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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2560/2013**

AMRIK SINGH

..... Petitioner

Through: Mr. Kushagra Pandit, Advocate

versus

UNION OF INDIA

..... Respondent

Through: Mr. Manish Mohan, CGSC with Ms.
Hina Shaheen, Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

22.05.2015

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1. This is a writ petition directed against the order dated 05.05.2011. The Appellate Tribunal for Forfeited Property (in short the Tribunal) dismissed the appeal of the writ petitioner against the order dated 15.07.2010, passed under Section 68F (2) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short the NDPS Act), on a singular ground, which is, that the appeal was time barred.

2. To be noted, the petitioner had preferred an appeal under Section 68O(1) of the NDPS Act, which was received in the Tribunal, on 29.11.2010. It is not in dispute that during this period, the petitioner was in judicial custody.

2.1 It is also the case of the petitioner both before this court as well as before the Tribunal that his mother, who is aged, was seriously ill.

2.2 As a matter of fact, the writ petitioner had filed the appeal with the

Tribunal with an application for condonation of delay. In terms of Section 69O(1) of the NDPS Act, an appeal has to be preferred with Tribunal, within 45 days from the date on which the order is served on the aggrieved party.

2.3 The Tribunal is empowered to entertain an appeal, which is, filed after the said period of 45 days, though not later than 60 days from the date of passing of the impugned order, provided, the aggrieved person is able to demonstrate that delay was on account of sufficient cause.

3. Notice in this petition was issued on 22.04.2013. Since then, respondent has filed its counter affidavit. In the counter affidavit, the respondent has taken the stand that the impugned order passed by the Tribunal is demonstrative of the fact that the order dated 15.07.2010, was served on the petitioner, on 30.08.2010.

3.1 There is a further averment to the effect that the said order (i.e. order dated 15.07.2010) was despatched by the Station House Officer, P.S. Sadar, Thanesar, for service, on the petitioner.

3.2 It is, in this context, that the respondent has averred that a report dated 22.07.2010 was generated by the office of the said SHO wherein, it is recorded that the petitioner refused to accept service on 22.07.2010 when, he was called upon to do so by the Assistant Superintendent, Jail.

3.3 It is further averred that yet another attempt, to effect service of the order dated 15.07.2010, was made, though the petitioner refused to accept service. The assertion is that refusal of service was made in the presence of an independent witness. This occurrence is said to have taken place on 23.09.2010.

4. Pertinently, the counter affidavit filed by the respondent is not accompanied by the report of the SHO dated 22.07.2010.

4.1 Apart from the assertion made in the counter affidavit, there is nothing to show that an attempt was made to effect service on the writ petitioner, on 23.09.2010 in the presence of independent witness.

4.2 Be that as it may, the impugned order somehow seeks to take the position that the petitioner was served on 30.08.2010. There is an apparent conflict in the position taken by the respondent, and that, which is indicated in the impugned order.

4.3 In the impugned order, there is no such reference to attempted services by the SHO, to which I have made a reference hereinabove. The Tribunal, it appears, has not satisfied itself as regards service being effected of order dated 15.07.2010, on the petitioner.

5. In these circumstances, I am inclined to set aside the order. It is ordered accordingly. The Tribunal will, therefore, hear the matter on merits and render a decision in the matter.

6. The writ petition is disposed of in the aforementioned terms.

RAJIV SHAKDHER, J

MAY 22, 2015

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