

**(2011) 09 DEL CK 0295**

**In the Delhi High Court**

**Case No : Criminal A. No. 1231 of 2011**

Directorate of Enforcement

APPELLANT

Vs

Renu Vij

RESPONDENT

**Date of Decision : 30-09-2011**

**Acts Referred:**

Foreign Exchange Management Act, 1999 — Section 35

Foreign Exchange Regulation Act, 1973 — Section 54, 68, 9(1)

**Citation : (2011) 09 DEL CK 0295**

**Hon'ble Judges : V.K. Shali, J**

**Bench : Single Bench**

**Advocate : Ruchir Mishra, for the Appellant;**

**Final Decision : Dismissed**

## **Judgement**

V.K. Shali, J.—These are two criminal appeals bearing no.1231/2001 titled Directorate of Enforcement v. Renu Vij and Crl. A. No. 1232/2011 titled Directorate of Enforcement v. Ravinder Singh.

2. Both these appeals have been preferred against the orders dated 26.6.2006, 6.8.2009 and 28.7.2009. Along with Crl.A.No.1231/2011, two applications bearing Crl. M.A. No. 11750/2011 (seeking condonation of 507 days delay in filing the appeal) and Crl.M.A.No.11752/2011 (seeking condonation of 151 days delay in re-filing the appeal) are filed and along with Crl.A.1232/2011 also, there are two similar applications bearing Crl.M.A.no.11756/11 and Crl. M.A. No.11758/11.

3. By virtue of the present order, both these sets of applications are being considered and disposed of.

4. Briefly stated the facts of the case are that two appeals bearing No. Crl.A.382/2005 and Crl.A.388/2005 were filed by Smt. Renu Vij and Sh. Ravinder Singh respectively, before Appellate Tribunal for Foreign Exchange against a common adjudication order dated 4.3.2005 passed by the Special Director,

Enforcement Directorate, Govt. of India, New Delhi imposing a penalty of Rs.1,00,00,000/- against Renu Vij for contravention of Section 9(1)(d) read with Section 68 of Foreign Exchange Regulation Act, 1973 and Rs.40 lacs against Sh. Ravinder Singh for contravention of provisions of Section 9(1)(b) of the Foreign Exchange Regulation Act, 1973. The reason for imposition of these penalties in the departmental adjudication proceedings were essentially twofold i.e. (i) Smt. Renu Vij made a payment of US\$3,20,000/- to Sh. Ravinder Singh and he received such payment otherwise than an authorized dealer by order or on behalf of M/s Less and Less Trading Company, Dubai and (ii) Renu Vij made a payment of Rs.2,67,98,100/- to one Vinod Grover by order and on behalf of Rajesh Mahajan of Dubai.

5. The Tribunal vide order dated 8.11.2005 granted dispensation of the pre-deposit of penalty to both the respondents on the ground of prima facie a good case is being shown by both of them and thereafter, two appeals were taken up for final disposal by the Division Bench of the Appellate Tribunal.

6. Vide order dated 26.6.2006, while as the Chairperson was of the view that the adjudicating Authority had committed a serious error in treating the two statements of the deceased Anil Vij, as confession and in imposing penalty on the respondents and consequently, took the view that the order of adjudication dated 4.3.2005 passed by the Special Judge was liable to be set aside and quashed, contrary view was taken by the Member, who was of the view that the penalty was validly imposed on both the parties though, the penalty amount imposed on respondent i.e. Renu Vij was reduced from Rs.1 crore to Rs.5 lacs on humanitarian ground to meet the ends of justice while as the penalty of Rs.40 lacs imposed on Sh. Ravinder Singh was confirmed. The humanitarian ground which had prompted the member to reduce the penalty from Rs. 1 crore to Rs.5 lacs was the demise of Anil Vij, husband of the appellant and one Vinod Grover (connected with their organization) during the pendency of adjudication and thus it had cause irreparable loss to the lady.

7. On account of this disagreement between the Members, the matter was referred to the third Member for his view, so that the matter gets finally adjudicated. The third Member vide order dated 28.7.2009 dealt with the issues arising out of the two appeals and supported the view of the Chairperson, meaning thereby that the order dated 04.03.2005 of the Adjudicating Authority was liable to be set aside. After receipt of order dated 28.07.2009, in terms of majority opinion, the Division Bench allowed the said appeals vide order dated 6.8.2009. In the present appeals, three orders have been accordingly assailed i.e. 26.6.2006, the original disagreement order, 28.7.2007, the order passed by the third Member concurring with the view of the Chairperson and the order dated 6.8.2009 whereby the Division Bench, which had originally disagreed between themselves, allowed the appeals of Smt. Renu Vij and Sh. Ravinder Singh, in view of the opinion of the third Member.

8. The Department felt aggrieved by these three orders accordingly, preferred

the present appeals against the said order of setting aside the imposition of penalty. The appeals are accompanied by two sets of applications in both the appeals. In Crl.A.No.1231/2011, an application bearing Nos.11750/2011 (seeking condonation of 507 days delay in filing the appeal) and in Crl.A.No.1232/2011 an application bearing Crl.M.A.no.11756/11 (seeking condonation of 507 days delay in filing the appeal from the date of final order i.e. 6.8.2009). It may be pertinent here to mention the averments made in the said applications, which read as under:

(i) That vide order dated 26.6.2006, 28.7.2009 and 6.8.2009 passed by learned Appellate Tribunal for Foreign Exchange (Ld. Tribunal) in Appeal no. 382/2005 titled as Smt. Renu Vij v. Special Director, Enforcement Directorate and also Appeal No. 388/2005 titled Shri Ravinder Singh v. Special Director, Enforcement Directorate, the Hon''ble Tribunal set aside the adjudication order passed by the Appellant, a certified copy of the same was received by the department on 23.9.2009. The appellant department decided to challenge the order of the Hon''ble Tribunal and they send the comments /instructions to the counsel for the appellant, the detailed Appeal was prepared and was further required to be transmitted to the Department for the approval of the competent authority. It was approved that the same was signed, attested and filed before this Hon''ble Court. That delay was neither intentional nor deliberate.

(ii) The delay of 507 days in filing the criminal appeal has occurred in the aforesaid circumstances. It is in the interest of the justice that the delay in filing the appeal be condoned.

9. These two appeals are the replica of each other and so are the applications.

10. It may be pertinent here to note that the applications which have been filed are bereft of any details as regards the reasons as to why a delay of 507 days had occurred in filing the appeals.

11. The second set of applications in filing the aforesaid appeals are Crl. M.A. no.11752/11 in Crl.A.No.1231/11 and Crl.M.A.no.11758/11 in Crl.A.No.1232/211 wherein the condonation of 151 days delay in re-filing the appeals has been sought, the reasons for delay in re-filing the appeals are given in para 3 of the applications wherein it is stated that while the appeals were pending under objection in the Registry, the learned counsel for the appellants had got designated as a senior counsel and thus the brief of the appellants was returned to them. Thereafter, the appellants wrote to the concerned Department for appointment of another counsel for the purpose of removal of defect in re-filing and pursuing the present appeals and this took considerable time and thus resulted in delay of 151 days in re-filing of the appeals. It is also stated that the delay is not intentional or deliberate.

12. It may be pertinent here to note that in these applications, no date of collection of the brief from the registry is given. No date on which the re-filing has been done has been given. The explanations made in the applications are too

general and casual in nature which are far from meeting the requirement of "sufficient cause".

13. I have heard the learned counsel for the appellants. It has been contended by the learned counsel for the appellants that the delay in filing the original appeal and in re-filing has taken place on account of the delay in normal decision making process which is bound to entail certain time at different levels and since the case of the appellants, prima facie, is very good, therefore, the delay in filing the appeals, both originally as well as in re-filing may be condoned and the appeals may be heard on merits. The learned counsel for the appellants has not cited any judgment in support of its contention. Very general submissions have been made that the public interest would suffer in case appeals are not heard on merits.

14. I have considered the submissions made by the learned counsel for the appellants and gone through the applications.

15. An appeal according to Section 35 of FEMA has to be filed against the order of the Appellate Tribunal within a period of 60 days from the date of pronouncement of the order. The relevant Provisions of Section 35 of FEMA and Section 54 of FERA under which these appeals have been filed, read as under:

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.

54. Appeal to High Court.-An appeal shall lie to the High Court only on questions of law from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of Section 52:

Provided that the High Court shall not entertain any appeal under this section if it is filed after the expiry of sixty days of the date of communication of the decision or order of the Appellate Board, unless the High Court is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

16. A perusal of the aforesaid two Sections would show that u/s 54 of FERA, appeal had to be filed in only 60 days, which has been reiterated u/s 35 of the FEMA. But one modification has been made by addition of a proviso which lays down that if sufficient cause is shown, this period may be condoned by another 60 days. A conjoint reading of the main Section with the proviso would mean that the appeal has to be filed maximum within a period of 120 days and not beyond that. As against this, in the instant case, there is a delay of 507 days in filing the appeal and further delay of 151 days in re-filing.

17. The law regarding the condonation of delay has gone sea-change after the judgment of the Apex Court in *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, . In the said case, the Apex Court had observed that while seeking condonation of delay the party should not only explain as to why it did not file the appeal on the last day but it must also explain each day's delay, which has occurred thereafter.

18. This concept of explaining each day's delay has been relaxed by the Apex Court over a period of time and it has adopted a very liberal approach with regard to the condonation of delay. It has held that the broad parameters which should be kept in mind while condoning the delay are:

(i) That the quantum of delay which is sought to be condoned by a party may not be material, what is material is the bonafides of the party seeking condonation of such a delay;

(ii) The Court's approach for the condonation of delay under the heading of "sufficient cause" must be pragmatic and liberal, so as to advance substantial justice between the parties. It has also been observed that different standards cannot be applied to a private party and the Government body. Although some play in the joints so far as the functioning is concerned has to be given.

19. It may be pertinent here to refer to only one of the judgments of the Apex Court which is in line with the earlier judgments holding such an opinion and has dealt with all those previous judgments with regard to the condonation of delay. It has been observed in *State of Nagaland Vs. Lipok AO and Others*, as under:

The expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bonafides is imputable to the party seeking condonation of delay. In litigations to which Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by the Government are lost for such defaults, no person is individually affected, but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristic of decisions of private individuals. The law of limitation is, no doubt, the same for a private citizen as for Governmental authorities, Government, like any other litigant must take responsibility for the acts and omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its offices or agents and where the officers were clearly at cross-purposes with it.

The decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay-intentional or otherwise is a routine. Considerable delay of procedural red-tape in the process of their making decision

is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default, no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detention of sufficient cause for explaining every day's delay. The State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision where he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants.

The Court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay.

20. In the light of the aforesaid observations of the Apex Court what needs to be considered is as to whether in the present case, by making averments in the applications, the original delay of 507 days in filing the appeal as well as the delay in re-filing, has been explained or not? Secondly, whether the appellants are bonafide or not, in filing the appeal.

21. So far as the averments made in the applications are concerned, it may be said that the applications have been drafted in a most casual manner and absolutely no details have been given for the reasons as to why a delay of 507 days had occurred. This is despite the fact although it has been observed hereinabove that the maximum period within which the appeal can be filed despite condonation of delay is only 120. Even if this Court wanted to show indulgence to the appellant, being a Government body, it finds it difficult to help the appellants as it has been guilty of gross negligence. In my opinion, the department sat over the files purposely and intentionally to help the respondents and then filed the appeals belatedly to get only a seal of legitimization.

22. No date, on which the judgment of the Appellate Tribunal was received by them or the dates on which the different officers dealt with the file has been given. The averments which have been made in such a casual manner seeking condonation of delay has been reproduced hereinabove, and it has been stated that decision making process has resulted in 507 days delay.

23. If these are the averments made in the applications in such important matters where the citizen is sought to be fastened with a liability running into lacs of rupees, it can be said that this is being done in a most casual manner and as a matter, there is a gross negligence on the part of the department. Even after the objections were raised by the Registry with regard to the filing of the appeals, the officers of the department had not woken up in order to remove those objections. No dates have been given as to when the file was collected from the registry when the counsel was designated as a senior, what date the matter was referred to the department by the Directorate of Enforcement for the purpose of appointment of an alternate counsel and in the absence of these

details, it can certainly be said that the intention of the Department was not bonafide in pursuing the matter as they were sleeping over the matter either deliberately or inadvertently. It has been a common practice of some of the Departments that when they want to help a party, they will cause delay deliberately so that ultimately when the appeal or any such matter is filed only a seal of legality is obtained from the Court inasmuch as the Court will be dismissing the application or the appeal seeking condonation of delay. The other possibility is that the department is deliberately trying to keep the person in limbo, despite knowing well that the matter has been pending before the adjudicating authority from 2004 onwards and thereby casting a cloud on their rights which has accrued to them in view of the appeal being allowed by the Appellate Tribunal.

24. There is so much of gross negligence on the part of the appellants that even the word "sufficient cause" has not been used by them in the applications.

25. The Court is cognizant of the fact that after the expiry of the period of limitation, a vested right is created in favour of the opposite party and therefore, the benefit of such right accrued ought not to be disturbed lightly.

26. I, therefore, feel that both the appeals are bereft of any material which will persuade the Court to condone the delay either originally or in re-filing. After the expiry of period of limitation a vested right is created in a party which cannot be defeated easily. On the contrary, accordingly, the applications seeking condonation of delay in original filing and re-filing in both the set of appeals are also disallowed and resultantly the appeals are dismissed as barred by time.