

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.4 OF 2015
IN
FERA APPEAL NO.46 OF 2006

Union of India through Director of
Enforcement ... Applicant
v/s
Ms Dimple D. Sheth ... Respondent

WITH
CIVIL APPLICATION NO.5 OF 2015
IN
FERA APPEAL NO.45 OF 2006

Union of India through Director of
Enforcement ... Applicant
v/s
Mr Pravin J. Sheth ... Respondent

WITH
CIVIL APPLICATION NO.6 OF 2015
IN
FERA APPEAL NO.43 OF 2006

Union of India through Director of
Enforcement ... Applicant
v/s
Ms Dipesh P. Sheth ... Respondent

WITH
CIVIL APPLICATION NO.7 OF 2015
IN
FERA APPEAL NO.50 OF 2006

Union of India through Director of Enforcement	... Applicant
v/s	
M/s Ditco Securities Pvt.Ltd.	... Respondent

**WITH
CIVIL APPLICATION NO.8 OF 2015
IN
FERA APPEAL NO.47 OF 2006**

Union of India through Director of Enforcement	... Applicant
v/s	
Mrs Pushpa P. Sheth	... Respondent

**WITH
CIVIL APPLICATION NO.9 OF 2015
IN
FERA APPEAL NO.52 OF 2006**

Union of India through Director of Enforcement	... Applicant
v/s	
M/s Dipesh Engineering Works	... Respondent

**WITH
CIVIL APPLICATION NO.10 OF 2015
IN
FERA APPEAL NO.51 OF 2006**

Union of India through Director of Enforcement	... Applicant
v/s	
Mr Ajit J. Sheth	... Respondent

**WITH
CIVIL APPLICATION NO.14 OF 2015**

**IN
FERA APPEAL NO.44 OF 2006**

Union of India through Director of Enforcement	... Applicant
v/s	
Mr Bhavesh P. Sheth	... Respondent

**WITH
CIVIL APPLICATION NO.15 OF 2015
IN
FERA APPEAL NO.42 OF 2006**

Union of India through Director of Enforcement	... Applicant
v/s	
Mr Dharmesh P. Sheth	... Respondent

**WITH
CIVIL APPLICATION NO.16 OF 2015
IN
FERA APPEAL NO.48 OF 2006**

Union of India through Director of Enforcement	... Applicant
v/s	
M/s Ditco Capital Resources Ltd.	... Respondent

**WITH
CIVIL APPLICATION NO.17 OF 2015
IN
FERA APPEAL NO.49 OF 2006**

Union of India through Director of Enforcement	... Applicant
v/s	
Ms Ditco Construction Ltd.	... Respondent

Ms S.V. Bharucha wit Mr D.P. Singh for Applicant.
Mr Advait M. Sethna with Ms Ruju R. Thakker i/b Mr S.V. Marwadi
for Respondent.

**CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.**

DATE : 26TH OCTOBER 2015

P.C. :-

1. These Civil Applications by the Applicant – Union of India through the Director of Enforcement, Mumbai seek to challenge a conditional order of the Registrar (Judicial) of this Court dated 10th March 2015 dismissing FERA Appeal No.46 of 2006 and other Appeals.
2. It is common ground that these Appeals have been filed under section 52 of the then Foreign Exchange Regulation Act 1973 challenging the order dated 30th May 2003 of the Appellate Tribunal.
3. These Appeals were admitted and are pending for compliance with the Office objections. The objections arise because in terms of the applicable procedural rules, the Appellant / Applicant before us is obliged to supply the Registry of this Court all the documents and records forming part of the adjudication order and

the Appeal so as to enable the Registry to prepare a paper-book. There have been defaults on the part of the Appellant / Applicant. These defaults are noted in the affidavit filed in reply by the Respondents and they have been emphasizing that though the Appeals had been admitted way back on 31st August 2007 and a facility was given to the Applicant / Appellant to supply a private paper-book, still the defaults continue and therefore the Registry was left with no choice but to dismiss the Appeals without adjudication on merit. Now the question arises whether the same opportunity should be given again.

4. Mrs Bharucha, learned counsel appearing for the Applicant has no answer to this query save and except to say that the matter is very old and it is very difficult to trace out the documents and records and thereafter prepare a paper-book. She would submit that in the Government administrative lapses, procedural delays are a known fact and if that results in dismissal of the Appeals without adjudication on merits, such dismissal will not serve larger public interest.

5. Mr Sethna, learned counsel appearing on behalf of the

Respondents, on the other hand, submits that enough latitude and leniency has been given and shown to the Applicant. Merely because it is Government, it does not mean that they have vested right to delay the proceedings or to commit default in complying with the procedural rules. They cannot, after such enormous delay and deliberate and willful default seek restoration of the Appeals. They have been rightly dismissed by the Registrar (Judicial) of this Court. If the Appeals are dismissed without adjudication on merits, then it is solely because of Applicants and not for reasons attributable to the Registry of this Court. There is no merit in each of these Applications and they deserve to be dismissed.

6. We have perused all these Applications and explanation given therein. Mr Sethna is right in urging that this explanation does not inspire confidence. The delay has been continuing over last eight years. Even after this Court had permitted the Applicant / Appellant to file a private paper-book, still the default has continued. It is not known why the Applicant / Appellant has not been able to trace the record. The explanation therefore does not inspire much confidence.

7. However, it could be that in all such matters, there will be a vested interest. There could be different reason for not complying with the procedural rules and one of being to facilitate the Respondents. We do not wish to look into these reasons any further. However, we are surprised and shocked that for such lapses and non-compliance with the procedural requirements, the Director of Enforcement, having his office at Mumbai, has not initiated the necessary inquiry and sought explanation from those working under him as to why the delay has occurred. He must take disciplinary action.

8. The Director of Enforcement cannot go on giving instructions to seek time or to set aside a conditional order. This mechanical exercise demonstrates the casualness on the part of all concerned in the Directorate of Enforcement. We think eight years delay is a long enough period for directing investigation. Yet, for the fault of the Director of Enforcement and his team, we do not wish to adversely affect the larger public interest. In the circumstances, we pass the following order :-

(a) On the Applicant paying to the Respondents costs

quantified at Rs.10,000/- in each of these Appeals and which should be paid within two weeks from today, we grant them time till 17th December 2015 to file complete paper-books in all appeals.

(b) If such compliance is made and receipt of payment of costs is shown, the Registry to allow the Appellant – Applicant to prosecute each of these Appeals on merits and in accordance with law.

(c) No extension of time will be granted for payment of costs or complying with the orders of this Court.

(d) Hereafter, no Civil Application will be entertained.

(B.P. COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)