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**(1997) 04 SC CK 0002**

**In the Supreme Court Of India**

**Case No : Criminal Appeals Nos. 464 To 471 Of 1997**

Yakub Abdul Razak Memon

APPELLANT

Vs

Competent Authority <BR>Essa Abdul Razak Memon and  
Others Vs Competent Authority, Bombay

RESPONDENT

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**Date of Decision : 25-04-1997**

**Acts Referred:**

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 —  
Section 12(4), 22

**Citation : (1999) CriLJ 5001 : (1997) 11 SCC 421**

**Hon'ble Judges : S. Saghir Ahmad, J;M. K. Mukherjee, J**

**Bench : Division Bench**

**Final Decision : Allowed**

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## **Judgement**

1. Leave granted in all the petitions. Heard learned Counsel for the parties.
2. Aggrieved by an ex-parte composite order dated September 28, 1993 passed by the Competent Authority u/s 7 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 ("Act" for short) the seven appellants filed separate appeals before the Appellate Tribunal on May 9, 1985 as also applications for condonation of delay in filing the same. By the impugned order the Tribunal dismissed the appeals on the ground that the appeals were filed beyond the period of 60 days, as contemplated by the proviso to Section 12(4) of the Act and that the Act did not vest any power in the Tribunal to condone any delay, even on sufficient cause being shown, after the expiry of 60 days from the date of service of the order to be impugned. Hence these appeals.
3. Mr. Salve for the appellants contended that the period of limitation u/s 12(4) of the Act was to be reckoned from the date of service of the order on the person aggrieved and the manner of such service was provided u/s 22 of the Act. Since service was not effected in terms thereof the appeals could not have been dismissed on the ground of limitation, reckoning the period thereof from the date of the appellants knowledge, argued Mr. Salve. The learned Counsel for the

respondents on the other hand contended that the above contention of the appellants should not be entertained as it was being raised for the first time in this Court.

4. The contention raised by Mr. Salve being one of law based on admitted facts, we do not find any substance in the objection raised on behalf of the respondents. Coming now to the merits we find that the respondents, in their counter-affidavits stated that the order u/s 7 (which was made on 28-9-93) was served on 1-10-1993 by affixation. The question, therefore, is whether such service was a proper and valid service u/s 22 of the Act which reads as under:

Any notice or order issued or made under this Act shall be served-

(a) by tendering the notice or order or sending it by registered post to the person for whom it is intended or to his agent;

(b) if the notice or order cannot be served in the manner provided in Clause (a) by affixing it on a conspicuous place in the property in relation to which the notice or order is issued or made, or on some conspicuous part of the premises in which the person for whom it is intended is known to have last resided or carried on business or personally worked for gain.

5. From a plain reading of the above Section it is manifest that service under Clause (b) that is by affixation, would be permissible if the notice or order cannot be served in the manner provided in Clause (a). Therefore, without making any effort to serve in terms of Clause (a) the respondents could not have invoked service by affixation under Clause (b). As, admittedly, no step was taken to serve the order passed u/s 7 by tendering or sending it by registered post, and, on the contrary, within 3 days of the making thereof it was sought to be served for the first time by affixation, it must be said that there was no valid service within the meaning of Section 12(4).

6. We therefore, allow these appeals, set aside the impugned order and direct the Appellate Tribunal to hear and dispose of the appeals in accordance with law.