

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5955 OF 1997

Ramchandra A. Kamat @ Nana
Kamat @ Nanabhai Kamat, son of
late Shri Achyutrao Kamat,
r/o C-2 "Shardashram".
Bhavanishankar Road, Dadar
(West), Mumbai-400 028.

.... Petitioner

- Versus -

1. P.K. Ajwani,
Special Director, Enforcement
Directorate, (Foreign Exchange
Regulation Act), Janmabhoomi
Chambers, Walchand Hirachand
Marg, Mumbai-400 001.
2. Prabhat Kumar,
Dy. Director, Enforcement
Directorate, (Foreign Exchange
Regulation Act), Mittal Tower,
Nariman Point, Bombay-400 021.
3. The Additional Director,
Enforcement Directorate,
(Foreign Exchange Regulation
Act), Government of India,
Lok Nayak Bhavan, 6th Floor,
Khan Market, New Delhi.
4. Union of India,
having office at Mumbai,
Marine Lines, Mumbai-20.

.... Respondents

Mr. Rajendra N. Bhagattjee for the Petitioner.

Mr. Advait M. Sethna i/by Mr. H.V. Mehta for the Respondents.

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

DATE : DECEMBER 19, 2016

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. By this writ petition under Article 226 of the Constitution of India, the petitioner is seeking to quash and set aside Show Cause Notices being Exhibits “B”, “C” & “E” and Notices of adjudication being Exhibits “O”, “R” & “S” to the writ petition. That is sought in the following facts.

2. However, in the meanwhile, there is an Order passed on 11-12-2013, during the pendency of the writ petition. That has been passed by the Assistant Director, Directorate of Enforcement.

3. It is stated that the petitioner and now a senior

citizen was served these Show Cause Notices on the footing that he has committed breach and violation of the then Foreign Exchange Regulation Act, 1973, which now stands replaced by the Foreign Exchange Management Act, 1999. The petitioner states in the writ petition as to how he was sought to be proceeded against. The petitioner has narrated that the Show Cause Notices were issued and he was called for a personal hearing. The petitioner could not proceed with the matter in the absence of the relevant records and documents. The argument was that the petitioner should be supplied with copies of the documents which the prosecution seeks to rely upon. The petitioner instead received notices of personal hearing. The petitioner pointed out that the issue of adjudication of the Show Cause Notices was kept pending from 1980 to 1996. Finally, the petitioner, after a lapse of 17 years, was called for a hearing. When that notice was issued and duly served, the petitioner pointed out that when this writ petition was filed he was 65 years of age. He had several health problems. The Show Cause Notices of 1980 are sought to be now adjudicated upon.

However, that is without supplying the petitioner with the relevant documents. Therefore, the petitioner submitted that after a lapse of 17 years the Show Cause Notice cannot be adjudicated. In any event and without prejudice to the above, without supplying the documents which are relied upon and providing with copies thereof, the petitioner cannot be called upon to attend any hearing.

4. The petitioner reiterated this demand from time to time in series of letters. The petitioner pointed out even during the pendency of this petition that it will not be possible for him to attend any hearing unless the request as made by him is duly complied with.

5. This writ petition was placed before a Division Bench of this Court on 17-12-1997 and it was admitted. Interim order was passed on the following satisfaction:-

“Rule.

Respondents, though served, are absent. Petition was adjourned on 2 occasions to enable Resps to serve

copies of documents on Petr.

Interim relief in terms of prayer clause (d).

“Prayer clause (d):

That pending the hearing and final disposal of the above petition this Hon'ble Court be pleased to direct the Respondents not to proceed further with the adjudication proceedings.”

The interim order was in terms of prayer clause (d). The adjudication proceedings could not be therefore held. However, from the averments in a further application filed in this writ petition, namely, Civil Application No.1114 of 2014, it is apparent that this writ petition was called out but came to be dismissed for want of prosecution. During the pendency of the petition, the Enforcement Directorate levied a penalty of Rs.5,00,000/- on the petitioner by passing an Order dated 11-12-2013.

6. This Court, therefore, granted the civil application and allowed an amendment to the writ petition. It also permitted the petitioner to tender a compilation containing synopsis of dates and events and the Judgments relied upon.

7. On such a writ petition, which has been listed for hearing and final disposal, we have heard both sides. We have perused the writ petition. It is apparent now that on account of the subsequent developments, Civil Application No.254 of 2014 was allowed. The writ petition was restored and by a further order of 23-4-2014 Civil Application No.1116 of 2014 was made absolute in terms of prayer clause (a).

8. The prayer clause (a) on page 7 of Civil Application No.1114 of 2014 reads as under:-

“(a) Pending hearing and final disposal of the present Civil Application as well as the Writ Petition, this Hon'ble Court be pleased to stay the execution, operation and implementation of the impugned order No.ADJ/33-B/AD/APP/FERA/2013/F.No.T-4/07/80 (SCN-IV) dated 11.12.2013 (Exh.D hereto).”

9. The sum and substance of this is that the Show Cause Notices could not be adjudicated from the date of issuance i.e. from 1980 to 1997. When an attempt was made to adjudicate them in the year 1997, the petitioner approached this Court with this writ petition. It was admitted. Since interim

order in terms of prayer clause (d) of the petition was granted from 1997 and which was operative till 2012 when the petition was dismissed for no fault of the petitioner but for lapses on the part of his Advocate, the adjudication could not take place. In addition, taking advantage of such dismissal, an adjudication Order was passed. Even that adjudication Order could not be enforced in the light of the interim stay granted by this Court to its enforcement and execution. Since the interim stay to its enforcement and execution is in force, it was submitted by Mr. Bhagattjee that the Order dated 11-12-2013, firstly, grants no opportunity to the petitioner of being heard. Secondly, it has been passed without allowing the petitioner to inspect the record of the Show Cause Notices and furnishing the copies of the relied upon and relevant documents. Therefore, such an Order cannot be sustained. It should be quashed and set aside.

10. Mr. Bhagattjee would lastly submit that the result of the above would be that the Show Cause Notice of 1980 will remain pending for adjudication. Mr. Bhagattjee submitted that when the writ petition was filed in the year 1997, the petitioner

was 65 years of age. Nineteen years have gone by after the date of filing of the writ petition and the petitioner is now aged 84 years. He will be entering his 85th year. No useful purpose will be served by subjecting such a senior citizen to adjudication proceedings with the above handicaps. Therefore, he would submit that we proceed to quash and set aside not only the adjudication Order dated 11-12-2013 but also the Show Cause Notices themselves.

11. This request is opposed by Mr. Sethna. He would submit that the matter pertains to violation of the provisions of the Foreign Exchange Regulation Act, 1973. Secondly, the petitioner was detained and a preventive detention order was passed. That was set aside. But the Order passed by this Court in that behalf does not preclude and prohibit the respondents from adjudicating the Show Cause Notices and penalising the petitioner for having violated the terms and conditions on which the foreign exchange was allowed to be traded. That was brought in without complying with the provisions of the Act. Therefore, if such Show Cause Notices are not allowed to be

adjudicated, a wrong message will go down and violators and breakers of law can get away only because of the procedural delays. Hence, he would submit that the writ petition be dismissed.

12. After giving our anxious consideration to the submissions, we find that if we would accede to the request of Mr. Sethna, what would thereafter revive is an adjudication post-issuance of the Show Cause Notices. All the Show Cause Notices and which are annexed to this writ petition are of the year 1980. The Show Cause Notices were not adjudicated on account of the repeated and renewed requests of the petitioner from the date of their issuance till the year 1997 for supplying the relied upon and relevant documents. Since that controversy went on and the writ petition was filed, but no willingness of the Revenue to provide the documents was exhibited, this Court proceeded to admit the writ petition. It stayed the adjudication of the Show Cause Notices. From that date till 2012 no such adjudication, as is contemplated in law, could take place. However, when the writ petition was dismissed for want of

prosecution, the respondents passed the impugned adjudication Order. The petitioner promptly moved and sought restoration of the writ petition to the file of this Court. He also sought a relief in the form of staying the recovery of the penalty and execution of the adjudication Order. That was also granted. Therefore, neither the penalty amount could be recovered nor the adjudication Order enforced till date.

13. Now when the petitioner has complained about non-receipt of the documents, what it would really mean is that we set aside the adjudication Order and allow the respondents to proceed with the adjudication afresh. That would be permissible only after the petitioner's request for supply of relevant documents and/or copies thereof is granted. If from 1980 the relevant records, if preserved, would have to be traced out, inspection granted, copies provided, etc., we do not think that any useful purpose will be served by going ahead with the Show Cause Notices. If from 1980 the records based on which the Show Cause Notices were issued, even if preserved, have to be supplied and only thereafter the Show Cause Notices can be

adjudicated, then, to subject the petitioner like the present one, who is aged 85, to all this agony, will result in virtually nothing. There is no certainty that the records would be available. There is no further certainty that inspection and the process of furnishing copies of relevant documents can be completed even if we fix a time schedule. Thereafter, the adjudication Order and further remedies under the Act to challenge it, if it is adverse, would be the process which the parties must go through. In these circumstances and in the facts peculiar to this case for an alleged violation which has taken place way back in 1979-1980, we do not think that we should allow the respondents to pass an adjudication Order. It is desirable and in the larger interest that we close the proceedings against the petitioner.

14. We, therefore, allow the writ petition. We quash and set aside all the adjudication Notices/call Notices impugned in the writ petition. As a result of this, even the adjudication Order dated 11-12-2013 will not survive. The petition is made absolute in these terms. There will be no order as to costs.

15. We clarify that this order shall not be treated as a precedent for similar cases in future. It is only in the absence of the voluminous record which the petitioner will have to peruse for himself to be ready to face adjudication and the process of tracing it out, granting inspection and providing copies that we have passed the subject-order. It is also passed bearing in mind the age of the petitioner and his serious health issues and problems.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)