(2018) 02 DEL CK 0665

In the Delhi High Court

Case No : Letter Patent Appeal No. 57 Of 2018, Civil Miscellaneous Application No. 5630, 5631 Of 2018

Bimal Kumar Jain APPELLANT

Vs

Directorate Of Enforcement RESPONDENT

Date of Decision : 28-02-2018

Acts Referred:

Foreign Exchange Management Act, 1999 — Section 60(3)

Citation : (2018) 02 DEL CK 0665

Hon'ble Judges : S. Ravindra Bhat, J;A. K. Chawla, J

Bench : Division Bench

Advocate : Rakesh Tiku, Naveen Malhotra, Gaurav Kohli, Amit Mahajan

Final Decision : Partly Allowed

Judgement

S. Ravindra Bhat, J

1. Ld. Single Judgeâ??s order upholding the decision of the Assistant Director, Enforcement Directorate in the course of the proceedings under

Section 60(3) of the Foreign Exchange Management Act, 1999 (hereafter referred to as â??FEMAâ??) is challenged in this appeal.

2. The Enforcement Directorate made a complaint on 8.1.2016 alleging violation of provisions of FEMA; a show cause notice was issued on

11.1.2016 to the appellant calling upon him to disclose why adjudication proceedings contemplated under the enactment, should not be drawn.

Adjudication pursuant to the show cause notice was initiated. At the stage of initiation of proceedings for release of jewellery seized, a writ petition

was disposed of on 14.9.2017. During the course of proceedings, the appellant sought cross-examination of Mr. Manoj Garg (Investigating Officer) as

well as others, which was denied. The Special Director (Adjudicating Officer) rejected the application by a cryptic order on 3.1.2018. The

observations of the Special Director are, as follows :

â??â?¦â?¦..I find that the grounds mentioned by the noticees no. 1, 2 & 3 for cross-examination pertain to substantive nature of

transactions as revealed during the course of investigation and all these transactions are based on documents seized during various search

operations as mentioned in the complaint. Merits and de-merits of the allegations contained in the SCN/Complaint and replies filed by

noticees are duly taken into account at the stage of Adjudicating Proceedings, besides providing adequate opportunities to the noticees for

making oral and written arguments/submissions during the course of personal hearings.

Therefore, the request of the noticees to seek the cross-examination is required to be considered having regard to provisions contained in

the said adjudication, rules as elaborated above and it cannot be considered as a matter of right.â??

Ld. Sr. Counsel for the appellant relies upon the judgment of this Court in Shahid Balwa vs. The Directorate of Enforcement, (2013) 201 DLT 211

and states that the proposition that cross-examination of the witnesses, who have adduced against a party, is permissible and that there is no blanket

ban in law preventing such a course. It is also submitted that even though the appeals by Special Leave were preferred before the Supreme Court

against judgment of Shahid Balwa and the matter has been stayed, nevertheless, the Bombay High Court has followed and explained the logic in

Shahid Balwa; vide its judgment in Lalit Kumar Modi vs. Special Director Enforcement (Writ Petition 2803/2016 decided on 30.1.2018).

Ld. counsel for the Directorate of Enforcement Mr. Mahajan urges that there is no infirmity in the impugned order. He highlights that the application

made to the Special Director did not specify which of the witnesses were needed for cross-examination; on the other hand, the request was to permit

for cross-examination of the Investigating Officer, which was denied. It was also urged that denial of cross-examination cannot always be

characterised as violation of principle of natural justice as the procedure cannot be straight jacketed in all circumstances. It is submitted that in Shahid

Balwa (supra) the Division Bench did not give a blanket right to cross- examine all the witnesses or to examine the witnesses, who testified in the

course of the proceedings under FEMA.

3. The application made to the Special Director in the course of proceedings in this case (dated 21.12.2017), is part of the record. No doubt, the

appellant sought the Investigating Officerâ??s cross-examination inasmuch as, according to him, examination as to the conclusion in his report was

necessary. The appellant, at the same time requested for cross-examination of the other witnesses, whose statements were on record by the

Directorate of Enforcement. So far as statements of these witnesses or individuals are concerned, the order of the Special Director is absolutely

silent. In this given situation, the Single Judgeâ??s conclusion that cross-examination cannot be sought as a matter of right in respect of witnesses is

correct. At the same time, what appears to have been overlooked in the impugned order is that, apart from the Investing Officer, other witnessesâ??

examination too, was sought. The Special Director did not deal with that aspect in any manner. In the circumstances, the appellant shall approach the

Special Director within three weeks spelling out the reasons why the cross-examination of the witnesses other than the IO is needed. In the event

such application is made, the Special Director shall consider it and after granting appropriate hearing to the appellant, pass a reasoned order. The

reasoned order shall be communicated to the appellant within two weeks of the conclusion of such hearing/opportunity.

4. The appeal is therefore, partly allowed in the above terms. All the pending applications also stand disposed of.

Order dasti.

