(2009) 07 DEL CK 0197

In the Delhi High Court

Case No : WP (C) No''s. 5284-85 of 2006

Nitin Ramniklal Shan APPELLANT

Vs

Special Director RESPONDENT

Date of Decision : 27-07-2009

Acts Referred:
Foreign Exchange Regulation Act, 1973 — Section 9(1)

Citation : (2009) 166 DLT 107 : (2010) 8 RCR(Civil) 342 : (2009) 95 SCL 131

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Prabhjit Jauhar, for the Appellant; Dalip Mehra and Rajiv Ranjan Mishra, for the Respondent

Judgement

Sanjiv Khanna, J.—The petitioners, Mr. Nitin Ramniklal Shah and Mr. Mahesh Ramniklal Shah, have filed the present petition against the order dated 6-3-2006 passed by Appellate Tribunal for Foreign Exchange rejecting their applications for dispensation of pre-deposits of the penalty amount of Rs. 5,00,000 and Rs. 5,20,000 respectively imposed on them by the Adjudicating Authority under the Foreign Exchange Regulation Act, 1973 (''Act'', for short).

2. The allegation against the petitioner Nos. 1 and 2 is that they had purchased NRI cheques of Rs. 12,21,057 and Rs. 13,00,000 respectively from one Mr. Sanjiv Goel. It is alleged that these cheques were purchased after paying consideration of Rs. 16,04,000 and Rs. 17,00,000 and the petitioners had violated provisions of Section 9(1)(d) of the Act. It is also claimed that the petitioners are not entitled to protection granted under the Remittance of Foreign Exchange and Investment in Foreign Exchange Bonds (Immunities and Exemptions) Act, 1991 and Remittances in Foreign Exchange (Immunities) Scheme, 1991.

3. Learned Counsel for the petitioners submits that the impugned order passed by the Appellate Tribunal is non-speaking and does not deal with the contentions raised by the petitioners. He has also drawn my attention to order dated

30-6-1997 passed by Foreign Exchange Regulation Appellate Board and it is stated that in identical facts the penalty orders were quashed. This aspect has not been considered by the Appellate Tribunal.

4. On the last date of hearing, learned Counsel for the petitioners was asked to obtain instructions whether they are ready and willing to deposit part penalty amount and furnish security in the form of immovable property to protect the interest of the respondents and to ensure recovery of demand in case of an adverse order. Learned Counsel for the petitioners states that the petitioners will deposit Rs. 3 lakhs with the respondents and furnish security of an immovable property to the satisfaction of the respondents. The aforesaid payment of Rs. 3,00,000 will be made within a period of four weeks from today and security bond with papers will be furnished within four weeks. On payment being deposited and security being furnished and accepted, the attachment orders issued by the Directorate of Enforcement in respect of bank accounts in State Bank of India, Mandavi Branch, Mumbai, will be withdrawn. The respondents will be entitled to enforce and encash the security in case of an adverse order against the petitioner.

5. The petitioners will also file an affidavit giving details of their bank accounts and details of their other immovable property(ies). The said affidavit will be filed with the Directorate of Enforcement within four weeks. The impugned order dated 6-3-2006 is modified in terms of the present order. The appeal filed by the petitioners will be disposed on merits after aforesaid payment is made and security is furnished. It is clarified that this Court has not expressed any opinion on the merits of the appeal and the learned Tribunal will be disposed of the appeal without being influenced by any observation made in this order.

The writ petition is disposed of.

