

Court No. - 1

Case :- FIRST APPEAL DEFECTIVE No. - 66 of 2023

Appellant :- Nafis Ahmad And Others

Respondent :- Union Of India Thru. Secy./Competent Auth. Enemy Property Of India, New Delhi And Others

Counsel for Appellant :- Mohiuddin Khan, Sonu Shukla

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Om Prakash Shukla, J.

1. Heard learned counsel for the appellants.

Order on Delay Codonation Application

2. The first appeal has arisen out of the order dated 19.4.2023 passed by the Deputy Secretary to Government of India, Ministry of Home Affairs, FFR Division on the representation filed by the appellants under Section 18 of the Enemy Property Act, 1968. Previously the first appeal from the date of knowledge of the same order was reported within limitation but on an objection raised, the appeal was permitted to be filed along with an application seeking condonation of delay, hence the application.

3. The appeal against the order passed under Section 18 of the Act is maintainable within a period of 90 days, therefore, looking to the date of order i.e. 19.4.2023 impugned here in this appeal, the Court permitted the appellant to file a fresh appeal along with an application for condonation of delay.

4. It is under these circumstances that the delay condonation application has come to be filed along with this appeal.

5. The cause shown in the application seeking condonation of delay is sufficient.

6. The application for delay condonation is accordingly allowed and the delay condoned.

Order on the Appeal

7. The first appeal before this Court under Section 18-C of the Enemy Property Act, 1968 arising against the order passed under Section 18 of the said Act would be maintainable only when a dispute relating to the enemy property is adjudicated on the issue of vesting of the property in the custodian under an order passed by the competent authority.

8. The impugned order has not decided any dispute with respect to any such vesting nor any such order was placed before the Central Government.

9. The Central Government by means of order dated 19.4.2023 has accordingly informed the appellants that the representation directed against the order dated 17.5.2018 has rather arisen out of a proceedings drawn against the appellant under Section 38(1) of U.P. Revenue Code, 2006 against which an appeal would lie before the District Magistrate or appellate authority prescribed under the Code.

10. It is this liberty which appears to have been granted to the appellants previously by this Court vide order dated 21.11.2017 in Writ Petition Misc. Bench No. 28036 of 2017.

11. On conclusion of the proceedings with the passing of the order dated 17.5.2023, it was, as a matter of fact, open to the appellants to have availed of the remedy of appeal under the provisions of U.P. Revenue Code, 2006 which the appellants have failed to do, on the contrary, they chose to file an application/representation under Section 18 of the Enemy Property Act which has been returned to them as non-maintainable.

12. Thus, the Central Government has declined to enter into the grievance as was raised against the order passed by the revenue court under Section 38(1) of U.P. Revenue Code, 2006.

13. We do not find any reason to entertain the present appeal under Section 18-C of the Enemy Property Act particularly when there is no decision rendered by the government of India under Section 18 of the said Act within its scope.

14. Leaving it open to the appellants to avail the appropriate remedy before the competent revenue court, the present appeal filed under Section 18-C of Enemy Property Act not being maintainable is consigned to record.

Order Date :- 11.12.2023

Fahim/-