
(2012) 09 DEL CK 0136

In the Delhi High Court

Case No : LPA 656 of 2011 and CM 15077 of 2011

Amina Bi Kaskar Decd thr Lrs

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-09-2012

Acts Referred:

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 —
Section 10, 12(4), 22, 7, 9

Citation : (2012) 194 DLT 57 : (2012) 132 DRJ 657 : (2013) 1 ILR Delhi 398

Hon'ble Judges : Siddharth Mridul, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Bahar U. Barqi, for the Appellant; Jatan Singh with Mr. Tushar Singh,
for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—These appeals have been filed against the common judgment passed by a learned Single Judge of this Court in WP(C) 1426/1999 and WP(C) 1439/1999 on 14.07.2011. The only issue that arises for consideration is whether the Appellate Tribunal for Forfeited Properties (hereinafter referred to as "the Tribunal") had not committed an error in law in dismissing the appellants' common appeal filed purportedly u/s 12(4) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 [hereinafter referred to as "SAFEMA"] on the ground that the said appeal was beyond the time prescribed under the said provision.

2. Some facts would be necessary to decide these appeals. The competent authority under SAFEMA passed an order dated 14.07.1998 for forfeiture of several properties u/s 7 of SAFEMA. The common appeal filed on behalf of the appellants herein before the said Tribunal was filed on 20.10.1998. It is obvious that the appeal was beyond the period of 60 days from the passing of the order dated 14.07.1998 by the competent authority. We may point out, at this stage, that the appellants had admitted in their said appeal before the Tribunal that the

order dated 14.07.1998 was served upon them on 29/30th July, 1998. This admission has clearly been made in paragraph 3 as well as paragraph 8 of the appeal. The clear admission was to the following effect:-

that the said order dated 14.07.1998 was received by the appellant sometime around 29-30th of July, 1998.

A condonation of delay application was also filed along with the said appeal before the said Tribunal. Paragraph 4 of the said condonation of delay application reads as under:-

That the impugned order dated 14.7.1998, was served on the appellant on 29/30th July, 1998, and the appellant should have preferred an appeal within 45 days therefrom. The appellants are illiterate and pardanashini widows and the appellant no. 1 has the duty of bringing up four minor children and an ailing aged mother who is appellant no. 2 in addition to other social obligations.

3. The Tribunal took up the application for condonation of delay and disposed of the same by its order dated 26.10.1998. By an order of the same date, the said application had been dismissed in the following manner:-

3. The order dated 14.7.1998 was served on the appellants on 29/30th July 1998, whereas the order dated 14.10.1998 was served on the appellants on 17.10.1998. Hence the appeal so far as the order dated 14.7.1998 is concerned, was filed with delay on 20.10.1998. The appellant, therefore, filed his application for condonation of delay in presenting the appeal against the order dated 14.7.1998.

4. xxx

5. The copy of the order dated 14.7.1998 was served on the appellants on 29/30th July, 1998 and the appeal was presented on after 20th October 1998 on the 81st day after the service of the order. Under Sec. 12(4) of SAFEMA, an appeal against an order under Sec. 7 or sub-section (1) of Sec. 9 or Sec. 10 has to be preferred within 45 days from the date on which the order is served on the appellant. As per the proviso to sub-section 4, the Tribunal may entertain an appeal after the expiry of the period of 45 days, but not after 60 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. Admittedly, the appeal was presented beyond the period of 60 days. This Tribunal had earlier held by an order dated 1st April 1997 in F.P.A. No. 3 of 1997 in Smt. Pallavi Haribhai Tandel vs. Competent Authority, Ahmadabad, reported in ITR 226 (1997) 1 that the Tribunal has no power to entertain any application for condonation of delay, if the appeal preferred beyond 60 days from the date or the receipt of the order under appeal. Following the decision, we hold that the appeal having been filed beyond 60 days after receipt of the order under appeal, is barred by limitation and this Tribunal has no power to condone delay beyond the period of 60 days prescribed under the Act.

4. Thereafter, both the appellants filed an application for review of the said order

dated 26.10.1998, whereby the condonation of delay application was rejected and the appeal was held to be barred by limitation. The said review application was disposed of by an order dated 10.02.1999 by holding that proper service had been effected and that there were no grounds for reviewing the order dated 26.10.1998. The review petition was dismissed.

5. At this juncture itself, we would like to point out that there is no provision for review in SAFEMA. Therefore, the Tribunal, in our view, ought not to have even entertained the review petition. It is a well settled principle that the power of review is the creature of statute and unless and until the statute provides for a review, any authority, other than a Court of plenary jurisdiction, such as a High Court, would not have any inherent power of review. If any authority is needed for this purpose, the decision of the Supreme Court in the case of Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, would be sufficient. An order purportedly passed in exercise of a review jurisdiction, which an authority does not have, would be a nullity. This is also clearly established in the said decision of the Supreme Court. Consequently, all arguments which were considered and raised and disposed of by the review order dated 10.02.1999, in our view, would be of no consequence. The review petition was not maintainable and the review order dated 10.02.1999 was also a nullity. We may point out that it is in this review application that arguments had been raised with regard to the service of the order on an agent of the appellants, namely, their lawyer/advocate. In our view, we need not go into all those arguments because they were raised only at the stage of the purported review application filed on behalf of the appellants which they were not entitled to do because there was no provision for review in SAFEMA.

6. Unfortunately, the learned Single Judge also went into great detail on the aspect of as to whether service on the advocate was sufficient service within the meaning of Section 22 of SAFEMA. We feel that the entire discussion on that aspect of the matter was unnecessary. This was so because the appellants had clearly admitted in their appeal that the order dated 14.07.198 had been served on them on 29/30th July, 1998. It is on this basis that they had filed the appeal and it is on this basis that they had sought condonation of delay.

7. Section 12(4) of SAFEMA reads as under:-

12. Constitution of appellate tribunal. -

(1) xxx

(2) xxx

(3) xxx

(4) Any person aggrieved by an order of the competent authority made u/s 7, sub-section (1) of section 9 or section 10, may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal:

Provided that the Appellate Tribunal may entertain any appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

It is clear that an appeal u/s 12(4) of SAFEMA has to be filed within 45 days from the date on which the order is served on the person aggrieved. The proviso extends that period by enabling the Tribunal to entertain an appeal even after the period of 45 days but restricts it to the period of 60 days. The stipulation is clear and categorical that the Tribunal cannot entertain any appeal after 60 days from the date on which the order is served on the aggrieved person. The question of the appellant being prevented by a sufficient cause in not filing the appeal within the initial period of 45 days can be looked into only for the balance period of 15 days after 45 days, that is, up to the 60th day.

8. We may point out that the learned counsel for the appellants sought to bring out a distinction between the service of notice and order as provided in Section 22 and service of an order as indicated in Section 12(4) of SAFEMA. We are unable to agree with the said submission of the learned counsel for the appellants. Section 12(4) simply provides that the order must be served on the aggrieved person. The manner in which the order is to be served is set out in Section 22. It not only includes the orders passed under Sections 7, 9(1) or 10 but also other orders and notices that may be made or issued under the said Act. Section 22 of SAFEMA reads as under:-

22. Service of notices and orders. - Any notice or order issued or made under this Act shall be served-

(a) by tendering the notice or order or sending it by registered post to the person for whom it is intended or to his agent;

(b) if the notice or order cannot be served in the manner provided in clause (a), by affixing it on a conspicuous place in the property in relation to which the notice or order is issued or made, or on some conspicuous part of the premises in which the person for whom it is intended is known to have last resided or carried on business or personally worked for gain.

9. Anyhow, we need not go into this aspect of the matter at all inasmuch as the appellants themselves had admitted in their appeal that they had been served with the order dated 14.07.1998 passed by the competent authority on 29/30th July, 1998. That is the starting point of limitation. The appeals were filed on 20.10.1998, which is beyond 60 days from 30th July 1998. In these circumstances, the Tribunal was left with no power to entertain the appeal. We have already indicated that the Tribunal had no jurisdiction to entertain the review petition and / or to pass any order thereon other than dismissal of the same for non-maintainability. The review application as also the order dated 10.02.1999 cannot be looked into for any purposes in these proceedings. Although the learned Single Judge has arrived at the conclusion that the appeals

were barred by time on different set of reasons, we feel that the impugned order does not warrant any interference inasmuch as we agree with the conclusion for the reasons indicated above.

The appeals are dismissed. There shall be no order as to costs.