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(1987) 04 DEL CK 0013

In the Delhi High Court

Case No : Criminal Appeal No. 2 of 1986

Union of India APPELLANT

Vs

Foreign Exchange Regulation Appellate Board and Another RESPONDENT

Date of Decision : 20-04-1987

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 54

Citation : (1990) 68 CompCas 46 : (1987) 32 DLT 278 : (1987) RLR 270

Hon'ble Judges : M.K. Chawla, J

Bench : Single Bench

Advocate : Kadambini Sharma, O.P. Soni and Kamlesh Dutt, for the Appellant;

Judgement

M.K. Chawla, J.

(1) In the month of March, 1980 Shr Issar Das son of late Shri Khub Chand purchased a residential house bearing No. O-13, Lajpat Nagar-II, New Delhi from Shri O. P. Sethi, resident of B-3134-A Lawrence Road, Delhi for a consideration of Rs. 1,31,500.00 . A sum of Rs. 75,000.00 was paid by means of a bank draft to the credit of Shri O. P. Sethi. The remaining amount of Rs. 56,5001- was paid to one Shri B. B. Sawhney, general attorney of Shri O. P. Sethi. Thereafter the sale deed was duly registered and possession delivered.

(2) Somehow or the other the officers of the Foreign Exchange Enforcement Branch, came to know of this transaction. On enquiry the department came to know that at the relevant time Shri 0. P. Sethi was a person resident outside India and as such had no authority to accept the sale consideration without the prior approval of the concerned authorities. On the basis of the investigations of the Directorate Shri Issar Das was served with the following Show Cause Notices :-

"1.Show Cause Notice No. T-4/127-D/83-DD, dated 8-11-1983-alleging that during the year 1979-80 Shri Issar Das son of late Shri Khub Chand r/o. 0-13 Lajpat Nagar Ii, New Delhi purchased from Shri B. B. Sawhney son of Shri Tara

Chand r/o. B-3/34-A Lawrence Road, Delhi 35 for Rs. 1,31,500.00 and made payment amounting to Rs. 75,000.00 for the credit of Shri 0. P. Sethi, son of late R. R. Sethi, a person resident outside India in contravention of Section 9(1)(a) of Foreign Exchange Regulation Act, 1973.

(2) Show Cause Notice No. T-4/1128-B/83, dated 8-11-1983-alleging that during the year 1979-80, Shri Issar Das s/o. Shri Khub Chand purchased the residential house No. 0-13, Lajpat Nagar Ii, New Delhi from Shri O. P. Sethi, a person resident outside India through his attorney Shri B. B. Sawhney son of Shri Ta Chand R/o B-3/34-A, Lawrence Road, Delhi for Rs. 1,31,000.00 and made payment amounting to Rs. 56,500.00 to Shri B. B. Sawhney son of Shri Tara Chand, a person resident outside India in contravention of Section 9(1)(d) of the Foreign Exchange Regulation Act, 1973."

(3) Shri Issar Das was required to show cause in writing within 30 days from the date of the receipt of the said memorandum as to why adjudication proceedings as contained in Section 51 of the Foreign Exchange Regulations Act, 1973 be not held against him, for the aforesaid contraventions. Shri Issar Das through his counsel filed the detailed reply denying the allegations contained in the show cause notices, inasmuch as at the relevant time he did not know that Shri O. P. Sethi was a person resident outside India. As Shri B. B. Sawhney was competent to enter into the sale agreement, for and on behalf of Shri O. P. Sethi, the transaction was completed and payments made. This defense was not accepted. The learned Deputy Director vide order dated 30-4-1984 concluded.:-

"THE contention of the learned Advocate that Shri Issar Das did not know that Shri O. P. Sethi was a person resident outside India nor he made enquiry regarding Shri Sethi for the reason that Shri Sawhney was holder of power of attorney, is not acceptable as Shri Issar Das was a tenant of the same house owned by Shri O. P. Sethi since October, 1978. This house was subsequently purchased by him which is the subject matter of adjudication. Shri Issar Das in his statement dated 26-7-1983 before the Enforcement officer has admitted that the rent receipt of the said house was being given by Shri Satish Sethi son of Shri 0. P. Sethi as Shri 0. P. Sethi was not residing in the house and subsequently he came to know that he was residing out of India. In the said statement he has further stated that Shri O. P. Sethi''s family consisting of his mother, wife, three sons and one daughter were residing in one portion of the house and have vacated the portion in January, 1980. Later on he came to know that Shri Sethi''s family members have also left for abroad. At the time of registry i.e. on 7-3-1980 no one from Sethi''s family was available. From the above statement it is clear that Shri Issar Das was aware that Shri O. P. Sethi was not residing in India and as such by making a payment of Rs. 75,000.00 by Demand Draft in favor of Shri 0. P. Sethi, Shri Issar Das contravened the provisions of Section 9(1) (a) of the Foreign Exchange Regulation Act, 1973. Similarly by making another payment of Rs. 56,500.00 to Shri B. B. Sawhney by way of sale of the said house owned by Shri O. P. Sethi, a person resident outside India, Shri Issar Das has

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contravened the provisions of Section 9(1)(a) of the Foreign Exchange Regulation Act, 1973."

(4) In view of this finding the Deputy Director Imposed a penalty of Rs. 5,000.00 each for the contravention of F.E.R.A. as shown in the two show cause notices.

(5) Shri Issar Das was not satisfied with the order of the Deputy Director and preferred to file an appeal which was heard and disposed of by the appellate board on 28-8-1985. On the same facts, the appellate board came to the conclusion that on record there is nothing to suggest that Shri Issar Das told lie in his statement. The Board concluded thus :-

"THEA. 0. in his order has based his finding in respect of such knowledge of the Appellant on the mere circumstance that the appellant was a tenant in the house for the last about two years and that the rent receipts were being given to him by O. F. Sethi''s son and the family of O. P. Sethi was residing in a portion of the house and vacated the same sometime in January, 1980 while the sale deed was executed in early March, 1980. As stated above, we do not see how it can be said with much force that the Appellate-tenant must have come to know as to where the landlord was actually living. It is not uncommon that individuals stay in other parts of the country for being in service or business and do not visit their families'' for years. In any case, it cannot be said that a tenant must know as to where the landlord resides. In the circumstances, . in my view, there was no sufficient reason to discard the statement of the Appellant that in fact he did rot know till the purchase of the house by him that the owner O. P. Sethi was residing outside India. That being so, the finding of the A. O. to the effect that the payments were made by the Appellant in contravention of sections 9(1)(a) and 9(1)(d) of the Act was clearly erroneous in law and cannot be sustained. As a result the appeal must succeed "

(6) In the second appeal before this court the grievance of the U.O.I. is that the appellate board has failed to property Inter part the true meaning, object and scope of the provisions as contained in Section 59 of the Act, inasmuch as, it failed to take into consideration the definition of culpable mental state which besides other includes knowledge of a fact and belief or reason to believe the fact.

(7) Furthermore, according to the learned counsel, the appellant board has committed an error in the judgment, in relaying upon a vague and improbable statement of the respondent to the effect that he did not know the whereabouts of Shri O. P. Sethi. It was for him to discharge the burden to prove that not only he had no knowledge that Shri O. P. Sethi was non resident but also that he had no reason to believe this fact. On this short ground the appeal, according to the learned counsel, is liable to be accepted.

(8) The learned counsel for the respondent has raised two preliminary objections to the maintainability of the present appeal. In this behalf he has placed reliance on the provisions of Section 54 of the Act, which reads as under ;-

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"54.Appeal to High Court.--An appeal shall lie to the High Court only on questions of law from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of Section 52. Provided that the High Court shall not entertain any appeal under this section if it is filed after the expiry of sixty days of the date of communication of the decision or order of the Appellate Board, unless the High Court is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

(9) According to the learned counsel the findings of the courts below are based on pure questions of fact. The appellant has not propounded any question of law, nor it arises in this appeal. Furthermore, according to the learned counsel, the appeal is barred by limitation. In the absence of any application, the delay cannot be condoned. On these short grounds the appeal merits dismissal.

(10) To start with I propose to dispose of the second objection. The impugned order of the appellate board is dated 28th August, 1985. The proviso to Section 54 of the Act provides limitation -of 60 days for filing appeal to the High Court. The limitation will start from the date of the communication of the decision or order of the Appellate Board. The copy of the order of the appellate board was sent to the Registrar F.E.R.A. Board, vide letter No. FERAB/276/84, dated 11-9-1985. This letter was received in the office on 12th of September, 1985. If we calculate the period of 60 days from the date of the communication of the decision, the appellant was required to file the decision, the appellant was required to file the appeal on or before the 11th of November, 1985. According to the learned counsel for the appellant the High Court was closed from 9-11-1985 to 13-11-1985. The present appeal was filed in the Registry on 14-11-1985. In that situation the appeal cannot be said to have been filed beyond the period of limitation. This objection thus has no merit.

(11) On the second aspect the respondent has a valid and forcible submission. The main question for decision before the Deputy Director and the appellate board was, as to whether Shri Issar Das, at the time of the purchase of the house or when he made the payment, had the actual knowledge that Shri 0. P. Sethi was a resident outside India. On the same set of evidence the authorities below have adopted a divergent view. This is a pure question of fact. No question of law has been formulated or discussed in any of the orders. The appellant has also not been able to formulate a question of law requiring serious consideration. Even if it be assumed for the sake of the argument that both the views are possible, there is no reason as to why the view of the appellate board be not given preference even the reasoning of the Deputy Director. That being the position it cannot be said that the orders of the appellate board suffer from any legal infirmity or that it committed any error of law, in coming to the finding.

(12) The learned counsel for the appellant has not been able to point out any circumstance showing that the respondent at the relevant time had the culpable mental state and intentionally bye-passed the provisions of the Foreign Exchange Regulations Act. The ''Culpable Mental State'' as per the Explanation of Section

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59 includes the intention, motive, know-ledge of fact and belief in or reason to believe a fact. Such a fact can be said to be provided only when the court believes it, to exist beyond reasonable doubt and not merely when its existence is established by preponderance of probability. The evidence before the authorities below, even if looked into from this angle do not establish the intention, motive or the knowledge of the respondent that at the relevant time Shri O. P. Sethi was resident outside India.

(13) Besides the reasoning of the appellate board with which I fully concur, the following circumstance would also indicate that Shri Issar Das had no occasion or opportunity to know this fact. First of all Shri Issar Das is an illiterate person and not well versed in English. On the suggestion of one Mr. Sehgal, he agreed to purchase the property and contacted Shri B. B. Sawhney who was holding a valid and legal power of attorney from Shri O. P. Sethi to execute the sale deed. The entire sale consideration was paid by the respondents in two Installments. The sum of Rs. 75,000.00 was paid by means of a bank draft and the same was deposited in the joint account of Shri 0. P. Sethi and his wife. The second Installment of Rs. 56,500.00 was paid to the attorney. The major portion of the entire consideration was spent by the family of Shri 0. P. Sethi in India. It was not expected of the respondent to find out as to who is the actual owner or where he is residing. The attorney was competent to sell the house and through him the transaction was got completed. The sale deed was registered. The attorney passed on the title lawfully and delivered the vacant possession of the property in dispute. It may be that Shri Issar Das was residing in the same house as a tenant but that fact by itself is not enough to establish that he had the knowledge or reason to believe that Shri 0. P. Sethi is a resident outside India. There is no evidence to infer to the contrary.

(14) The point in issue as discussed earlier is based on the factual appraisement of the evidence on the particular circumstance of this case. This being essentially a question of fact where no legal implications are involved, the appeal u/s 54 of the Act thus is not maintainable.

(15) In the result I have no hesitation to dismiss the appeal. Ordered accordingly.

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