

(2019) 02 ATPMLA CK 0002

In the Appellate Tribunal Under Prevention Of Money Laundering Act

Case No : MP-PMLA-4302, 4330/CHD/2018, 6827, 6848, 6849/CHD/2020, FPA-PMLA-2205/CHD/2018

Dinesh Kumar

APPELLANT

Vs

Assistant Director Directorate Of Enforcement, Chandigarh

RESPONDENT

Date of Decision : 04-02-2019

Acts Referred:

Prevention Of Money Laundering Act, 2002 — Section 8(4), 26(5), 35(2)

Citation : (2019) 02 ATPMLA CK 0002

Hon'ble Judges : G. C. Mishra, Acting Chairman

Bench : Single Bench

Advocate : Saurabh Kapoor, Atul Tripathi

Judgement

G. C. Mishra, Acting Chairman

MP-PMLA-6848/CHD/2020 (E.H.), MP-PMLA-6849/CHD/2020 (Stay), MP-PMLA-6827/CHD/2020 (Resto.) in FPA-PMLA-2205/CHD/2018

1. The present application has been filed by the applicant for Restoration of appeal dismissed on 27.11.2019 for non-prosecution. In the said application, inter-alia, the following grounds have been taken for restoration of the appeal, the relevant portions of the application are reproduced hereinbelow:-

â??(3) That earlier the appeals were listed before the Honâ??ble PMLA Tribunal, New Delhi, wherein the Counsel for the Appellant had been regularly appearing on behalf of the Appellant/Applicant.

(4) That since the matter was listed for Final hearing before the Honâ??ble Tribunal on 27.11.2019, wherein no notice for hearing was

served upon the Appellant and further the interim orders were not uploaded on the website due to which the Appellant/Applicant was not

aware of the next date of hearing. The Applicant/Appellant came to know about the dismissal of the appeal when he had visited the Office of

the Respondent at Chandigarh. However now the notice for possession has been served upon the Appellant. Annexed hereto is the copy of

the possession notice annexed as Annexure A-2.

(5) That non appearance of the Counsel/Appellant was inadvertent and due to the aforesaid reasons.

(6) That the Honâ??ble Tribunal may kindly appreciate that the Honâ??ble Tribunal is vested with the powers to restore the Appeals in

the interest of Justice as held in the catena of judgments. Further the main cases are pending adjudication before the Honâ??ble Tribunal.

(7) It is respectfully submitted that the appellant has meritorious case requiring Honâ??ble Tribunalâ??s decision on substantial questions

of law and the revival of the said appeal and decision of merits is requested since the Adjudication of the case is likely to take some time.

(8) If the application is allowed and main appeal is restored in that case the interest of the Respondent will not be adversely effected rather

the case would be decided on merits.â??

2. During the course of hearing the learned counsel submitted that the appellant is ready to pay cost, if any, for restoration of appeal.

3. In reply to the said application the Respondent has filed the reply seeking dismissal of the restoration application, inter-alia, on following fact and grounds.

(i) The restoration application has been mischievously filed after suppressing relevant facts.

(ii) The appellant as well as the counsel for the appellant has failed to appear on 27.05.2019, 08.07.2019 and 27.11.2019. It is contended by the

Respondent that the appeal no. FPA-PMLA-2205/CHD/2018 (the present appeal) was heard alongwith the other appeals no. FPA-PMLA-2085-

2095/CHD/2017, FPA-PMLA-2097-2102/CHD/2017 and FPA-PMLA-2331/CHD/2018 with all these appeals being represented through same

advocates but neither the counsel nor the appellants appeared on 27.05.2019 and 08.07.2019. The counsel appearing for the all the appeals except for

the present appeal therefore this Tribunal mentioned in its order dated 27.11.2019 that neither the appellant nor any authorized representatives or any advocate is appearing on that matter since many dates. The said appeal was dismissed for non-prosecution.

(iii) No specific provision under PMLA for restoration of appeal. However, the provisions of Section 35(2) of the PMLA, 2002 provides that the

Appellate Tribunal shall have discharging its function under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure,

1908 (5 of 1908), while trying a suit in respect of this certain matters which include setting-aside any order of dismissal of any representation for

default or any order passed by it ex-parte.

(iv) On the dates mentioned above i.e. 27.05.2019, 08.07.2019 and 27.11.2019 the appellant has failed to appear either in person or through his

representative or through his counsels on three occasions i.e. the date mentioned above and that the counsel for the appellant choose to appear for

other appeals but has chosen not appear in this appeal.

(v) The dismissal of the appeal is justified. The appellant has failed to put up sufficient cause to substantiate for his non-appearance. The application is

devoid of merit and deserves to be dismissed.

4. Heard both sides and perused the pleadings of both the parties. It is the contention of the appellant that he did not appear on 27.11.2019 as no notice

was served upon the appellant and the interim order was not uploaded on the website due to which the appellant/applicant was not aware of the next

date of hearing. Further, ground has been taken that he came to know about the dismissal of appeal when he had visited the office of the Respondent

at Chandigarh. It has been the claim of Shri Saurabh Kapoor, learned Advocate that he has been advocate for the appellant from the very beginning.

On perusal of the order sheets it appears that on some occasions his name has been shown as the counsel for this applicant/appellant. Infact Mr.

Saurabh Kapoor did not file vakalatnama for the present appellant in the appeal no. FPA-PMLA-2205/CHD/2018. Shri Saurabh Kapoor, is the

Advocate for other appellants in the connected matter. On some occasions the connected appeals are listed alongwith the present appeal and common

orders were passed and that was the reason as to why Shri Saurabh Kapoor's name appears in the order sheets as counsel for the appellants.

Since, his name was appearing in the common order in some other occasions, therefore, when individual order in the appeal filed by the present applicant was passed the name of Shri Saurabh Kapoor appeared as Advocate for the appellant/applicant. During the course of the hearing of the application it is admitted by Shri Saurabh Kapoor that he did not file any vakalatnama in the appeal. It is seen from the record that not only on three dates mentioned above but also on several other dates Shri Dinesh Kumar was neither present in person nor any authorized person or representatives present on his behalf. During the course of hearing Shri Saurabh Kapoor, the learned Advocate admitted that he has been the Advocate for the other appellants. Shri Saurabh Kapoor has for the first time filed his vakalatnama in appeal no. FPA-PMLA-2205/CHD/2018 on 31.01.2020 i.e. after the dismissal of the appeal. No vakalatnama has been filed with respect to present application and other miscellaneous applications. However, in the interest of justice, without going into these technicalities Shri Saurabh Kapoor was allowed to argue the application. During the course of hearing on 03.02.2020, the appellant/applicant Shri Dinesh Kumar was also present in the court.

5. The appeal was dismissed on 27.11.2019, the application for restoration has been filed on 07.01.2020. The period for filing a restoration application is 30 days from the date of dismissal. In the present case, the application for restoration has been filed on 41st day excluding the date of dismissal. No specific application for condonation of delay has been filed but it is stated in the restoration application that he could not know about the date of order as the order was not uploaded on the website. He came to know about the dismissal of the appeal when he had visited the office of the Respondent at Chandigarh. During the course of hearing, it is orally pleaded by Shri Saurabh Kapoor, that the delay if any, may be condoned in the interest of justice, as the connected matters are pending before this Appellate Tribunal and that no prejudice would be caused to the Respondent.

6. It is an undisputed fact that the Original Application (O.A.) bearing no. 93/2017 was filed by the Respondent before the Adjudicating Authority against 50 defendants including the present applicant/appellant. The Adjudicating Authority allowed the O.A. The defendants therein, being aggrieved, have preferred several appeals and the same are pending. The numbers of few of the appeals are reflected in this order in the preceding paragraph. It

is the contention of the appellant that his appeal has a good case. He has been made a scape goat and he is not a beneficiary. The case of the applicant will be frustrated if the appeal is not heard on merit. It is further contended by the applicant that since the connected appeals are pending before this Tribunal no harm would be caused if the application for restoration of the appeal is allowed.

7. It is the contention of the learned counsel for the Respondent that prosecution complaint has already been filed against the accused persons including the present appellant in which the property involved in this appeal/application is also part of the said complaint. The appellant has not filed application for condonation of delay nor there are sufficient grounds in the application to restore the appeal.

8. Considered the materials on record as well as the oral submissions made by both the parties. The facts that as emerged from the pleadings, record and oral submission, I am of the considered view that the appellant has advanced the reasons of non-filing of the applications for condonation of delay.

One of the ground is that he could not know about the passing of the order dated 27.11.2019 as the said order was not uploaded in the website.

Section 26(5) of the Prevention of Money Laundering Act, 2002 cast a mandatory duty on the Appellate Tribunal to send a copy of the every order

made by it to the parties to the appeal. There is nothing on record to show that copy of the order dated 27.11.2019 has been sent to the appellant. That

being so, in fact, there is no delay in filing the appeal.

9. The grounds of restoration advanced by the appellant is considered. The connected appeals are pending before this Tribunal and if the appeal is not

restored to file than it would cause great hardship to the appellant and his family members. The prejudice which is likely to cause if the application is

allowed can be compensated in terms of money. The applicant has agreed to compensate the Respondent with appropriate cost.

10. Considering the overall situation, in the interest of justice, the application for restoration of appeal is allowed subject to payment of cost of Rs.

20,000/- to the Respondent within eight weeks.

11. Subject to above the appeal no. FPA-PMLA-2205/CHD/2018 is restored to file.

12. An application for stay has been filed by the applicant on the ground that he has received the notice dated 07.01.2020 under section 8(4) of the

PMLA, 2002 for vacation of the property at H. No. 3086/1, Sector 47-D, Chandigarh. It was submitted by the appellant that the appellant and his family members including aged parents who were staying in the property at H. No. 3086/1, Sector 47-D, Chandigarh have been evicted by the Respondent vide notice issued on dated 07.01.2020 and they have taken shelter in the house of appellant's sister. The Respondent has already taken possession of the said property. In view of the fact that the possession of the aforesaid property has been taken, so the application for stay is dismissed being infructuous. Since the applications are disposed of as above, so the application for Early Hearing is also disposed of.

List the appeal on 9th April, 2020 when the connected matters are coming up.

Copy of the order be given â??dastiâ?? to both the parties.