

(2013) 11 DEL CK 0342
In the Delhi High Court
Case No : Criminal A. 186 of 2007

Bhawarlal S. Kothari

APPELLANT

Vs

Registrar, Appellate Tribunal Foreign Exchange and Another

RESPONDENT

Date of Decision : 06-11-2013

Acts Referred:

Foreign Exchange Management Act, 1999 — Section 35
Foreign Exchange Regulation Act, 1973 — Section 8(1)
Limitation Act, 1963 — Section 14

Citation : (2013) 10 AD 370 : (2014) 1 JCC 48

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : P. Ojha, Mr. Alok Singh and Mr. Suresh Kumar, for the Appellant;
Rajdipa Behura, for the Respondent

Final Decision : Disposed Off

Judgement

Hima Kohli, J.—The present appeal has been filed by the appellant, a permanent resident of Mumbai, against an order dated 22.3.2006 passed by the Appellate Tribunal for Foreign Exchange (in short "the Tribunal") in Appeal No. 134/1996, preferred by him against the order dated 27.2.1996 passed by the adjudicatory authority holding inter alia that the appellant had contravened the provisions of Section 8(1) of the Foreign Exchange Regulation Act, 1973 (in short "the FERA") and imposing a penalty of Rs. 87,000/- on him. At the outset, learned counsel for the respondents opposes the present appeal on twin grounds of maintainability, the first ground being that the present appeal has been filed beyond the prescribed period of limitation and the second ground is that this Court is not vested with the territorial jurisdiction to entertain the same.

2. For deciding the objection of limitation taken by the counsel for the respondents, as noted above, reference to some dates is considered relevant. The impugned order is dated 22.3.2006. Section 35 of the Foreign Exchange Management Act, 1999 (in short "FEMA") provides for 60 days for filing an

appeal in the High Court and the said period of 60 days are to be reckoned from the date of communication of the decision or order of the Tribunal to the aggrieved party. It is an undisputed position that on the date of filing of the appeal, the provisions of the FERA had ceased to apply and the provisions of FEMA have been invoked by the appellant.

3. As per the learned counsel for the appellant, a certified copy of the impugned order came to be served on the appellant on 27.12.2006. The records reveal that the present appeal was filed on 26.2.2007. If the period of 60 days for filing the appeal is reckoned from 28.12.2006, the same would have expired on 25.2.2007. However, 25.02.2007 happened to be a Sunday, and the present appeal came to be filed on the very next working day, i.e. on 26.02.2007; as such it has been filed well within the period of limitation. Therefore the objection raised as to the maintainability of the appeal on the ground that it is barred by limitation, is found to be devoid of merits and is turned down.

4. Coming to the second objection taken by the learned counsel for the respondents with regard to lack of territorial jurisdiction, counsel for the respondents refers to the Explanation appended to Section 35 of the FEMA to contend that the appellant who is a permanent resident of Mumbai, being the aggrieved party, ought to have approached the Bombay High Court to assail the impugned order. In support of her submission that this Court is not vested with the territorial jurisdiction to entertain the present appeal, she relies on the decision of the Supreme Court in the case of Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and Another, .

5. To appreciate the aforesaid submission made by the counsel for the respondent, it is necessary to advert to Section 35 of the FEMA, which reads as below:

35. Appeal to High Court - Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Explanation - In this section "High Court" means-

(a) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(b) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.

6. As noted above, the Explanation clause of Section 35 of the FEMA explains the term "High Court" in two contexts. In Explanation (a), the term "High Court" has been defined as a court where the aggrieved party ordinarily resides or carries out business or personally works for gain and Explanation (b) applies where the Central Government being an aggrieved party, proposes to file an appeal and in such circumstance, the "High Court" has been defined as one within whose jurisdiction the respondent or any of the respondents ordinarily reside or carry out business or personally work for gain. In other words, both the Explanations work to the benefit of the individual, whether as the appellant/aggrieved party or as a respondent in a State appeal.

7. In the present case, the appellant herein is the aggrieved party, who, as is apparent from a perusal of the memo of parties and the affidavit filed in support of the appeal, is a permanent resident of Mumbai. In such a circumstance, Explanation (a) of Section 35 of FEMA comes into play and there is no manner of doubt that the appellant ought to have approached the court where he ordinarily resides to file the present appeal. In view of the above, this Court cannot be treated as the "appropriate court" within the meaning of the Explanation to Section 35 of the FEMA for purposes of entertaining the present appeal.

8. Accordingly, the objection taken by the respondent with regard to the maintainability of the appeal on the second ground is upheld and the present appeal is disposed of with liberty granted to the appellant to approach the appropriate High Court vested with the territorial jurisdiction, as specified in Section 35 of the FEMA, for filing an appeal against the impugned order. In view of the fact that the date of the impugned order is 22.3.2006 and the present appeal came to be filed within the period of limitation, on 26.2.2007 and after the pleadings were completed, the same was admitted for final hearing on 25.3.2009 and ever since, it has remained pending, the appellant shall be at liberty to invoke the provisions of Section 14 of the Limitation Act for explaining the delay in approaching the said court. Further, in the interest of justice, it is directed that the interim order dated 30.3.2007, staying the operation of the impugned order, shall continue to operate in favour of the appellant for a period of six weeks from today so as to enable him to seek interim relief from the High Court vested with the territorial jurisdiction to entertain the appeal in accordance with law. The appeal is disposed of.