

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**FERA APPEAL NO. 1 OF 2015
WITH
CIVIL APPLICATION NO.11 OF 2015
IN
FERA APPEAL NO.1 OF 2015**

JSW Steel Ltd ..Appellant/Applicant

Vs.

The Special Director, Office of the Special
Director of Enforcement ..Respondent

**FERA APPEAL NO. 2 OF 2015
WITH
CIVIL APPLICATION NO.12 OF 2015
IN
FERA APPEAL NO.2 OF 2015**

V. P. Garg ..Appellant/Applicant

Vs.

The Special Director, Office of the Special
Director of Enforcement ..Respondent

**FERA APPEAL NO. 3 OF 2015
WITH
CIVIL APPLICATION NO.13 OF 2015
IN**

FERA APPEAL NO.3 OF 2015

M. V. S. Seshagiri Rao

..Appellant/Applicant

Vs.

The Special Director, Office of the Special

Director of Enforcement

..Respondent

Mr. Rafiq Dada, Senior Counsel a/w Mr Nanda Gopal, Mr Chirag Shetty i/b Economic Laws Practice, for the Appellants/Applicants in FERA 1/15 & CA.11/15.

Mr. Nanda Gopal, Mr Chirag Shetty i/b Economic Laws Practice, for the Appellants/Applicants in FERA 2/15 & 3/15 and CA.12/15 & 13/15.

Mr A. J. Rana, Senior Counsel a/w Mr Salil Shah, Mr H. V. Mehta, for the Respondent.

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

DATE :- SEPTEMBER 28, 2015.

P. C.:

When these FERA Appeals were placed before us for admission and stay, Mr Rana, leaned Senior counsel appearing for the Revenue/DRI raised a preliminary objection to the

maintainability of these Appeals. His submission is that the Registry has proceeded on the footing that the Appeals which are placed on today's Daily Board for admission are not barred by limitation. However, the Appellants have expressly sought condonation of delay in filing of the Appeals and for that purpose they have filed Civil Applications dated 5th August, 2015.

2 Our attention has been invited by Mr Rana to the Memo of this Civil Application seeking condonation of delay and more particularly paragraphs 4 to 12 thereof to submit that the understanding of the Appellants is not what is now being projected but they are seeking to challenge the final order dated 26th November, 2010. Mr Rana submits that this final order dated 26th November, 2010 was challenged by the Appellants in this Court by filing an Appeal being, Appeal(st)No.15188 of 2011 but that Appeal was specifically withdrawn and our attention is invited to Annexure-B to this Civil Application which is the order dated 21st June, 2012 granting liberty to withdraw the Appeals for pursuing Review Petitions before the Appellate Tribunal.

3 Mr Rana, then, submits that the Review Petitions have been dismissed on 9th January, 2015. In the circumstances, the delay of 1458 days in filing the present Appeal to challenge the order dated 26th November, 2010 cannot be condoned. That delay is for the fault of the Appellants themselves and they cannot blame anybody else, if they have withdrawn the earlier Appeals. In the circumstances, by relying upon the principles enshrined in Order 47(XLVII) Rule 7 of the Code of Civil Procedure, 1908 and analogous thereto, Mr Rana would submit that neither in terms of Section 14 of the Limitation Act, 1963 or by ordinary Rule, this delay can be condoned. There is no power of condoning the same and the Civil Application be dismissed.

4 Mr Dada, learned Senior counsel would submit that this Court was moved earlier and the FERA Appeals were placed before the Division Bench on 21st June, 2012. This Court noted in its order passed on that date that the Appellants wish to challenge another order of the Tribunal dated 26th November, 2010.

However, on 21st January, 2011 these very Appellants had filed Review Petitions before the Tribunal but the Bench of the Tribunal was not available. Since the DRI instituted recovery proceedings, the Appellants moved the Delhi High Court by filing a Writ Petition but the Delhi High Court noted that the Appellants have remedy of filing statutory Appeals before this Court. The Delhi High Court, therefore, on 25th May, 2011 disposed of the Writ Petitions by granting the Appellants liberty to move this Court and file substantive Appeals but the Delhi High Court protected the interest of the Revenue/DRI, as well.

5 This Court found that the Tribunal would be functional shortly and that is why it noted the request of the Appellants' counsel to withdraw the Appeals and pursue the Review Petitions. Now, the Review Petitions have also been dismissed. However, if the DRI is objecting to the condonation of delay of 1458 days, still it must realize that Section 35 of the Foreign Exchange Management Act, 1999(FEMA) provides for a right of Appeal and that right of Appeal can be exercised by any person aggrieved

against any decision or order of the Appellate Tribunal. Therefore, if this Appeal lies and it is maintainable against review order dated 9th January, 2015, then, there is no delay in filing the same. However, for deciding as to whether the Review Petition has been rightly disposed of or the review jurisdiction has been exercised erroneously, this Court will have to see merits of both orders namely earlier order dated 26th November, 2010 and the Review order dated 9th January, 2015. Looked at from any which way, Mr Dada submits that the Appeal raises substantial question of law. Once it is taken to be an Appeal against Review Order, then, there is no bar to its maintainability nor is it delayed. In other words, it is not barred by limitation either.

6 We have, with the assistance of the learned counsel appearing for both sides perused the Civil Applications seeking condonation of delay. We are in agreement with both the learned Senior counsel that the Registry should not have placed the FERA Appeals for admission and stay, unless the position with regard to the delay was clarified. Once the Appellants themselves have

applied for condonation of delay, then, it was the duty of the Registry to have invited our attention to these pending Applications and listed them. We have called for the original Applications filed for condonation of delay and with the consent of both counsel, we have heard these Applications.

7 Having heard both counsel, we find that Section 35 of the FEMA provides for an Appeal by any person aggrieved by any decision or order of the Appellate Tribunal. Prima facie, a decision on the Review Petitions, is a decision or order of the Appellate Tribunal and the Appellants are aggrieved by the same. Therefore, the Appeal in terms of Section 35 is maintainable. We are in agreement with Mr Dada that so far as this aspect of the matter is concerned and that is how the Appellants aggrieved by the review orders have approached this Court, then, the FERA Appeals are not barred by limitation.

8 Once the Appeal is taken to be an Appeal challenging the order dated 9th January, 2015, then, it is not barred by

limitation. We have heard both sides on the point of admission of these Appeals and arising out of order dated 9th January, 2015. We are of the clear view that the Appeals do raise questions of law, and therefore, they deserve to be admitted. The same are, therefore, admitted on questions(m) and (n).

“M):-Whether the Tribunal was justified in dismissing the Review Petition as not being maintainable given that the issue of “non-consideration of material evidence” raised therein goes to the root of the matter and is therefore an “error apparent on the face of the record?”

N):-Whether failure to appreciate material evidence already on record in the first round of proceedings and subsequent appreciation thereof in Review proceedings would tantamount to “re-appreciation of evidence”?

9 Respondent waives service.

10 We, however, clarify that all contentions with regard to the ultimate relief that the Appellants are entitled to, are kept open. We have not foreclosed the issue as to what will be the eventual relief that this Court can grant to the Appellants in the event the

Appellants satisfy this Court that the Review Petitions have been erroneously dismissed. All contentions of both sides on the final relief to be granted by this Court are kept open. All courses permissible in law are open for this Court. This order disposes the Civil Applications for condonation of delay but with the above clarifications. No costs.

(B. P. COLABAWALLA, J.)

(S. C. DHARMADHIKARI, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed Judgement/Order.