

(2006) 07 BOM CK 0003

In the Bombay High Court

Case No : First Appeal No"s. 379, 380 and 381 of 1987

Jasjit Singh and Another

APPELLANT

Vs

Foreign Exchange Regulation Board and Another

RESPONDENT

Date of Decision : 31-07-2006

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 2, 54, 9(1)

Citation : (2007) 3 ALLMR 214 : (2007) 3 BomCR 854

Hon'ble Judges : Sathe S.R., J;Mhase S.B., J

Bench : Division Bench

Advocate : A.H. Bhatija and Y.R. Mishra, Sowmya Srikrishna, instructed by Bachubhai Munim and Co, for the Appellant;

Final Decision : Dismissed

Judgement

Mhase S.B., J.—These three appeals have been directed as against the order passed by the Foreign Exchange Regulation Appellate Board on April 29, 1980 in Appeal Nos. 329, 371 and 372 of 1979. These three appeals were filed before the Foreign Exchange Regulation Appellate Board by the appellants as against the orders passed by the Assistant Director of Enforcement under the provisions of the Foreign Exchange Regulation Act, 1973 bearing No. T-4/154/ AD (ONC)/B/79 dated 30th July, 1979. The appellant in appeal No. 371 of 1979 and 372 of 1979 are the directors of Associated Capsules Private Limited which company is appellant in appeal No. 329 of 1979. These two Directors and the Company, namely, Associated Capsules Private Limited are the persons who have challenged the above referred order. The penalty has been imposed by the Assistant Director of Enforcement for violation of provisions of Section 9(1)(a) and 9(1)(d) of the Foreign Exchange Regulation Act, 1973. The said order was confirmed by the appellate tribunal and therefore this appeal u/s 54 of the Foreign Exchange Regulations Act, 1973 is preferred.

2. The facts in the present matter are not disputed, namely, one Mr. Hansen who was a Danish national came to India sometime in 1950 and married an Indian

lady and stayed in India till 1975. Mr. Hansen left India along with his family members which included Indian lady who was his wife, in the year 1975. While Mr. Hansen was in India, he was staying in a rented premises known as "Grey Dawn" Gamber's Estate, S.V. Road, Mumbai, at the rate of Rs. 800/-per month inclusive of the furniture in said bungalow. While leaving India in June-1975, Mr. Hansen entered into an agreement of care taker with appellant Company. Therefore, the appellant company continued to make payment of Rs. 800/- per month to landlord Mr .Mascarenhas till 1st February 1978 when the premises were handed over by the appellants to Mr. Marcarenhas-landlord of the said premises. Thus, it is admitted position that from 13.6.1975 to September 1976 rent of the premises known as "Gray Dawn" was paid by the appellants to Mr. Marcarenhas-landlord for and on behalf of the Mr. Hansen, a Danish national. Taking into consideration these facts, the penalty was imposed by the Director of Enforcement u/s 9(1)(a) and 9(1)(d) of the said Act which was confirmed by the appellant Tribunal.

3. Learned Counsel appearing on behalf of the appellant submitted that the definition of a "person resident in India" as available from Clause (p) of Section 2 of the said Act has been misconstrued by the authorities to hold that Mr. Hansen is a "resident outside India" and the payment for and on behalf of a foreign national has been made by the appellants. In order to scrutinise this aspect, the relevant portion of the definition Clause (p) for our consideration is Clause (iii), which is as follows:

(p) "person resident in India" means - (iii) a person, not being a citizen of India, who has come to, or stays in India, in either case -

(a) for or on taking up employment in India, or

(b) for carrying on in India a business or vocation in India, or

(c) for staying with his or her spouse, such spouse being a person resident in India, or

(d) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period:

Explanation.-A person, who has, by reason only of paragraph (a) or paragraph (b) or paragraph (d) of Sub-clause (iii) been resident in India, shall, during any period in which he is outside India, be deemed to be not resident in India;

4. From the facts it appears that from 1950 to 1975, i.e., till June when Mr. Hansen left for Denmark, he was employed in India. Therefore, he was a person resident in India. However, the day one he left India he is no more covered under Clause (iii)(a) of definition Clause (p).

5. It is further to be noted that he has married with an Indian lady. Therefore, if he is residing or staying with his spouse, such a spouse being a resident in India, he can be treated as a person resident of India. However, it is pertinent to note

that he left India in 1975 along with his wife. Therefore, he was not staying in India so as to reside along with his spouse. Since both of them, namely, Mr. Hansen and his wife had left India in 1975, thereafter it is not possible to hold that Mr. Hansen was a person residing in India.

6. Looking from any point of view, on the facts which are admitted, it is not possible to hold that Mr. Hansen was residing in India from June 1975 till February 1978 when the payments were made by the caretaker appellants for and on behalf of Mr. Hansen to Mr. Marcarenhas-landlord of the premises "Gray Dawn". Result is that provisions of Section 9(1) Clauses (a) and (d) are attracted which are as follows:

9. Restrictions on payments: (1) Save as may be provided in and in accordance with any general or special exemption from the provisions of this sub-section which may be granted conditionally or unconditionally by the Reserve Bank, no person in, or resident in India shall -

(a) make any payment to or for the credit of any person resident outside India;

(b)...

(c) ...

(d) make any payment to, or for the credit of, any person by order or on behalf of any person resident outside India;

7. Therefore, what we find that the payments which were made by the appellants were for and on behalf of a foreign national, without having appropriate permission from the Reserve Bank of India and there was a breach of Section 9(1) Clauses (a) and (d) of the Foreign Exchange Regulation Act, 1973, as has been rightly observed by the authorities. The matter is without any merit.

8. It is submitted by the learned Counsel appearing on behalf of the appellant that all the claims were settled by the appellant with the landlord and therefore it was not a case of a payment on behalf of the foreign national. The submission is recorded only for the purpose of rejection because it carries no merit because it is an admitted fact that the payments which were made by the appellant were being made as a caretaker of the premises of Mr. Hansen as per the agreement dated 13.6.1975. Therefore, the submission that the claims of the landlord were settled by the appellants in their individual capacities, is without any merit and is hereby rejected. In the result, appeals by the appellants are hereby dismissed with costs.