merely because an issue framed in a civil suit relating to the similar subject has been decided against a party, it does not, ipso facto, preclude or prohibit the said party from questioning the legality of the consequence emanating out of the said infraction or violation of a particular provision of an enactment or a statute.

5. Learned senior counsel also states that in any case the correctness or otherwise of the power conferred by FERA on the competent authority of respondent no.1/Reserve Bank of India (hereafter referred as "RBI") while issuing the letter dated 14.12.1998 is always open to challenge under the writ proceedings. He states that the learned Single Judge did not consider this relevant aspect and misdirected the issue by relating the challenge to the outcome of the suit and appellate proceedings. According to him, these are two distinct and distinguishable challenges.

6. We have heard Mr. J. Sai Deepak, learned senior counsel and Mr. Bharat Arora, learned counsel appearing for the private respondents, and perused the impugned judgment as also the records.

7. Record reveals that CS(OS) 1336/1998 was preferred by the appellant against the respondent nos.2 and 3 seeking a declaration that the General Power of Attorney, Special Powers of Attorney, Wills, Agreement to Sell and any other related instruments executed be operative only until 31.12.1999, and stood extinguished thereafter. Material on record also reveals that a suit bearing CS(OS) 2273/2000 was also instituted by the respondent nos.2 and 3 against the appellant seeking specific performance of the documents executed during the transaction between the parties. Undeniably, on 15.09.2011, the learned Single Judge in CS(OS) 2273/2000 framed an additional issue, which reads, "Whether the transaction in favour of plaintiff No.2 is hit by Section 31 of the Foreign Exchange Regulation Act, 1973?...OPP". It is borne from the record that the learned Single Judge decreed CS(OS) 2273/2000 filed by the respondent nos.2 and 3, while dismissing CS(OS) 1336/1998 filed by the appellant vide the common judgment dated 02.12.2024.

8. Apparently, the appellant challenged the said decree by preferring a Regular First Appeal bearing RFA (OS) 13/2025 and RFA (OS) 14/2025. We are given to understand that these two appeals preferred by the appellant have also been

dismissed by the judgment dated 28.10.2025 by the learned Division Bench of this Court by a detailed judgment. Learned counsel for respondent nos.2 and 3 has handed over a copy of the judgment dated 28.10.2025. The same is taken on record.

9. It would be relevant to note the observations and the findings recorded by the learned Division Bench in its judgment dated 28.10.2025, particularly paras 27 and 28, which have also been taken note of by the learned Single Judge in para 14 of the impugned judgment. Para 14 of the impugned judgment reads thus:

"14. By common judgment dated 02.12.2024, CS (OS) No. 1336/1998 was dismissed, while CS (OS) No. 2273/2000 was decreed inter alia directing specific performance of ATS dated 31.03.1998. During the pendency of this writ petition, the appeals filed by the Petitioner have been dismissed vide judgment dated 28.10.2025. Significantly, in paragraph 12 of the judgment, Division Bench has taken note of the additional issue and the contentions of the respective parties with respect to Section 31 of FERA as also RBI Notification. In paragraph 14(vi), Division Bench has captured the contention of the Petitioner vis-à-vis the FERA regime and paragraph 15 (viii) encapsulates rival contention of Respondent No.2. After analysing the rival submissions as also Section 31(1) of FERA and concerned RBI Notification, the Division Bench held as follows:-

"26. Consequently, we now proceed to consider the issue framed pertaining to the transaction executed by Respondent No.2 in CS (OS) No. 2273/2000, as raised by the Respondents in the amended plaint.

27. This Court is placing reliance upon the RBI Notification, in relation to Section 31(1) of the FERA which reflects that the intimation to the RBI is required. The RBI Notification is reproduced hereinbelow:

"In pursuance of Sub-section (1) of Section 31 of the Foreign Exchange Regulation Act, 1973 (46 of 1973) and in supersession of As Notification No. FERA 100/92-RB dated 8th January 1992, the Reserve Bank is pleased to grant general permission to foreign citizen of Indian origin, to acquire by way of purchase or inheritance and dispose of by way of sale any immovable property, not being agricultural land/farm house/plantation property, situate in India, and to acquire by way of gift and dispose of by way of sale or gift any residential property situate India subject to the following conditions:

1.(a) In the case of purchase the entire consideration is paid out of foreign exchange brought into India through normal banking channel or out of the funds held in Non-Residential External (NRE) Rupee or Foreign Currency Non-Residential (FCNR) account maintained by the purchaser in India. Purchase of residential property is, however, permissible only for bona fide residential purpose of the purchaser, and it shall not be let out except where it is not immediately required for that purpose.

(b) Any person, seeking repatriation of permissible portion of sale proceeds of

any such immovable property, may may apply to the Chief General Manager, Exchange Control Department, Foreign Investment Division (III), Reserve Bank of India, Central Office, Mumbai in the form specified, at the earliest.”

(Emphasis Supplied)

28. It is evident that the transactions executed by Respondent No.2, a foreign citizen of Indian origin, fall squarely within the scope of the general permission granted under the RBI Notification. The Respondents have demonstrated that the purchase consideration for the Second Floor, together with roof and terrace rights, was remitted through NRO and NRE accounts in accordance with the procedural requirements prescribed by the RBI. Further, the Declaration (IPI7) dated 18.08.1998 submitted by Respondent No.2 was duly accepted and acknowledged by the RBI vide its letter dated 14.12.1998. In consequence, the transaction is fully compliant with the statutory provisions under FERA and the procedural mandates stipulated by the RBI Notification.”

10. Contrary to the submissions addressed by learned senior counsel for the appellant, it is clear that the learned Division Bench has examined the additional issue in detail and has rendered its findings thereon clearly pointing out to the fact that the transaction is fully compliant with the statutory provision in the FERA, and the procedural mandate stipulated by the RBI notification. In light of the clear findings recorded by an Appellate Court under Section 96 of the Code of Civil Procedure, 1908, we are unable to appreciate as to on what grounds a writ Court can examine the same issue again. Moreover, in case the appellant was not satisfied with the findings recorded either by the learned Single Judge in the Original Suit or the observations of the Appellate Court, nothing precluded him from challenging the same in accordance with law.

11. At this juncture, we also would find it appropriate to take note of the observations rendered by learned Single Judge in para 15 of the impugned judgment, which too are of relevance. The same reads thus:

“15. From the aforesaid observations of the Division Bench, it is palpably clear that the Court has decided the additional issue settled between the parties in the suit and held that the transactions executed by Respondent No.2 fall squarely within the scope of general permission granted under RBI Notification and that Respondents have demonstrated that purchase consideration for 2nd floor, together with roof and terrace rights, was remitted through NRO and NRE accounts in accordance with procedural requirements prescribed by RBI. The Division Bench has also observed that declaration (Form IPI-7) dated 18.08.1998 was duly accepted by RBI and in consequence, the transaction is fully compliant with statutory provisions under FERA and procedural mandates of RBI Notification. Significantly, RBI maintains the stand even today that mere delay in submission of the declaration may not invalidate the acquisition if exchange control requirements are complied with as also that prevailing guidelines allow acquisition of residential immovable property by foreign citizens of Indian origin

from repatriable funds i.e., NRE and FCNR accounts and in the present case, portion of purchase amount was paid through NRO account (non-repatriable funds) and thus RBI accepted the declaration with a caveat that Respondent No.2 is eligible for repatriation of USD 18134.70 only (funds used from FCNR account). I am thus of the view that there is merit in the preliminary objection raised by the Respondents that the issues sought to be agitated by the Petitioner in the present writ petition have been duly considered and decided by the Division Bench in RFA (OS) 13/2025 and RFA (OS) 14/2025 and cannot be reopened in these proceedings.”

12. This Court also has to bear in mind the fact that once an issue was framed, though the burden of discharging the onus was on the respondent nos.2 and 3, who were the plaintiffs in CS (OS) 2773/2000, nothing precluded the appellant from adducing proper evidence, whether documentary or oral, in support of the aforesaid contention which could and ought to have been placed in the trial proceedings to vindicate his stand. This would have been the appropriate procedure to be followed by the appellant in order to sustain and prove the stand taken on the additional issue. If the appellant has failed in such endeavour for any reason whatsoever, it would not, ipso facto, vest any right upon the appellant to agitate the very same issue again which has been settled by the learned Single Judge as also the learned Division Bench. Urging that the fundamental question is one of violation of statutory framework, and hence, amenable to writ jurisdiction is unsustainable, furthermore, on the grounds of constructive res judicata too. Law conceives of finality of disputes.

13. In view of the above, we do not find any merit in the present appeal and the same is dismissed, however without any order as to costs.