

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1324 OF 2014**

Pooja Gyanchandra Joshi .. Petitioner
vs
The Union of India & ors .. Respondents

Mr.Swapnil Bangur a/w Mr.Yatin R.Shah
and Ms.Tejashree Tawde Advocates for Petitioner

Mr.B.M.Chatterjee, Sr.Counsel and Mr.M.S.
Bhardwaj for Respondent nos.1 and 2

**CORAM : S. C. DHARMADHIKARI &
G. S. KULKARNI, JJ.**

DATED : 1ST JULY,, 2015

P.C.

1. The Petitioner challenges an order passed by the Appellate Tribunal for Foreign Exchange under the Foreign Exchange Management Act, 1999 (Act of 1999) (for short 'FEMA').

2. The initial order passed by the Tribunal in Appeal No.1144 of 2004 dated 3rd February, 2011 was not challenged by filing an Appeal under section 35 of FEMA but, a Review Petition was filed before the Tribunal being Review Petition No.5 of 2011 seeking a review of the initial order. By the order impugned in this writ petition dated 1st October 2013 this Review Petition also stood dismissed.

3. A preliminary objection is raised to the maintainability of the writ petition by the learned counsel appearing for the respondents and our attention is invited to section 35 of the FEMA which reads as under:

35. “ **Appeal to High Court-** Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order.

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.”

4. Upon perusal of this provision we inquired from the Petitioner's Advocate as to why an Appeal to this Court was not preferred when that remedy was available if not at the earlier stage at least after the review order and by applying the Doctrine of Principle of Merger, the only answer given is that the Writ Petition raises several important questions of law and the Petitioner be now not non-suited for having not filed an Appeal.

5. We are unable to agree with this contention for more than one reason. We have been noticing of late parties repeatedly

approaching this Court directly in the face of alternate and equally efficacious remedy of an Appeal. It may that this is a further Appeal and on question of law but, the order of the Appellate Tribunal under the FEMA can be questioned in a further Appeal. If that further Appeal has to be filed within 60 days it is from the date of communication of the decision of the order of the Appellate Tribunal and such an Appeal lies on any question of law so also this Court having not been in a position to condone the delay beyond 120 days in all, will not enable either this Court to exercise its writ jurisdiction or the parties to get over the provisions like section 35. This Court cannot in the garb of the Writ Petition allow the parties to get over such statutory provisions and which they did not avail though being aware of the same.

6. We are therefore, not impressed by the Petitioner's counsel requesting this Court to entertain this Writ Petition. We are of the view that having not filed an Appeal against the initial order dated 3rd February, 2011 and 1st October, 2013 when at both stages the provision like section 35 was in place and available then, this Writ Petition cannot be entertained. The remedy of an Appeal is an alternate and equally efficacious. On the own showing of the Petitioner, the Petitioner has to blame herself for having not filed an Appeal in time or within the

extended time and take a chance before the same Appellate Tribunal.

7. In the circumstances, the Writ Petition is entirely misconceived and is dismissed.

G.S.KULKARNI, J

S.C.DHARMADHIKARI, J