(1994) 07 DEL CK 0079

In the Delhi High Court

Case No : Civil Writ Petition No. 4554 of 1993 and Civil Miscellaneous Appeal No. 7458 of 1993

Selvedge APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 18-07-1994

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1994) 3 AD 808 : (1994) 31 DRJ 325

Hon'ble Judges : Devinder Gupta, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : Rohit Kochhar, Madan Lokur, Nandini Ramachandran and Alapana Poddar, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) The petitioner, a partnership firm, has filed this petition under Article 226 of the Constitution seeking a writ of mandamus or other appropriate writ, order or direction directing the respondents to return to the petitioner Rs.2,80,000.00 along with interest thereon from the date this amount was seized and till its payment and has also sought a direction to the respondents to pay to it a reward of 20% for giving information to the petitioner (respondents) pursuant to which the department unearthed under invoicing/over invoicing to the tune of over Rs.50 lakhs. The petitioner also wants a compensation of Rs.2 lakhs. There are three respondents. First respondent is the Union of India through the Secretary to the Government of India, Ministry of Finance, Department of Revenue; the second is the Director of Enforcement; and the third is the Assistant Director, Enforcement Directorate, both under the Foreign Exchange Regulation Act, 1973 (for short "F.E.R.A.")

(2) Noise to show cause was issued to the respondents as to why rule nisi be not issued. This court also directed issuance of notice to Mr. Vinod Mahajan as well. As to how the notice to Mr. Vinod Mahajan came to be issued we shall see

presently. It is not necessary to detail the facts except to note that there was some existing business dispute between Vinod Mahajan, proprietor of M/s. Joy line Gmbh, Germany, and the petitioner who had exported some garments to Vinod Mahajan but did not receive the payment in time. Since the petitioner was unable to realise the sale proceeds for having exported the goods within a period of six months from the date of dispatch which was 19 April 1991, the petitioner was served with a notice dated 4 February 1992 by the Reserve Bank of India to the effect that unless the export proceeds are realised action would be taken under the F.E.R.A. It would appear that in order to settle the problem faced by the petitioner from the Reserve Bank of India the petitioner made an arrangement with Vinod Mahajan for giving to it a draft in the sum of Rs.2,98,136.00 . In this connection we may refer to Fax message sent by Vinod Mahajan to the petitioner which has been brought on record by the petitioner itself :-

" TO: Selvedge Attn. Mr. Sanjay Dosaj Datum 12.11.92- I have got your drafts made and as agreed u pl arrange the same amount in Inr i.e. 2,98'',000,- so that we can exchange these with each other. Sanjay, I have again gone thru the whole a/c and even if I overlook at present my profit added, you owe me much more. I am not considering your white blouses value as these are nt sold so far. So final A/C settlement will be done only after these are sold and that is why I am not considering the profit added into the a/c statement at this time. Once again I would like to remind you that we will just exchange these so that u r free of Rbi hustles and Therefore pi arrange this amount as otherwise things will not work out. . Regds, Joyline / Mahajan. "

(3) It will, thus, appear that the intention was that the petitioner would show this amount of Rs.2,98,136.00 as its export proceeds realisation to R.B.I, so that the R.B.I, may not take any action against the petitioner under F.E.R.A. The Fax message quoted above would also show that Vinod Mahajan was quite reluctant to part with this money because he too had a certain claim against the petitioner. This Fax message was taken by the petitioner to the third respondent the Assistant Director, Enforcement Directorate. A letter dated 17 November 1992 was written by the petitioner in that connection. This letter is as under :-

" TO, The Asst. Director Enforcement Directorate F.E.R.A., New Delhi. Nov/17/1992 Dear Sir, This is to inform you that Export Proceeds to the tune of Rs.2,98,136.00 pertaining to the year 1991 against export of garments is due from M/s Joyline Mode Verterieb Gmbh, 78, Faustrasse, 8000 Munchen 82, Germany. We have obtained extention from the R.B.I, vide their letter DT. 4.2.1992 (copy enclosed). Mr. Vinod Mahajan N.R.R. Prop of M/s Joyline is asking for Indian Currency in lieu of their payment. He has sent us a fax DT. 12.11.1992 in this regard (copy enclosed). He is likely to come on 19.11.92 and is likely to stay in Hotel Meridien. We do not have to pay anything to him. Kindly book him under Fera who is attempting to indulge in Hawala transaction. Also arrange to get on Draft released from him. I shall inform the room and the time of his arrival. His Delhi assets are M/s Mahajan &. Co., 82/2 Whs, Kirti Nagar. sd/- Petitioner"

Subsequently, by another letter the petitioner informed the third respondent that Vinod Mahajan had since checked in Hotel Le Meridien and that he had phoned the petitioner about the draft and asked it to bring the cash equivalent to the export proceeds. In this communicated which is dated 20 November 1992 addressed to the Assistant Director, the petitioner partner said that he visited Vinod Mahajan that day and told him that he would be arranging money within 2/3 days. It would, Therefore, appear that on the one hand there was understanding between Vinod Mahajan and the petitioner that when Vinod Mahajan would give the draft for Rs.2,98,136.00 to the petitioner, he would receive from the petitioner an equivalent amount in cash, and at the same time, on the other hand, the petitioner was approaching the officers of the Enforcement Directorate for booking Vinod Mahajan for violation of the provisions of the F.E.R.A. On 23 November 1992 a search was conducted of the hotel room which Vinod Mahajan was occupying and a draft in the sum of Rs.2,98,136.00 and cash amounting to Rs.2,80,000.00 was recovered by the officers of the Enforcement Directorate and a panchnama prepared. Partner of the petitioner is one of the signatories to the panchnama. The draft for Rs.2,98,136.00 had been issued by Deutsche Bank, Frankfurt, Germany. There is no dispute that the amount of Rs.2,80,000.00 which was recovered from the hotel room of Vinod Mahajan was paid to him by the petitioner. Statement of Vinod Mahajan was recorded under the provisions of the F.E.R.A. and he admitted recovery of the bank draft and the cash aforementioned. He stated that the goods sent by the petitioner were defective and he had been raising claim against the petitioner and so it was agreed to that on his bringing a draft for Inr 298136 he would be paid an equivalent amount in Indian currency by the petitioner. He said :

" I agreed and brought one draft for Inr 298136- from Germany in favor of M/s. Selvedge and I delivered the same to Mr. Sanjay Dosaj today and in exchange of the same the seized Indian currency of Inr 280000- he handed over to me today and for the balance amount of Inr 18136- he promised to pay me in cash tomorrow morning. I state that draft of Deutsche Bank for Inr 298136- recovered from Sh. Sanjay Dosaj is the same draft which I brought from abroad at his instance and exchanged the same with him today."

(4) Now the petitioner made a claim both to the bank draft and the Indian currency so recovered. The bank draft was given to him by the respondents, but in view of the claim raised by Vinod Mahajan the Indian currency could not be returned to the petitioner. In this respect the third respondent had to say as under :-

"9.As regards the currency of Rs.2,80,000.00 , after full investigation which concluded sometime towards the end of November 1993, it has been found that this money did not represent any violation of any provision of FERA. 10. In view of the above, there are two options now available with the Respondents :- a) To give the cash amount of Rs.2,80,000.00 to the Petitioner disregarding the claim of Vinod Mahajan; b) To give the cash amount of Rs.2,80,000.00 to Vinod Mahajan disregarding the claim of the Petitioner and accepting the claim of Vinod Mahajan. "

(5) The respondents denied the claim of the petitioner to the interest. During the pendency of this petition the amount of Rs.2,80,000.00 was deposited by the respondents with the Registrar of this Court and it was directed that the Registrar shall put this amount in F.D.R. to carry maximum interest to be renewed from time to time. Petitioner says that the amount of Rs.2,80,000.00 belong to it and should be paid to it. Its claim is not free from doubt. Mr. Rohit Kochhar, learned counsel for the petitioner, said that in case the amount is paid to Vinod Mahajan an offence u/s 8 of the F.E.R.A. would have been committed which is punishable under the F.E.R.A. We are not going into the question whether any offence u/s 8 of the Act would be committed or not. It is for the parties to take appropriate action in the matter. Here is a case in which both petitioner and Vinod Mahajan have staked their claim to the money lying in this Court. In support of the claim of the petitioner Mr. Rohit Kochhar himself filed his affidavit running into Ii pages giving the background of the case as to how under his instructions petitioner had been meeting the officers of the Enforcement Directorate. This Court did not ask Mr. Rohit Kochhar to file his affidavit and in the circumstances we do not think it was necessary for an advocate to file his own affidavit. It would be struck out from the record. No claim for the interest or reward has been made out. The basis of claim for reward is some newspaper reporting that the Enforcement Directorate was able to unearth a racket involving foreign exchange to the tune of Rs.50 lakhs. This is hardly any evidence for the petitioner to press a claim for reward. We have also not been shown under which provision of law the reward is being claimed. We find no merit in the petition and would dismiss the same. However, we direct that the amount of Rs.2,80,000.00 with interest accrued thereon shall be retained by the Registrar of this Court and returned to any of the parties who gets its or his claim adjudicated upon from a competent civil court. In the circumstances, we will leave the parties to bear their own costs.

