

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 1318/2016 & CM APPL. 5764/2016

S.K. KHANDELWAL & ANR Petitioners

Through Mr. Rajeeve Mehra, Senior Advocate with Mr.
Soumik Ghosal and
Mr. Ramesh Singh, Advocates for
P-1.
Mr. Ramesh Singh, Advocate for P-2.

versus

THE SPECIAL DIRECTOR OF ENFORCEMENT
AND ANR

..... Respondents

Through Mr. Ashish Dholakia, Advocate for UOI.

%

Date of Decision: 17th February, 2016.**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****JUDGMENT****MANMOHAN, J: (Oral)**

1. Present writ petition has been filed seeking partial quashing of the order dated 15th October, 2013 passed by respondent no. 2 whereby two appeals bearing nos. 14 and 15 of 2012 along with application for condonation of delay were dismissed.

2. Mr. Rajeeve Mehra, learned senior counsel for petitioner no. 1 states that though the applications for condonation of delay were allowed in appeals bearing nos. 116/2011, 117/2011 and 118/2011, yet they were dismissed in appeal nos. 14 and 15 of 2012. Mr. Mehra further states that the delay in filing the appeal is entirely attributable to general counsel of the petitioner.

3. Mr. Ashish Dholakia, learned counsel for respondents, who appears on advance notice, states that present writ petition is not maintainable as the petitioners

have an alternative effective remedy by way of an appeal under Section 35 of the Foreign Exchange Management Act, 1999. In support of his submissions, he relies upon a judgment of the Supreme Court in ***Raj Kumar Shivhare vs. Assistant Director, Directorate of Enforcement & Another***, (2010) 4 SCC 772.

4. In rejoinder, Mr. Rajeeve Mehra, learned senior counsel for petitioner no. 1 submits that a writ petition is maintainable challenging an order passed by the Appellate Tribunal for Foreign Exchange. In support of his submission, he relies upon a Division Bench judgement of this Court in ***Union of India Vs. Classic Credit Ltd.***, LPA No. 123/2008 decided on 20th October, 2008.

5. In the opinion of this Court, a writ petition should not ordinarily be entertained if the petitioner has an alternative effective remedy by way of an appeal. Relevant portion of Section 35 of the Foreign Exchange Management Act, 1999 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:”

6. In ***Raj Kumar Shivhare*** (supra) the Supreme Court has held as under:-

“18. The argument that under Section 35 only appeals from final order can be filed has been advanced on a misconception of the clear provision of the section itself. The section clearly says that from “any decision or order” of the Appellate Tribunal, appeal can be filed to the High Court on a question of law.

xxxx

xxxx

xxxx

xxxx

20. Under Section 35 of FEMA, the legislature has conferred a right of appeal to a person aggrieved from “any” “order” or “decision” of the Appellate Tribunal. Of course such appeal will have to be on a question of law. In this context the word “any” would mean “all”.

xxxx

xxxx

xxxx

xxxx

22. The word “any dispute” is somewhat akin to “any order” or “any decision”. Any dispute, occurring in Section 51 of the English Arbitration Act, 1975 has been interpreted to have a wide meaning to cover all situations where one party makes a

request or demand and which is refused by the other party [see *Ellerine Bros. (Pty) Ltd. v. Klinger* [(1982) 1 WLR 1375 : (1982) 2 All ER 737 (CA)]].

xxxx

xxxx

xxxx

xxxx

26. In the instant case also when a right is conferred on a person aggrieved to file appeal from “any” order or decision of the Tribunal, there is no reason, in the absence of a contrary statutory intent, to give it a restricted meaning. Therefore, in our judgment in Section 35 of FEMA, any “order” or “decision” of the Appellate Tribunal would mean all decisions or orders of the Appellate Tribunal and all such decisions or orders are, subject to limitation, appealable to the High Court on a question of law.

xxxx

xxxx

xxxx

xxxx

31. When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case the High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go-by by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction. The High Court, with great respect, fell into a manifest error by not appreciating this aspect of the matter. It has however dismissed the writ petition on the ground of lack of territorial jurisdiction.

xxxx

xxxx

xxxx

xxxx

39. In the instant case none of the aforesaid situations are present. Therefore, principle laid down in *Ratan* case [(2003) 5 SCC 399] applies in the facts and circumstances of this case. If the appellant in this case is allowed to file a writ petition despite the existence of an efficacious remedy by way of appeal under Section 35 of FEMA this will enable him to defeat the provisions of the statute which may provide for certain conditions for filing the appeal, like limitation, payment of court fee or deposit of some amount of penalty or fulfilment of some other conditions for entertaining the appeal. (See para 13 at SCC p. 408.) It is obvious that a writ court should not encourage the aforesaid trend of bypassing a statutory provision.”

(emphasis supplied)

7. This Court is of the opinion that in view of the subsequent judgment of the Supreme Court in ***Raj Kumar Shivhare*** (supra), the Division Bench judgment of this Court in ***Classic Credit Ltd.*** (supra) offers no assistance to the petitioners.

8. Consequently, present writ petition and application are dismissed but with no order as to costs. However, petitioners are given liberty to file appropriate proceedings in accordance with law. Rights and contentions of all parties are left open.

MANMOHAN, J

FEBRUARY 17, 2016

rn

