

(2011) 07 DEL CK 0239

In the Delhi High Court

Case No : Writ Petition (C) No. 1426 of 1999

Amina Bi Kaskar (Deceased)

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-07-2011

Acts Referred:

Advocates Act, 1961 — Section 30
Appellate Tribunal for Forfeited Property (Procedure) Rules, 1986 — Rule 5(1), 5(6), 5(9)
Arbitration Act, 1940 — Section 14(2)
Arbitration and Conciliation Act, 1996 — Section 34
Constitution of India, 1950 — Article 226
Smugglers and Foreign Exchange Manipulators (Appellate Tribunal for Forfeited Property) Rules, 1977 — Rule 5, 6, 7
Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 — Section 10, 12, 12(1), 12(4), 19

Citation : (2011) 185 DLT 274

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Bahar U. Barqi with Mr. D.K. Sharma, for the Appellant; Jatan Singh with Mr. Ashish Kumar Srivastava and Mr. Kunal Kahol, Advocates for UOI, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitions challenge the orders dated 11th February, 1999 and 10th February, 1999 respectively of the Appellate Tribunal for Forfeited Property constituted under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA). Mrs. Amina Bi Kaskar, the petitioner in W.P.(C) No. 1426/1999 being the mother of Mrs. Hasina Ibrahim Parkar, the petitioner in W.P.(C) No.1439/1999, died during the pendency of the petitions and Mrs. Hasina Ibrahim Parkar was substituted in her place in W.P.(C) No. 1426/1999 also.

2. Notice of the petitions was issued. Vide interim orders dated 11th March,

1999, dispossession of the petitioners from the forfeited properties was stayed. On 28th November, 2000 and 26th March, 2001 it was further directed that the petitioners shall not part with possession, assign, alienate or alter the status of any of the properties in question. Rule was issued in the petitions on 20th January, 2006. On 20th July, 2010 Mrs. Hasina Ibrahim Parkar was directed to file an affidavit confirming that in respect of each of the properties subject matter of the present petitions, the order dated 28th November, 2000 was being complied with. Such an affidavit has been filed.

3. The counsel for the petitioners and the counsel for the respondent UOI have been heard.

4. The Competent Authority under SAFEMA, vide order dated 14th July, 1998 made in exercise of powers u/s 7 of SAFEMA, held the properties mentioned therein in the name of Mrs. Amina Bi Kaskar and Mrs. Hasina Ibrahim Parkar being the mother and sister respectively of Mr. Dawood Ibrahim Sheikh, being a person covered by Section 2(2)(b) of SAFEMA, to be illegally acquired properties of Mr. Dawood Ibrahim Sheikh and liable for forfeiture u/s 7 and accordingly ordered forfeiture thereof and called upon Mrs. Amina Bi Kaskar and Mrs. Hasina Ibrahim Parkar to surrender the said properties.

5. The Competent Authority vide letter dated 14th October, 1998 called upon the petitioners to hand over vacant, peaceful physical possession of the properties by 26th October, 1998.

6. An appeal under Rules 5 & 6 of SAFEMA (Appellate Tribunal for Forfeited Property) Rules, 1977 was filed in the name of both Mrs. Amina Bi Kaskar and Mrs. Hasina Ibrahim Parkar before the Appellate Tribunal against the order aforesaid of the Competent Authority. Columns 2, 3 & 8 of the memorandum of the said appeal were as under:-

2. Date of the Order

Order No.CA/BOM/II/2(b)/D-4/93-94/1500 dated 14.10.1998 and Order No.CA/BOM/II/2(b)/D-4/93-94/1117 dated 14.07.1998

3. Date of service of the Order

Order dated 14.10.1998 was served upon the Appellant on 17.10.1998 itself. Order dated 14.7.1998 was served upon the appellant on 29/30th of July, 1998.

8. Relief claimed:

[The Appellant is disputing both the said orders, viz., Order dated 14.10.1998 and Order dated 14.7.1998 passed by the Competent Authority, in entirety]

It is respectfully prayed that this Learned Tribunal may graciously be pleased to:-

(a) Condone the delay in filing the present Appeal, in so far as the same impugned order dated 14.7.1998 passed by the Competent Authority under Sections 7 & 19(1) of the SAFEM Act, 1976, for the grounds for the same stated

in the accompanying application for condonation of delay;

(b) Set aside the order No.CA/BOM/II/2(b)/D-4/93-94/1117 dated 14.07.1998 and order No. CA/BOM/I/2(b)/D-4/93-94/1500 dated 14.10.1998 under SAFEMA passed by the Competent Authority is being illegal and violative of principle of natural justice and/or;

(c) Remand the matter back to the competent authority so that the appellants are given an opportunity for placing the relevant material and records before it for proper adjudication of the matter and for disposal in accordance with the law, if necessary, within a fixed time schedule;

(d) Pending the hearing and final disposal of the appeal the orders be stayed and the respondents be restrained from dispossessing the appellants and interfering with their peaceful possession of the property. [a separate application for stay of the operation of the impugned Orders is also being filed herewith],

(e) Pass such other or further order(s) as this Learned Tribunal deems fit and proper in the circumstances of the present case in favour of the appellants.

7. Under the column "Grounds of Appeal" in the aforesaid appeal, under the heading "Brief Facts of the Case" paras 5 to 10 were as under:-

5. That the counsel for appellant no. 1 had appeared before the Competent Authority on a number of occasion including 16.02.1998 and had to ask for adjournment for two weeks as he was busy in a Supreme Court time bound trial in the Mumbai City Court case being Suit No.2784/96 where he was representing defendant no. 6 in the Court. On the next date of hearing 26.02.1998, unfortunately, the counsel was still busy in the case as the trial was going on day-to-day and could not remain present before the Competent Authority.

6. That the counsel had placed some relevant facts before the Competent Authority as were available with him on the said date and had further made oral submissions relating to the source of income of the appellant and also other factual matters and also the fact that the Chartered Accountant of the appellant was in the process of updating the various accounts and the material would be placed before the Competent Authority within a short time as soon as the assessment would be completed by the Income Tax Officials.

7. The appellant in the end of July, 1998 received a notice alleged to have been passed under the SAFEMA forfeiting the property, set out therein by which order the Competent Authority seems to have been disposed of the matter without giving the appellant a full and complete opportunity of placing the relevant documents to discharge the burden that has been placed upon them of proving that the properties were purchased from the independent sources of the parties concerned and the properties have no nexus with the alleged illegal activities of AP-I or had absolutely no connection or had been bought out or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by or under any law for the time being in force. Or that the

said properties were illegally acquired properties within the clause (c), sub-section (2) of Section 3 of the SAFEMA. The matter had been pending before the Competent Authority since 1994 and had been listed for hearing on 14.07.1995. Thereafter nothing had been heard from the Competent Authority and the matter was suddenly disposed of after a lapse of three years without giving full opportunity to the appellants to discharge the onerous burden that has been caused upon them particularly on an illiterate pardanashini Muslim widow.

8. That the said order dated 14.07.1998 was received by the appellant sometime around 29/30th of July, 1998. The appellant no. 1 who was not fully aware of the impact of the order contacted her counsel and her Chartered Accountant and for the first time he learnt that an order has been passed on 31st December, 1997 in respect of one of the property covered by the order dated 14.07.1998 in regard to her residential flat wherein the Commissioner of Income Tax Appeals has subsequently found that there was no evidence brought on record by the Assessing Authority from which it could be inferred that fund or making investment in the said residential flat at A-2, Gorden Hill Apartments, 105, Safaiya Zafari, Nagpada, Mumbai, flowed from Mr. Dawood Ibrahim Kaskar who is the brother of the appellant no. 1 and has further held that investment for the said property has been made by the appellant and the source of funds in the same are to be considered in her hands and the property has also been held belonging to the appellant. A copy of the order of Commissioner of Income Tax Appeals dated 31st December, 1997 is annexed herewith and marked as ANNEXURE-I.

9. That the appellant no. 1 learnt of the order of the C.I.T. Appeals after she received the order of the Competent Authority and therefore, contacted her counsel as to the next course of action. That since the order of the Commissioner of Income Tax Appeals related to only one property and the forfeiture order is in relation to five others, the appellant was making every effort to collect whatever material which would be required for the preparation of the appeal and to explain and discharge the burden that had been placed on them. However, on 17.10.1998 the appellant no. 1 received notice dated 14.10.1998 by which the appellant no. 1 is required to hand-over the peaceful and vacant possession of her residential flat A-2, Gorden Hill Apartment, Sofia Sufari Road, Nagpad, Mumbai by 26.10.1998 by handing over the key of the vacant house to the respondents. The appellant is living in the said premises along with her four minor children and aged mother-in-law and other dependent members of her family, Iqbal Ismail Parkar, Rukaiya Abdulla Parkar and Razak Abdulla Parkar. Documents in support of their residence will be produced at the time of hearing. The said order has been endorsed to the Commissioner of Police, Mumbai, requesting him to give requisite number of police force to take over possession of the above said house on 26.07.1998.

10. That the appellants due to circumstances beyond their control have not been able to produce the relevant material at the date of hearing when the matter was

listed last on 16.2.98 and her counsel had to seek an adjournment. Only on receipt of the order dated 14.7.98 the appellant no.1 has now learnt that the matter has been disposed of and practically decided ex-parte in violation of the principles of natural justice.

8. The aforesaid appeal was accompanied with an application for condonation of delay in filing the appeal; paras 3 to 7 of the said application were as under:-

3. That under Sub-Section (4) of Section 12 of SAFEMA the appellants are required to file the appeal within 45 days from the date on which the order was served on him.

4. 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 ailing and aged mother who is appellant no. 2 in addition to other social obligations.

5. That the appellant no. 1 in the beginning of August had to be at Ragnagiri to attend the death anniversary prayers (fatwa) offered to her late husband and also to attend her ailing paternal grand-mothers at Ratnagiri and she had to extend her stay at Ratnagiri on account of her own illness. This also kept the appellant preoccupied and he could not promptly attend to the collection of records and filing of the present appeal.

6. That appellant no. 2 is about 78 years old and had already suffered a paralytic stroke from which she has not fully recovered and she is also a patient of diabetics and cannot move around on her own. That in fact the appellant no. 2 was hospitalized recently in September, 1998 and still she is not completely recovered and is not in a position to travel and pursue her case.

7. That the appellant no. 1 is an illiterate person and was not fully aware of the fact that the appeal had to be preferred within 45 days itself. This she became aware of only when she came back from Ratnagiri and she immediately started making arrangement for filing the same.

The said application was accompanied with an affidavit of one Mohd. Salim as the "parokar" of the petitioners Mrs. Amina Bi Kaskar and Mrs. Hasina Ibrahim Parkar.

9. The Appellate Tribunal vide order dated 26th October, 1998 dismissed the application aforesaid for condonation of delay in preferring the appeal holding that the Appellate Tribunal has no jurisdiction to condone the delay beyond the period of 60 days. While holding so, it was observed in paras 3, 4 & 5 of the order as under:-

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. Ms. Kamini Jaiswal, appearing for the appellants contended that one of the appellants had sufficient cause for not filing the appeal within time, as she had to attend on the paternal grandmother at Ratnagiri. It is also stated that the appellant no. 2 is old being aged about 78 years and had suffered a paralytic stroke and that she has been hospitalized. Appellant no. 1 is an illiterate person and was not fully aware of the limitation prescribed.

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.

Resultantly, the appeal aforesaid preferred by both Mrs. Amina Bi Kaskar and Mrs. Hasina Ibrahim Parkar was not entertained.

10. Thereafter an application titled as for review/rectification of the order dated 26th October, 1998 was filed before the Appellate Tribunal. Paras 1 to 9 of the said application were as under:-

1. That the appellants had filed the above mentioned Appeal alongwith an application for condonation of delay u/s 12 of the SAFEMA against orders dated 14.10.1998 and 14.07.1998 of the competent authority, SAFEMA.

2. That the said application for condonation of delay of the appellant has been rejected by the Tribunal as the Tribunal has found that it has no power to entertain an application for condonation of delay.

3. That the said Appeal had also impugned an order dated 14.10.98 passed by the competent authority u/s 19 of S.A.F.E.M.A. directing the appellant to hand over possession of her residential house by 26.10.98. The said order had been handed over to the daughter of the Appellant only on 17.10.98, which was a Saturday, the next two days were holidays on account of Diwali festival. Appeal was hurriedly filed on 20.10.98. The said appeal has been filed erroneously on the basis that the order dated 14.7.98 had been served on the appellant on 29.7.98.

4. That immediately on receipt of the limine order rejecting the appeal of the Appellant the counsel applied for inspection of the records and it has been discovered that the order dated 14.7.98 had not been served on the Appellants at all, the signature on the acknowledgement mentions the name of the

Appellant in English a language not known to the Appellant and the signature is of her minor daughter. The Appellant is an illiterate pardanashin Muslim woman and in fact signs only in urdu all documents signed by her including the Sale Agreement and the Power of Attorney executed before respondent No. 1 and this Hon"ble tribunal have been signed in urdu only. In Fact the appellant as already mentioned in the application for condonation of delay was away to Ratnagiri to attend the "fateha" ceremonies of her late husband and came back only in September after taking care of her ailing paternal grandmother.

5. That under Sub-Section (4) of Section 12 of SAFEMA the appellant was required to file the appeal within 45 days from the date on which the order was served on her.

6. That the impugned order dated 14.7.1998, was as it now turns out never served on the appellants as envisaged in Section 22 of the act and the appellant in her appeal filed on 20th October has erroneously mentioned that it was served on her on 29/30th July, 1998. The appeal of the Appellant was dismissed summarily on the basis of this erroneous statement made by the appellant.

7. That the appellant has discovered this mistake when the records of the competent authority were inspected by her counsel on 30.10.98 for the purpose of deciding further course of action on rejection of her appeal. A copy of the application moved by her counsel is annexed herewith and marked as ANNEXURE A

8. That thereafter the appellant on being informed that the acknowledgement bore her name in English with some signature in English below it. Thereafter the Appellant herself when with her counsel to the Respondent No. 1's office on 9.11.98 to ascertain and identify the writing and the signature on the RPAD card, she found that the signature and writing was that of her minor daughter Khushiya. A copy of the application is annexed herewith and marked as ANNEXURE B. On enquiry it was revealed by her said daughter that the envelope was received by her by post and the postman delivering the same had required her to put down her mother's name on the card. The said A.D. card does not contain any signature of the appellant.

9. The statement in the body of the appeal and application for condonation of delay to the contrary is an error apparent on the record of the case. That mistake is unintentional and bonafide and for reasons beyond the control of the Appellant.

11. The Competent Authority under SAFEMA, in response to the aforesaid application of the petitioners informed that the order dated 14th July, 1998 sent by registered post to Mrs. Hasina Ibrahim Parkar was duly served on her on 20th July, 1998; that the order sent by registered post to Mrs. Amina Bi Kaskar was returned back undelivered and hence the same was affixed under Panchnama on 29th September, 1998; that the order dated 14th July, 1998 was also delivered to the Advocate for Mrs. Amina Bi Kaskar and Mrs. Hasina Ibrahim Parkar on 22nd July, 1998; that the said Advocate was holding unrevoked Vakalatnama

from both of them and service on him was valid service of the order.

12. At this stage, it may be stated that both Mrs. Amina Bi Kaskar and Mrs. Hasina Ibrahim Parkar, before the Competent Authority as well as in the appeal as well as in the application aforesaid were represented by the same Advocate.

13. The Appellate Tribunal vide order dated 10th February, 1999 impugned by Mrs. Hasina Ibrahim Parkar in WP(C) No. 1439/99, dismissed the application aforesaid for review/rectification holding that Section 22(a) of SAFEMA permitted service of the order either on the person for whom it was intended or on his agent; "admittedly, the order was not served on the petitioners but was served on their Advocate" and holding the Advocate to be the agent of the petitioners. It was further held that the application for condonation of delay had been correctly dismissed vide order dated 26th October, 1998 (*supra*).

14. Mrs. Amina Bi Kaskar has not challenged the aforesaid order dated 10th February, 1999 because she, while pursuing the application aforesaid for review/rectification, also filed another appeal before the Appellate Tribunal, again challenging the order dated 14th July, 1998 (*supra*) of the Competent Authority. In the said appeal it was stated that the order dated 14th July, 1998 had been served on her only on 17th October, 1998. It was stated in the said appeal that she had left Bombay on 6th September, 1998 and returned back only on 17th October, 1998 when she found the order dated 14th July, 1998 pasted on her door. It was further stated by Mrs. Amina Bi Kaskar in the said appeal that her daughter i.e. Mrs. Hasina Ibrahim Parkar had earlier filed an appeal and had included Mrs. Amina Bi Kaskar's name also in the memo of appeal but she had never signed any document or Power of Attorney. The said (second) appeal was also filed through the same Advocate.

15. The Appellate Tribunal vide order dated 11th February, 1999 impugned by Mrs. Amina Bi Kaskar in WP(C) No. 1426/99, dismissed the aforesaid (second) appeal as barred by limitation. The Appellate Tribunal while doing so observed that though the earlier appeal had been filed in the name of both Mrs. Amina Bi Kaskar and Mrs. Hasina Ibrahim Parkar but there were no signatures of Mrs. Amina Bi Kaskar on any of the document(s) concerning the earlier appeal and as such the earlier appeal could not be said to have been preferred by Mrs. Amina Bi Kaskar. It was however further observed that "the learned counsel for the appellant does not dispute the fact of service of the order on the counsel as stated by the Deputy Director but only contends that the Advocate is not an agent of the appellant and the service on the Advocate is not service in accordance with Section 22 of SAFEMA and hence the period of limitation cannot begin to run from 22nd July, 1998 and the question of limitation does not arise". The Appellate Tribunal held that the Advocate is an "agent" within the meaning of Section 22(a) of SAFEMA and hence Mrs. Amina Bi Kaskar was held to have been served on 22nd July, 1998 and the (second) appeal also held to be barred by time.

16. The counsel for the petitioners has at the outset invited attention to Sections 12(4) and 22 of SAFEMA and which for ready reference are reproduced herein below:-

12. Constitution of appellate tribunal--

(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.

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.

17. It is contended that the mode of service prescribed in Section 22 inter alia of service on agent is not applicable to an appeal as provided u/s 12(4), the period of limitation wherefor is to be computed from the date of service on the aggrieved person alone and not on the agent. It is thus contended that the orders aforesaid treating the service on the Advocate of the petitioners to be service on the petitioners are bad.

18. I am unable to accept the said contention. Section 22 is the sole repository for service of "any" notice or order issued or made under SAFEMA. The order u/s 7 is an order under the Act and service of such an order cannot be excluded from the purview of Section 22. It may be mentioned that Section 12(1) provides for the orders of the Competent Authority against which appeal lies to the Appellate Tribunal. Section 12(4) provides the period of limitation for all such appeals. The appeals to the Appellate Tribunal do not lie against any other order than those provided u/s 12(1) and (4). If it were to be held that Section 22 does not provide for manner of service of orders mentioned in Section 12(4), then I wonder, for service of which orders provision is made in Section 22. Such an interpretation would make portions of Section 22 redundant/otiose and cannot be accepted. Section 12(4) only prescribes the date of commencement of limitation for preferring an appeal as, from the date of service of the order on the person aggrieved therefrom. However, how such service is to be effected is prescribed in

Section 22. Thus it cannot be said that Section 12(4) is intended to provide a special mode of service, other than that prescribed in Section 22. This Court in *Amarjit Singh Vs. Union of India and Others* has held that service of notices and orders under SAFEMA is to be as per Section 22 only and the procedure of service prescribed in CPC cannot be applied. The Apex Court also in *Yakub Abdul Razak Memon Vs. Competent Authority*, proceeded on the premise that mode of service of an order u/s 7 is as prescribed in Section 22.

19. The counsel for the petitioners has not challenged the finding of the Appellate Tribunal, of the Advocate being the agent of the client. The Appellate Tribunal has relied on several judgments in this respect. In the absence of any argument challenging the same having been urged, it is not deemed appropriate to burden this judgment with discussion on the said aspect. I may however notice that the Apex Court in *Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others*, in respect to notice u/s 14(2) of the Arbitration Act, 1940 held that the communication to the pleader of the parties that an award has been filed is sufficient compliance with the requirement of the said provision of giving notice to the parties concerned.

20. The counsel for the petitioners has also not made any argument on condonation of delay beyond 60 days being not possible. Reference in this regard can be made to the dicta in *Union of India Vs. M/s Popular Construction Co.*, relating to Section 34 of the Arbitration and Conciliation Act, 1996 where identical language as in proviso to Section 12(4) of SAFEMA was interpreted to hold that there is no power in the Court to condone delay.

21. The counsel for the petitioners has also invited attention to the affidavit filed by the said Advocate for the petitioners, in this Court, denying that the order dated 14th July, 1998 was served on him on 22nd July, 1998. No reliance can however be placed on the said affidavit. As aforesaid, the same Advocate had before the Appellate Tribunal and as recorded in the order dated 11th February, 1999, expressly admitted receipt of the order on 22nd July, 1998. A contradictory affidavit filed before this Court does not inspire confidence.

22. The counsel for the petitioners has however argued that the agency of Advocate is limited to the powers vested in him under the Vakalatnama executed in his favour and not beyond that. Attention is invited to the Vakalatnama filed before the Competent Authority and which is as under:-

I, _____ do hereby appoint Mr. Pervez M. Rustomkhan, Advocate, High Court, Bombay, to act, appear and plead for me and on my behalf in the above matter.

23. It is contended that the same nowhere authorizes the Advocate to accept copies of the order. It is also urged that the authorization in favour of the Advocate comes to an end on culmination of the proceedings and which before the Competent Authority culminated on 14th July, 1998 and thus the acceptance if any of the order on 22nd July, 1998 cannot be said to be acceptance as agent of the petitioners.

24. Per contra, the counsel for the respondent UOI has contended that the words "to act" in the Vakalatnama aforesaid are of wide amplitude and would encompass the authority to receive the order. It is further controverted that the authority of the Advocate comes to an end as claimed. It is contended that the Advocate was required to withdraw the Vakalatnama and which admittedly was not done.

25. I tend to agree with the contention of the counsel for the respondent UOI. The words "to act" are indeed words of wide amplitude. An Advocate u/s 30 of the Advocates Act, 1961 is entitled as of right to practice law inter alia before any Tribunal. The expression "right to practice" includes both pleading and to act as held in *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, . The Supreme Court in *Jamilabai Abdul Kadar Vs. Shankarlal Gulabchand and Others*, held that the right of the Advocate to practice i.e. to act, also included the authority to settle/compromise the lis on behalf of the client. In the face of such authority of the Advocate, it cannot be said that the Advocate, though authorized to settle/compromise on behalf of the client, has no authority to take delivery of the order on behalf of the client. The Division Bench of the Punjab & Haryana High Court in *S. Maharaj Baksh Singh Vs. Charan Kaur* AIR 1987 Punjab & Haryana 213 held that a lawyer is understood to embody his client in his own person.

26. Moreover, the contemporaneous conduct of the parties in the present case i.e. of both Mrs. Amina Bi Kaskar and Mrs. Hasina Ibrahim Parkar as well as the Advocate also demonstrates that they all understood that the Advocate was the agent for receiving the orders. Had the Advocate not treated himself so empowered to accept the order, he would not have accepted the order. Not only so, the same Advocate thereafter preferred the appeal to the Appellate Tribunal also. The appeal was preferred on behalf of Mrs. Amina Bi Kaskar also even though stated to be not bearing her signatures. The affidavit accompanying the appeal, as aforesaid was signed not by Mrs. Hasina Ibrahim Parkar also but by the "parokar". The relationship of the two petitioners being that of mother and daughter and there being nothing contrary, the "parokar" is deemed to have represented both the petitioners. The Advocate also on the basis of the Vakalatnama earlier given in his favour considered himself empowered to even prefer the appeal on behalf of Mrs. Amina Bi Kaskar. Both the petitioners availed benefit of the said appeal. They obtained interim orders restraining taking over of the possession. After having availed such benefits, they cannot be heard to contend otherwise.

27. It is a well established principle of civil law that the Vakalatnama issued to the Advocate enures in appeal arising from the original proceedings (See *Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh and Another*,). I find no reason not to apply the same to the proceedings under SAFEMA also.

28. In this regard I may also notice that the Appellate Tribunal for Forfeited Property (Procedure) Rules, 1986 while prescribing the procedure for filing

appeals and petitions, in Rule 5(1) prescribe the Memorandum of Appeal to be in the form annexed to the said Rules and in Rule 5(6) prescribe for the Memorandum of Appeal to be presented by the appellant in person or where there are more appellants than one, by any of them or by his authorized representative. The explanation thereto includes a legal practitioner authorized to appear on behalf of the appellant in the expression "authorized representative". The Rules nowhere require the appeal to be signed by the appellant(s) and Rule 5(9) requires the petition to be accompanied by an affidavit. In the present case as aforesaid in the (first) appeal, the affidavit was of the "parokar" of both Mrs. Amina Bi Kaskar and Mrs. Hasina Ibrahim Parkar. The Rules nowhere provide for the filing of Vakalatnama signed by the appellants. The Form of the Memorandum of Appeal annexed to the Rules requires the signature of the appellant and which as per Rule 5(6) would mean where there are more than one appellants, signature of any one appellant or his authorized representative. The (first) appeal preferred in the name of both Mrs. Amina Bi Kaskar and Mrs. Hasina Ibrahim Parkar was thus an appeal by both of them and did not cease to be an appeal by Mrs. Amina Bi Kaskar merely because the same did not bear her signatures. As aforesaid, signature by one appellant i.e. Mrs. Hasina Ibrahim Parkar, under the Rules aforesaid, was enough. Thus, the (second) appeal preferred by Mrs. Amina Bi Kaskar in any case was not maintainable and Mrs. Amina Bi Kaskar was fully bound by what was stated in the (first) appeal of having been served with the order of the Competent Authority in the end of July, 1998 and Mrs. Amina Bi Kaskar could not be permitted to reprobate.

29. Significantly, the petitioners did not take any action whatsoever against their Advocate. Rather, the Advocate remained hand in glove with the petitioners and filed affidavit in these proceedings supporting the case of the petitioners. The recent view of this Court has been that a litigant cannot take the shield of his Advocate. As aforesaid, the petitioners have been availing the services and benefits of the actions of the Advocate and cannot now be heard to contend that the Advocate was authorized to do one act but not to do another.

30. This Court had vide earlier order directed production of the records of the Competent Authority as well as the Appellate Tribunal. A perusal thereof shows that service by affixation was also affected on both the petitioners.

31. I am thus satisfied that there is nothing requiring interference of this Court in exercise of powers under Article 226 of the Constitution of India in either of the orders impugned in these petitions. The petitioners in the (first) appeal preferred before the Appellate Tribunal unequivocally admitted service upon them of the order of the Competent Authority in the end of the month of July, 1998. The said (first) appeal even though not bearing the signature of Mrs. Amina Bi Kaskar was an appeal by her also inasmuch as the Rules aforesaid permit an appeal by more than one appellant to be presented by one of the appellants only. The (first) appeal itself was preferred beyond the period of 60 days from such service and was accompanied by an application for condonation of delay and which

condonation was not permissible. The averments in the (first) appeal and in the application for condonation of delay filed therewith expressly related to the petitioner Mrs. Amina Bi Kaskar also and the petitioners could not subsequently be heard to contend that the said appeal was not by the petitioner Mrs. Amina Bi Kaskar. The Advocates who appeared in the (first) appeal also raised arguments on behalf of the petitioner Mrs. Amina Bi Kaskar, as recorded in the order dated 26th October, 1998 supra and such arguments must have been made under instructions from both Mrs. Amina Bi Kaskar and Mrs. Hasina Ibrahim Parkar. Rather, the application for review/rectification was beyond the scope of review and sought to withdraw admissions made earlier in the Memorandum of Appeal and in the application for condonation of delay and without making out any case for withdrawal of such admissions. It is inconceivable that the date of the service of the order would have been mentioned as in end of July, 1998 without the same having been so served. No explanation whatsoever was furnished as to how it came to be stated that the order was so served in the end of July, 1998 on both Mrs. Amina Bi Kaskar and Mrs. Hasina Ibrahim Parkar if the same had not been so served. Once the petitioners are held to be bound by the said admissions, the application for review/rectification and the (second) appeal, the orders whereon are under challenge, were misconceived.

32. The entire conduct of the petitioners in the present cases also does not entitle the petitioners to the exercise of discretion vested in this Court under Article 226 of the Constitution of India in their favour. The petitioners as aforesaid first admitted receipt of the order by both of them in the end of July, 1998 and sought condonation of delay in preferring the appeal. Upon being unsuccessful, they turned turtle and denied receipt of order as earlier admitted by them. Not only so, Mrs. Amina Bi Kaskar took contradictory stand. She on the one hand continued to pursue the application for review/rectification in the appeal filed along with her daughter Mrs. Hasina Ibrahim Parkar and simultaneously filed a fresh appeal denying that the earlier appeal was under her authority. Litigants who indulge in such practices do not deserve any sympathy from this Court. The Supreme Court in *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, has held that unscrupulous persons are abusing the process of this Court and should be dealt with sternly.

33. The petitioners today also continue to be represented by one Advocate only. They have throughout been pursuing the proceedings together and the averments now made are mala fide.

34. The petitioners in the manner aforesaid have throttled the order of forfeiture of properties for the last nearly 13 years. No case for review/rectification as sought to have been made, was made out. Without the service of the order on the petitioners as admitted by them in the appeal first filed, they could not have preferred the appeal. The counsel for the petitioners had no reply when confronted with as to how the appeal was preferred and the copy of the order filed with the first appeal received, if not as admitted therein.

35. The counsel for the petitioners has laid much emphasis on the copy of the passport of Mrs. Amina Bi Kaskar filed before this Court on the basis whereof it is contended that the appeal subsequently filed by Mrs. Amina Bi Kaskar in her own name was within the prescribed time from the date of her return to India. However in view of the above discussion, the said argument has no merits. Even if Mrs. Amina Bi Kaskar was abroad, the period of limitation began to run from the service on her agent and/or service in accordance with Section 22(b) of the Act. In fact the same is intended to take care of such situations only.

36. At this stage, notice may be taken of a preliminary objection of the counsel for the respondent UOI. He has with reference to Mahesh Kantilal Zaveri Vs. Union of India 2010 VII AD (Delhi) 804 challenged the very maintainability of the writ petition. This Court in the said judgment on the basis of Attorney General for India and Others Vs. Amratlal Prajivandas and Others, held that until and unless the detention order under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 is successfully challenged, the basis of subsequent forfeiture order under SAFEMA cannot be questioned. It is contended that Mr. Dawood Ibrahim Sheikh whose relatives within the meaning of Section 2(2)(c) the petitioners are and owing to detention order against whom the order of forfeiture of properties made, had not even challenged the detention order; the forfeiture effected cannot thus in any way be questioned.

37. The counsel for the petitioners has not been able to respond to the said argument also.

38. There is thus merit in the said contention also of the counsel for the respondent UOI and the petitions are liable to be dismissed on this preliminary ground as well.

39. The counsel for the respondent UOI has also contended that no grounds as taken at the time of hearing qua Sections 12(4) and 22 have been urged in appeal. It is also informed by way of abundant caution though has not been argued by the counsel for the petitioners that the Division Bench of this Court in Ashok Kumar Vs. Competent Authority 2001 (1) JCC (Delhi) 193 has held that the order under SAFEMA is independent of the orders under the Income Tax Act.

40. There is thus no merit in the petitions; the same are dismissed and the interim orders earlier granted stand vacated. The petitioners have, by abusing the process of the Court, delayed delivery of possession of the forfeited properties as aforesaid for the last 13 years. The petitioners are accordingly burdened with costs of Rs. 1,00,000/- each and are directed to on or before 14th August, 2011 put the respondents into possession of the properties and do everything in compliance of the order dated 14th July, 1998 and the respondents are directed to forthwith take over properties in terms of the order dated 14th July, 1998 of the Competent Authority.