
(2008) 02 DEL CK 0305

In the Delhi High Court

Case No : LPA 2450 of 2005 and CM No"s. 15345-47 of 2005 and 11793 of 2007

Lakshman C. Saha

APPELLANT

Vs

Special Director of Enforcement and Others

RESPONDENT

Date of Decision : 12-02-2008

Acts Referred:

Citation : (2008) 02 DEL CK 0305

Hon'ble Judges : Dr. M.K. Sharma, C.J;Reva Khetrapal, J

Bench : Division Bench

Advocate : Mathews J. Nedumpura, for the Appellant; Dalip Mehra and Rajiv Ranjan, for the Respondent

Final Decision : Dismissed

Judgement

Reva Khetrapal, J.—This appeal is directed against the order dated 13th September, 2005 passed by the learned Single Judge whereby the learned Single Judge dismissed the writ petition on the ground of non-compliance with the orders dated 31.05.2005 directing the petitioner to deposit 25% of the penalty within six weeks from the date of the order.

2. The facts emerging from the record are that by a detailed order dated 26th February, 1992, the Special Director, Directorate of Enforcement, New Delhi, after recording the evidence of the parties and affording personal hearing to the appellant on a number of dates, that is, 31.05.1990, 02.07.1990, 24.10.1990, 14.11.1990 and 28.11.1990 held that in view of the investigations, it appeared that the appellant had received a total payment of Rs. 1,55,87,155/- during the period 1980 to 1987 from one Shri Ranjit Saha, a person resident in India, at the instructions of his uncle Shri Pabitra Saha of Mymensingh, Bangladesh, a person resident outside India. It also appeared that the said Lakshman Saha had made total payments to the tune of Rs. 1,51,92,935/- to various persons in India during the said period at the instructions of the said Shri Pabitra Saha of Bangladesh without any general or special permission from the Reserve Bank of India. It was further held that the receipt of total payments of Rs. 1,55,87,155/-

and the making of payments of Rs. 1,51,92,935/- in the manner aforesaid was in contravention of the provisions of Section 9(1)(b) and Section 9(1)(d) respectively of the Foreign Exchange Regulation Act, 1973 and accordingly called for the imposition of a total penalty of Rs. 10 lakhs on the appellant to be paid at the office of the Enforcement Directorate, Calcutta Zonal Office, Calcutta by means of a demand draft drawn in the favor of the Deputy Director, Enforcement Directorate, Calcutta Zonal Office, Calcutta within 45 days of the receipt of the order.

3. Aggrieved by the above order of the Directorate of Enforcement, the appellant preferred an appeal before the Appellate Tribunal for Foreign Exchange, being Appeal No. 239/1992 Along with an application praying for dispensing with the requirement of the deposit of the penalty amount of Rs. 10 lakhs and for stay of the entire payment thereof during the pendency and till the disposal of the appeal. On 13th January, 2004, the Appellate Tribunal passed the following order:

APPELLATE TRIBUNAL FOR FOREIGN EXCHANGE

NEW DELHI-110 001

Appeal No. 239 of 1992

Date: 13.1.2004

Appellant appears in person. Mr. Mahendra Singh, Advocate, propose to appear for the appellant. DLA Dr. Shamsuddin appears for the respondent. Heard both sides on the question of waiver of penalty; having heard either side and on perusal of records, we find no justifiable grounds for waiver of the entire penalty amounts for pre-deposit as prayed for by the appellant. However, 50% of the penalty amounts stand waived for pre-deposit; the appellant is directed to deposit 50% of the penalty amount i.e. Rs. 5,00,000/-, within 60 days from today failing which the appeal will stand dismissed for default. For hearing on disposal, the matter be listed on 23.3.2004.

Sd/- Sd/- (SMT. P.N. SANTHAKUMARI) (O.P. NAHAR) MEMBER MEMBER appellant

Appellant's Counsel

Director, Directorate of Enforcement, New Delhi

Deputy Director, Directorate of Enforcement, Kolkata

DLA, Directorate of Enforcement, New Delhi

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4. Despite the passing of the above order, the appellant failed to make pre-deposit of 50% of the amount of penalty within 60 days and instead filed an application for modification of the order, which was taken up for hearing on 28th May, 2004 and was also dismissed on the same day as not maintainable. Eventually, on 8th September, 2004, the appeal itself was dismissed for non-

compliance of the order dated 13.01.2004 directing the appellant to deposit 50% of the amount of penalty, that is, Rs. 5 lakhs. A review petition seeking recall/ review of the order of the Appellate Tribunal dated 8th September, 2004 met with a similar fate and was also dismissed, resulting in the appellant filing a writ petition before this Court, being WP(C) No. 10109/2005.

5. The said writ petition came up for hearing before a learned Single Judge of this Court on 31st May, 2005 when the following order was passed:

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 10109/2005

Lakshman C. SahaPetitioner

Through Mr. J. Nedumpara Mathews, Adv.

Versus

Special Director of EnforcementRespondent

Through Mr. Rakesh Tikku, Adv.

CORAM:

Hon"ble Ms. Justice Gita Mittal

ORDER

31.05.2005

Learned Counsel for the petitioner submits that inasmuch as by a judicial pronouncement of this Court, the proviso of the notification reserving two posts of the Appellate Tribunal for Foreign Exchange for members of the Indian Legal Service has been held to be unconstitutional and void, the petitioner does not press prayer (iv) and leave is sought to withdraw the same. Leave granted. The writ petition is confined to consideration of prayers (i) to (iii) and (v) to (x).

Issue notice to the respondents to show cause why rule nisi be not issued, returnable on 13th September, 2005.

Mr. Rakesh Tikku, advocate accepts notice on behalf of the respondents and prays for time to file a reply. Let the reply be filed within four weeks. Rejoinder thereto within two weeks thereafter.

List on 13th September, 2005.

CM No. 7425/2005

Exemption allowed subject to just exceptions.

CM No. 7423/2005

Issue notice.

Mr. Rakesh Tiku, advocate accepts notice on behalf of the respondents. Let the reply be filed within four weeks. Rejoinder thereto within two weeks thereafter.

It is directed that in the meantime, subject to the petitioner depositing 25% of the penalty amount within six weeks from today, no coercive action shall be taken for recovery of the amount till the next date of hearing.

List on 13th September, 2005.

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Sd/-

(Gita Mittal, J.)

May 31, 2005

6. Aggrieved by the order dated 31st May, 2005, the appellant/petitioner filed a review application, being CM No. 8235/2005, for modification of the said order to the limited extent of waiver of the condition requiring him to deposit 25% of the penalty imposed within six weeks as a pre-condition for stay of the coercive recovery proceedings on the ground of financial constraints. On consideration of the application, the following order was passed by the learned Single Judge of this Court (HMJ Vikramajit Sen) on July 12, 2005:

IN THE HIGH COURT OF DELHI AT NEW DELHI

CM No. 8235/2005 in W.P.(C) 10109/2005

Lakshman C. SahaPetitioner

Through Mr. J. Nedumpara Mathews, Adv.

Versus

Special Director of EnforcementRespondent

Through None

CORAM:

Vikramajit Sen

ORDER

12.07.2005

On 31.5.2005, Ms. Gita Mittal, J. had directed the Petitioner to deposit twenty five per cent of the penalty within six weeks. A perusal of the Order shows that a detailed hearing was granted to the Petitioner on that date. The only intervening change is the change in the Roster. This is not a ground for modifying an Order previously passed, which has not even been complied with.

I find no merit in the application. Dismissed.

Sd/-

(Vikramajit Sen, J.)

JULY 12, 2005

7. On 13th September, 2005, after perusal of the orders dated May 31, 2005 as well as July 12, 2005 passed on the review petition, the impugned order dismissing the writ petition on the ground that the appellant's case did not warrant the exercise of jurisdiction under Article 226 of the Constitution was passed against which the present appeal has been preferred.

8. We have gone through the records and heard the learned Counsel for the appellant who has assailed the order of the learned Single Judge as cryptic and submitted before us that the appellant's failure to comply with the interim order can have only one consequence in law, i.e., that he will not be protected against the prosecution proceedings. Learned Counsel for the respondent on the other hand, sought to support the order on the ground that the appellant was involved in a Hawala transaction involving a sum of Rs. 1.55 crores on which he had earned a profit/commission of about Rs. 4 lakhs and that there was ample evidence in support thereof as evidenced by the order of the Enforcement Directorate, apart from the appellant's own statement of admission and the statement of the 17 persons to whom payments to the tune of about Rs. 1.51 crores had been made without any general or special permission from the Reserve Bank of India. All the recipients had named the appellant as the person from whom payments had been received by them.

9. The limited question which arises for consideration in the present appeal is whether the writ petition of the appellant, being WP(C) No. 10109/2005 was liable to be dismissed for non-compliance of the order of pre-deposit of 25% of the penalty amount.

10. Relying upon the provisions of Section 52(2) of the Foreign Exchange Regulation Act, 1973, which are pari materia with Section 19(1) of the Foreign Exchange Management Act, 1999, the appellant contended that where the pre-deposit of the penalty amount would cause "undue hardship" to the person appealing against the order of the adjudicating authority levying any penalty, the Appellate Tribunal may dispense with such deposit. For the facility of reference, the said provisions are extracted below:

FERA 1973

FEMA 1999

52. Appeal to Appellate Board

(2) Any person aggrieved by such order may, on payment of such fee as may be prescribed and after depositing the sum imposed by way of penalty u/s 50 and within forty-five days from the date on which the order is served on the person committing the contravention, prefer an appeal to the Appellate Board:

Provided that the Appellate Board may entertain any appeal after the expiry of the said period of forty-five days, but not after ninety days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time:

Provided further that where the Appellate Board is of opinion that the deposit to be made will cause undue hardship to the appellant, it may, in its own discretion, dispense with such a deposit either unconditionally or subject to such conditions as it may deem fit.

19. Appeal to Appellate Tribunal

(1) Save as provided in Sub-section (2), the Central Government or any person aggrieved by an order made by an Adjudicating Authority, other than those referred to in Sub-section (1) of Section 17, or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal:

Provided that any person appealing against the order of the Adjudicating Authority or the Special Director (Appeals) levying any penalty, shall while filing the appeal, deposit the amount of such penalty with such authority as may be notified by the Central Government:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

11. A bare glance at the provisions of Sub-section (2) of Section 52 is sufficient to show that the pre-condition for the right to prefer an appeal to the Appellate Board is the deposit of the sum imposed by way of penalty u/s 50. The second proviso to Sub-section (2), however, provides that where the Appellate Board is of the opinion that the deposit to be made will cause "undue hardship" to the appellant, it may, in its own discretion, dispense with such deposit either unconditionally or subject to such conditions as it may deem fit.

12. In a recent judgment, the Supreme Court in the case of *Indu Nissan Oxo Chemicals Ind. Ltd. v. Union of India and Ors.* 2008 AIR SCW 151 while dealing with a similar provision in Section 129E of the Customs Act (52 of 1962) held that while dealing with the application for waiver of deposit pending appeal, twin requirements for consideration, i.e., consideration of undue hardship aspect and imposition of conditions to safeguard the interest of Revenue, have to be kept in view. Undue hardship is a matter within the special knowledge of the applicant for waiver of deposit pending appeal and has to be established by him. A mere assertion about undue hardship would not be sufficient. For hardship to be "undue", it must be shown that the particular burden to have to observe or perform the requirement is out of proportion to the nature of the requirement itself, and the benefit which the applicant would derive from compliance with it.

13. Reference is also invited to a decision rendered by the Supreme Court in the case of Union of India and Anr. v. Adani Exports Ltd. and Anr. 2007 AIR SCW 7134, wherein the relevant aspects while considering the prayer for dispensation of pre-deposit have been highlighted thus:

The three aspects to be focussed while dealing with such applications are (a) prima facie case (b) balance of convenience and (c) irreparable loss.

It was further laid down by the Supreme Court in the said decision that even when the Tribunal decides to grant full or partial stay relating to pre-deposit, it has to impose "such conditions as may be necessary to safeguard the interest of the revenue. This is an imperative requirement of Section 129E of the Act."

14. A Division Bench of the Delhi High Court in Keramos Vs. Customs, Excise and Gold (Control) Appellate Tribunal and Another, while dealing with a similar provision in Section 35E of the Central Excise Act, 1944 noted as under:

The provisions are mandatory in nature and failure to deposit the amount in question renders the appeal incompetent. The factors to be kept in mind while considering an application for waiver of deposit are well established. These are a prima facie case in favor of the applicant, the balance of convenience qua deposit or otherwise, irreparable loss, if any, to be caused in case waiver is not granted and safeguarding of public interest.

15. In S. Vasudeva Vs. State of Karnataka and others, , it was held that under Indian conditions the expression "undue hardship" is normally related to economic hardship, but it is now well established that "undue hardship" means something which is not warranted by the conduct of the claimant or is very much disproportionate to it. Undue hardship is caused when hardship is not warranted by the circumstances. see Indu Nissan Oxo Chemicals Ind. Ltd. v. Union of India and Ors. 2008 AIR SCW 151.

16. In Oxford English Dictionary, the meaning of word "undue hardship" is given as unwarranted or inappropriate because excessive or disproportionate. Strouds Judicial Dictionary gives the following meaning to the word "undue hardship" as per judicial decisions cited therein:

For a hardship to be undue it must be shown in my opinion that the particular burden to the applicant to have to observe or perform the requirement is out of proportion to the nature of requirement itself and the benefit which the applicant would derive from compliance with it. (Re Walsh 1944) VLR 147.

Again in Liberian Shipping Corporation Pegorus v. Kingsons (1967) 2 KB 86 it is given as But even if a claimant has been at fault himself, it is an undue hardship, if the consequences are out of proportion to his fault.

17. In Bank of Baroda v. Appellate Tribunal for Foreign Exchange, a Single Judge of this Court after noticing the legal provisions and the judicial pronouncements with regard to pre-deposit of amount involved in disposal of an appeal u/s 19 of

the Foreign Exchange Management Act, 1999 observed as follows:

7. From the foregoing judicial pronouncements, as noted above, the position, which emerges is that the Tribunal while considering any application for waiver of deposit is to take into account firstly the existence of a prima facie case. In case, it is found that a party has a very strong prima facie case, and/or where the errors in the impugned order are writ large on the record, in such a case, it would be competent for the court in the exercise of its jurisdiction to grant waiver of pre-deposit since in such a case requiring a pre-deposit itself would amount to undue hardship. What is a prima facie case is well settled? It refers to an arguable or triable case. The Tribunal once it comes to the conclusion on perusal of the pleadings, documents and on hearing of the parties that there is a good prima facie case to be considered, the next step in exercise of discretion is determining the quantum of waiver to be granted. In determination of the quantum of waiver, factors, such as, balance of convenience, financial hardship of the parties, its capacity to pay or secure the amount and irreparable loss are to be considered. The said discretion is to be exercised in accordance with well settled principles for exercise of judicial discretion.

18. In the instant case, the primary challenge of the appellant to the order of the Tribunal and of the learned Single Judge is that financial hardship will be caused to him in case dispensation of penalty is not granted to him. However, in order to satisfy ourselves, we have considered the prima facie merits of the appellant's case and keeping in view the overwhelming evidence produced by the respondent before the Special Director, Enforcement, we are satisfied that the direction given by the Appellate Tribunal for pre-deposit of 50% of the amount of penalty as pre-condition for the disposal of the appeal was justified. Despite this, the learned Single Judge, on a writ petition filed by the appellant assailing the order, not only issued notice of the writ petition but scaled down the amount of pre-deposit to 25% of the penalty as a pre-condition for the consideration of the writ petition. The appellant, however, failed to comply even with the said condition and thus his writ petition came to be dismissed by the order of the learned Single Judge, which is under challenge before us.

19. While considering the effect of non-compliance of the order passed u/s 129(1) of the Customs Act, 1962 for deposit of the penalty amount, the Hon'ble Supreme Court in Navinchandra Chotelal Vs. Central Board of Excise and Customs and Others, held that where pre-deposit was not made in compliance with the provisions of the Section or with any order that may be passed there under, the Appellate Authority is fully competent to reject the appeal for non-compliance with the statutory provisions and in such a case the Appellate Authority cannot proceed to hear an appeal on merits. Paragraphs 18 and 19 of the judgment are apposite and are extracted below:

18. No doubt Section 129 does not expressly provide for the rejection of the appeal for non-compliance with the requirement regarding the deposit of penalty or duty, but when Sub-section (1) of Section 129 makes it obligatory on an

appellant to deposit the duty or penalty pending the appeal and if a party does not comply either with the main sub-section or with any order that may be passed under the proviso, the Appellate Authority is fully competent to reject the appeal for non-compliance with the provisions of Section 129(1). That is exactly what the first respondent has done in this case. Accepting the contention of Mr. Trevedi will mean that the appeal will have to be kept on file for ever even when the requirement of Section 129(1) has not been complied with. Retention of such an appeal on file will serve no purpose whatsoever because unless Section 129(1) is complied with, the Appellate Authority cannot proceed to hear an appeal on merits. Therefore, the logical consequence of failure to comply with Section 129(1) is the rejection of appeal on that ground.

19. No doubt, the rejection of the appeal by the first respondent will mean that the appellant is bound by the order of the third respondent levying penalty. Such a result has been brought about only by the default of the appellant in complying with the order of the first respondent to deposit half the amount of penalty. Therefore, it follows that the rejection of the appeal by the first respondent was legal and the order of the High Court dismissing the writ petition is valid.

20. A Constitution Bench of the Hon'ble Supreme Court in the case of *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, while examining the right of a person to file a statutory appeal held that it was perfectly within the power of the legislature while granting the right of appeal to impose conditions for the exercise of such right. In paragraph 40 of its judgment, the Constitution Bench held as follows:

40. After hearing the learned Counsel for the parties, we are unable to subscribe to the view taken by the High Court. Section 406(2)(e) as amended states that no appeal against a rateable value or tax fixed or charged under the Act shall be entertained by the Judge in the case of an appeal against a tax or in the case of an appeal made against a rateable value after a bill for any property tax assessed upon such value has been presented to the appellant, unless the amount claimed from the appellant has been deposited by him with the Commissioner. According to the proviso to the above clause, where in any particular case the Judge is of opinion that the deposit of the amount by the appellant will cause undue hardship to him, the Judge may in his discretion dispense with such deposit or part thereof, either unconditionally or subject to such conditions as he may deem fit. The object of the above provision apparently is to ensure the deposit of the amount claimed from an appellant in case he seeks to file an appeal against a tax or against a rateable value after a bill for any property tax assessed upon such value has been presented to him. Power at the same time is given to the appellate Judge to relieve the appellant from the rigour of the above provision in case the Judge is of the opinion that it would cause undue hardship to the appellant. The requirement about the deposit of the amount claimed as a condition precedent to the entertainment of an appeal which seeks to challenge the imposition or the quantum of that tax, in our

opinion, has not the effect of nullifying the right of appeal, especially when we keep in view the fact that discretion is vested in the appellate Judge to dispense with the compliance of the above requirement. All that the statutory provision seeks to do is to regulate the exercise of the right of appeal. The object of the above provision is to keep in balance the right of appeal, which is conferred upon a person who is aggrieved with the demand of tax made from him, and the right of the Corporation to speedy recovery of the tax. The impugned provision accordingly confers a right of appeal and at the same time prevents the delay in the payment of the tax. We find ourselves unable to accede to the argument that the impugned provision has the effect of creating a discrimination as is offensive to the principle of equality enshrined in Article 14 of the Constitution. It is significant that the right of appeal is conferred upon all persons who are aggrieved against the determination of tax or rateable value. The bar created by Section 406(2)(e) to the entertainment of the appeal by a person who has not deposited the amount of tax due from him and who is not able to show to the appellate Judge that the deposit of the amount would cause him undue hardship arises out of his own omission and default. The above provision, in our opinion, has not the effect of making invidious distinction or creating two classes with the object of meting out differential treatment to them; it only spells out the consequences flowing from the omission and default of a person who despite the fact that the deposit of the amount found due from him would cause him no hardship, declines of his own volition to deposit that amount. The right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. We fail to understand as to why the Legislature while granting the right of appeal cannot impose conditions for the exercise of such right. In the absence of any special reasons there appears to be no legal or constitutional impediment to the imposition of such conditions. It is permissible, for example, to prescribe a condition in criminal cases that unless a convicted person is released on bail, he must surrender to custody before his appeal against the sentence of imprisonment would be entertained. Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid. Such a provision was on the statute book in Section 30 of the Indian Income Tax Act, 1922. The proviso to that section provided that "...no appeal shall lie against an order under Sub-section (1) of Section 46 unless the tax had been paid". Such conditions merely regulate the exercise of the right of appeal so that the same is not abused by a recalcitrant party and there is no difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the Legislature to impose an accompanying liability upon a party upon whom legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfillment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation, and we can discern no contravention of Article 14 in it. A disability or disadvantage arising out of a party's own default or omission cannot be taken to be tantamount to the creation of two classes

offensive to Article 14 of the Constitution, especially when that disability or disadvantage operates upon all persons who make the default or omission.

21. A Full Bench of the Delhi High Court in *Shri Shyam Kishore Vs. Municipal Corporation of Delhi and others*, relying upon the judgment of the Supreme Court in *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, and the subsequent decision of the Supreme Court in *Seth Nand Lal and Another Vs. State of Haryana and Others*, on the same lines, affirmed that the right to appeal is a statutory right and can be circumscribed by the conditions in the grant and that there is no absolute right of appeal and held as under:

...There is no absolute right of appeal and it being not a right under the Constitution, there is nothing wrong in the statute making a provision of conditional appeal and a person desirous of availing the provision to appeal has to comply with the conditions.

22. It was further held by the Full Bench in the aforesaid case that as a matter of practice and procedure, the Court should not normally permit the aggrieved party to abandon the normal remedies of appeal under the Act in favor of a petition under Article 226 of the Constitution of India, unless any action is taken without jurisdiction or if the Court comes to the conclusion that the alternative remedy provided under the Act is not adequate and cannot inspire confidence inasmuch as it would amount to an appeal from "Caesar to Caesar". In such circumstances alone, the existence of an alternative remedy would not bar the exercise of writ jurisdiction under Article 226 of the Constitution.

23. Applying the above law to the instant case and on examination of the records, we find that though the case of the appellant is that in view of his extremely weak financial condition the appellant is not in a position to deposit any amount as deposit towards penalty amount, the records of the writ petition, being WP(C) No. 10109/2005, reveal that the the appellant sought modification of the order of the learned Single Judge dated 31st May, 2005 requiring him to deposit 25% of the penalty imposed within six weeks as a pre-condition for stay of the coercive recovery proceedings on the mere strength of a purported certificate issued by a local MLA certifying that his monthly income did not exceed Rs. 15,000/- to Rs. 18,000/- per annum. Significantly, only an unsigned typed copy thereof was filed, without even placing the original on record. Not only this, the appellant/petitioner averred that though he had sought income certificates from the revenue authorities, the same had been refused to him, but not a scrap of paper to substantiate even this contention was placed on record by him.

24. It is also not in dispute that in the meanwhile, the appellant has been convicted by the Court of the Metropolitan Magistrate, 5th Court, Calcutta u/s 57 of the Foreign Exchange Regulation Act, 1973 for not depositing the penalty which was the subject matter of the appeal before the Appellate Tribunal for Foreign Exchange and the said conviction has been upheld by the District Court

in the appeal preferred by him there from. Apparently, the appellant thereafter preferred a criminal revision petition before the High Court of Calcutta, which was listed for final hearing on 6th August, 2007. The fate of the said criminal revision petition, however, has not been disclosed by the appellant to this Court.

25. We are referring to the aforesaid facts to show that the conviction of the appellant u/s 57 of the Foreign Exchange Regulation Act, 1973 by the Court of the Metropolitan Magistrate, 5th Court, Calcutta and the dismissal of his appeal there from sufficiently indicate that the appellant has no prima facie case in his favor, let alone a strong prima facie case. So far as financial hardship is concerned, there is nothing on record to indicate that the appellant has a meagre income as claimed by him. The writ records also show that a sufficient hearing was afforded to the appellant before directing him to pay 25% of the penalty amount amounting to Rs. 2.5 lakhs. The appellant having failed to comply with the said order, the order for dismissal of his writ petition cannot be faulted.

26. In our considered opinion, both the Tribunal and the learned Single Judge considered not only the aspect of whether or not a prima facie case is made out, but have also considered the financial hardship aspect. The learned Single Judge, on the plea of the appellant, scaled down the penalty amount from 50% to 25% after considering all the facts and circumstances, but the appellant failed to make payment of the pre-deposit amount despite modification of the order and also regardless of several adjournments granted to him for the aforesaid purpose.

27. Having considered the findings recorded by the Special Director, Enforcement, the Tribunal and the learned Single Judge, we do not think this to be an appropriate case where the appellant is entitled to any relief. The appeal has no merit and is accordingly dismissed. CM Nos.15345-47/2005 and 11793/2007 also stand disposed of.