(2016) 04 AHC CK 0054

In the Allahabad High Court

Case No : First Appeal From Order Defective No. 572 of 2016 and Civil Misc. Delay Condonation Application No. 132841 of 2016.

Ram Naresh Yadav APPELLANT

Vs

Deputy Director, Enforcement Directorate RESPONDENT

Date of Decision : 26-04-2016

Acts Referred:

Foreign Exchange Management Act, 1999 — Section 35
Foreign Exchange Regulation Act, 1973 — Section 18(2), 18(3), 49(5-A), 56
Limitation Act, 1963 — Section 5

Citation : (2016) 5 ADJ 246 : (2016) 117 ALR 796 : (2016) 2 CivilLJ 893

Hon'ble Judges : Arun Tandon;Abhai Kumar, JJ.

Bench : Division Bench

Advocate : Dwarika Prasad Shukla, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellant.

2. Adjudication proceedings under the provisions of Section 18 (2) and 18(3) of Foreign Exchange Regulation Act, 1973 were initiated against the appellant-Ram Naresh Yadav, the proprietor of M/s. Naresh Carpet Co., Khamaria, District-Bhadohi, culminating in an order of Deputy Director, Enforcement Directorate (FERA), Calcutta dated 14th August, 2003. In the letter forwarding the order dated 14.8.2003 itself, the petitioner was informed that the appeal would be maintainable only if the amount of penalty imposed is deposited within 45 days. Against the said order, the appellant before us filed an appeal under Section 49(5A) of the Foreign Exchange Regulation Act, 1999.

3. The appellant however, chose to file his appeal on 22.5.2004 along with an application for dispensing with the pre-deposit of the penalty. This application for waiver of pre-deposit was disposed of vide order dated 11.12.2008. The Tribunal by means of the said order permitted waiver of 50% of the penalty amount with a direction to deposit the remaining 50% within 30 days of the receipt of the

order of Tribunal. The appellant decided not to deposit even this 50 % of the amount and filed an application for review of the order dated 11.12.2008. This review application has been rejected by the Tribunal vide order dated 18th February, 2009.

4. The Tribunal in para-4 of the order dated 18.2.2009 has recorded that the order dated 11.12.2008 was made after hearing the appellant in person. On the review application 18.2.2009 was fixed as the date. The applicant did not appear and he sent a telegram seeking adjournment. The Tribunal proceeded to consider the review application and, thereafter, having found that the appellant has not deposited 50% of the amount despite the order dated 11.12.2008 held that the appeal was not maintainable and the same was consigned to record.

5. By means of present appeal filed under Section 35 of Foreign Exchange Management Act, 1999, the applicant has challenged the order of the Tribunal dated 18th February, 2009.

6. The appeal is reported to be beyond time by 6 years and 358 days i.e. nearly 7 years.

7. There is hardly any explanation worth consideration in the affidavit filed for condoning the delay of nearly 7 years in filing the present appeal. In para- 3 of the affidavit filed in support of Section 5 application, it has been stated that the deponent was informed about the order dated 18.2.2009 only on 2.2.2015 when he received intimation of proceedings under Section 56 of Foreign Exchange Regulation Act, 1973 i.e. case no. 1146 of 1997 said to be pending before the Chief Judicial Magistrate, Varanasi. It is then stated that the appellant contacted the office at Allahabad for inspection and providing a copy of the judgement of Tribunal as well as the office of Enforcement Directorate at Calcutta. It is then stated that the copy of the order dated 18.2.2009 was made available to the appellant only on 4.1.2016. Hence the present appeal.

8. We may record that the appellant had earlier filed a Writ Petition No. 13615 of 2016 against the order of Tribunal, which was dismissed with liberty to file an appeal on 29.2.2016. Hence, the appellant has filed this appeal.

9. In our opinion, since it was the appellant, who had initiated the proceedings before the Tribunal and it was in his presence that the order dated 11.12.2008 was passed requiring him to deposit 50% of the penalty amount so as to make the appeal competent, and further since last 8 years absolutely no steps had been taken by the appellant to deposit the requisite amount for making his appeal competent. What is worst to note is that the appellant contends that he was unaware of the order passed on his review application, it was his duty to have obtained information of the orders passed on review application said to have been filed in the year 2009. No litigant can be permitted to contend before us that after filing of the application for review, he will not pursue the same and await the communication of the order for 7 years. It is the litigant''s duty to keep watch on the proceedings initiated by him.

10. In our opinion, the delay between 2009 and 2015 has not been explained to our satisfaction. The appellant has been most negligent in pursing the proceeding before the Tribunal.

11. The application for condoning the delay in filing this appeal has no merit and is rejected.

