

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

WA.No. 1558 of 2015 () IN WP(C).11377/2015

**AGAINST THE ORDER/JUDGMENT IN WP(C) 11377/2015 of HIGH COURT OF KERALA
DATED 23/06/2015**

/APPELLANT/PETITIONER:

**M.SALIM AGED 27 YEARS
S/O. IBRAHIM, MANGATTU HOUSE, VILLIAPPILI P.O.
KOZHIKODE DISTRICT-673542.**

**BY ADVS.SRI.M.RAMESH CHANDER (SR.)
SRI.ANEESH JOSEPH
SMT.DENNIS VARGHESE**

RESPONDENTS/RESPONDENTS:

- 1. UNION OF INDIA
REPRESENTED BY SECRETARY TO MINISTRY OF FINANCE
GOVERNMENT OF INDIA, NEW DELHI-110001.**
- 2. APPELLATE TRIBUNAL FOR FOREIGN EXCHANGE
15TH FLOOR, HINDUSTAN TIME HOUSE, K.G.MARG
CONNAUGHT PLACE, NEW DELHI-110001.**
- 3. JOINT DIRECTORATE OF ENFORCEMENT
FOREIGN EXCHANGE MANAGEMENT ACT, KANOOS CASTLE
MULLASSERY CANAL ROAD WEST, COCHIN-682011.**

BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 21-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ASHOK BHUSHAN, CJ

&

A.M. SHAFFIQUE, J.

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W.A. No. 1558 of 2015

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Dated this, the 21st day of July, 2015

J U D G M E N T

Ashok Bhushan, CJ

Heard the learned counsel for the appellant.

2. This writ appeal has been filed against judgment dated 23rd June, 2015 in WP(C) No.11377/2015. The petitioner has filed the writ petition aggrieved by order passed by the Appellate Tribunal for Foreign Exchange dated 23rd March, 2015, by which, on an application filed by the petitioner for waiver of pre deposit penalty, following direction was issued in para 9;

“9. The application is accordingly disposed off. The recovery of penalty imposed against the appellant shall remain stayed during the pendency of appeal provided the appellant deposits 10% of the total amount of penalty imposed under two counts and further furnish bank guarantee for the remaining 90% within a period of 30 days from the date of communication of this order”.

3. The appellant aggrieved by the said order has filed the writ petition. Learned Single Judge by an interim order directed the appellant to deposit ₹10,00,000/- and the appellate authority was directed to decide the appeal itself. Petitioner failed to deposit the amount as directed by the learned Single Judge. Learned Single Judge disposed of the writ petition again extending liberty for a period of one month, which has not been availed. Learned counsel for the appellant submits that he having an arguable case, pre-deposit at best ought to have been ₹2,00,000/- only.

4. The appellate authority has directed deposit of only 10% of the total amount of penalty and to furnish bank guarantee for the rest of 90% amount. The writ court shall not sit in appeal against the said order of the appellate authority where substantial waiver has already been granted. The appellant could not even comply with the order of the learned Single Judge. Hence, we are of the view that present is not a case where any interference is called for in the judgment of the

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learned Single Judge.

Writ appeal is, therefore, dismissed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

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PS to Judge