

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 3037/2007

Date of Decision: 12th November, 2009

YASMIN M.V.VALIBHOY

Through

..... Petitioner

Mr. R.K. Handoo, Mr. S.P. Pandey and
Mr. Aditya Chaudhary, Advocates.

versus

DIRECTOR ENFORCEMENT DIRECTORA TE

Through

.. Respondent

Ms. Rajdipa Behura, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

O R D E R

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1. The petitioner herein is wife of late Mr. Bharat Thacker and daughter in law of late Mr. Hansraj Thacker, father of late Mr. Bharat Thacker. By adjudication order dated 30th August, 1998 passed under Foreign Exchange Regulation Act, 1973, penalty of Rs. 16,07,50,000/- and Rs. 5,00,000,00/- have been imposed on the ground of alleged violations of the provisions by late Mr. Hansraj Thacker and late Mr. Bharat Thacker.

2. Against the said adjudication order late Mr. Bharat Thacker had filed two appeals before the Appellate Tribunal of Foreign Exchange which was earlier known as FERA Board. The first appeal is as a legal representative of late Mr. Hansraj Thacker and the second appeal in his personal capacity. Mr.

Hansraj Thacker expired on 27th August, 1994. Along with the appeals, Mr. Bharat Thacker had filed applications for waiver of pre-deposit of the penalty amounts. During the pendency of the two appeals, Mr. Bharat Thacker had also expired on 18th September, 2000.

3. The petitioner herein Ms. Yasmin M.V. Valibhoy @ Mrs. Roopal Thacker thereafter filed applications dated 12th July, 2006 for being brought on record in the two appeal, as a legal representative of late Mr. Bharat Thacker. The petitioner is wife of late Mr. Bharat Thacker. The said applications it is stated have been allowed.

4. By the impugned order dated 8th February, 2007, learned Tribunal has asked the petitioner to deposit Rs.1,00,000,00/- as against the penalty of Rs. 5,00,000,00/- imposed on Mr. Bharat Thacker. In the first appeal filed against the adjudication order on the basis of the show cause notices issued to Mr. Hansraj Thacker, full dispensation has been granted. I am not concerned with the said appeal and the dispensation granted.

5. Counsel for the petitioner has drawn my attention to the application filed by the petitioner herein before the Appellate Tribunal for Foreign Exchange. Paragraph 7 of the said application reads as under:-

“7. THAT the applicant has not inherited any movable and immovable property through her deceased husband.”

6. Thus, it is a case of the petitioner that she has not inherited any moveable or immovable property from her husband late Mr. Bharat Thacker.

Counsel for the petitioner submits that in the impugned order there is no finding recorded in this regard and at the same time the Appellate Tribunal has directed the petitioner as a legal representative to deposit Rs. 1,00,000,00/- from the estate of the deceased i.e. Mr. Bharat Thacker. He, therefore, submits that the impugned order passed by the Appellate Tribunal is impossible to comply and is liable to be set aside.

7. The petitioner being a legal representative will be liable to the extent that she has inherited the estate from late Mr. Bharat Thacker. The estate of late Mr. Bharat Thacker is liable and can be attached and forfeited under provisions of the Foreign Exchange Regulation Act, 1973, on account of the adjudication order passed against Mr. Bharat Thacker. This is therefore necessary to enquire about the total estate left behind by late Mr. Bharat Thacker. No such enquiry was made and gone into. The petitioner herein has also not filed any affidavit stating and giving details of the estate left behind by late Mr. Bharat Thacker, what has happened to the said estate and who has inherited the same. In case late Mr. Bharat Thacker has left behind any estate, learned Appellate Tribunal is competent to pass an appropriate order to protect interest of the respondent department, even if the same is in possession/control of a third party, other than the petitioner herein. The petitioner cannot obviously object or protest against any such order, for she is not adversely affected and has not inherited the estate. Inheritance is subject to the first charge of the respondent.

8. In these circumstances, the impugned order dated 8th February, 2007, to the extent it relates to appeal No.37/2000 is set aside and the matter is remanded back for fresh adjudication on the application for waiver of pre deposit. The petitioner herein will file an affidavit stating on oath the estate left behind by late Mr. Bharat Thacker and whether she has inherited any of the properties subject matter of the said estate. In case the said estate is inherited by any third person(s), she shall give full details of the person(s), who has/have inherited the said estate. The said affidavit will be filed within a period of four weeks.

9. Counsel for the petitioner at this stage points out that the petitioner has raised some other contentions relating to merits of the adjudication order itself. During the course of arguments, it was submitted that the adjudication order dated 30th August, 1998, passed in respect of show cause notices issued to Mr. Hansraj Thacker is void as he had expired on 27th August, 1994. It was submitted that no reasons are recorded in the adjudication order dated 30th August, 1998 for imposing penalty of Rs. 5,00,000,00/- on late Mr. Bharat Thacker. Counsel for the respondent Enforcement Directorate has, however, controverted the said statements. With regard to the first statement, my attention is drawn to the first page of the adjudication order dated 30th August, 1998, wherein names and addresses of the parties have been given i.e. Mr. Hansraj Thacker, Mr. Bharat Thacker, M/s. Thacker Family Trust, Darshan Foundation, Ms. Bharti Thacker, who is the daughter of Mr. Hansraj

Thacker and Ms. Roopal Thacker, who is the petitioner herein. She further submits that the impugned order dated 30th August, 1998, should be read as a whole and the order states why penalty has been imposed on late Mr. Bharat Thacker. I need not examine the contentions raised by the petitioner and given opinion on the same as these issues are pending before the Appellate Tribunal.

10. Parties or their representatives will appear before the Registrar, Appellate Tribunal for Foreign Exchange on 9th December, 2009 at 11 A.M., when a date of hearing will be fixed.

The writ petition is accordingly disposed of. There will be no order as to cost.

SANJIV KHANNA, J.

NOVEMBER 12, 2009.
NA/P