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

\+ CRL.A. 1046/2015 & Crl.M.A. Nos.14733-34/2015

S K JAIN ..... Appellant

Through : Mr. Sudhir Nandrajog, Sr. Adv. with Mr. H. S. Bhullau and Ms. Gargi Bhatt, Advs.

versus

SPECIAL DIRECTOR OF ENFORCEMENT ..... Respondent

Through : Mr. A. K. Panda, Sr. Adv. with Mr. Anil Soni and Mr. M. Paikarany, Advs.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **06.10.2016**

By this appeal under Section 35 read with Section 49 of the Foreign Exchange Management Act, 1999, appellant has assailed the order dated 24th December, 2014 passed by the Appellate Tribunal for Foreign Exchange, New Delhi in appeal no.455/2005 whereby application for waiver of pre-deposit of penalty has been disposed of and appellant has been directed to deposit 10% of the total amount of penalty and furnish bank guaranty for the balance 90% amount of penalty, as pre-condition of hearing of appeal. It was contended before the Appellate Tribunal that in the bank accounts of appellant maintained with Central Bank of India, Nehru Place and UCO Bank Bhillai only ₹59,940/- there; whereas ₹15,194/- respectively were available. FDRs of ₹1,00,000/- and ₹2,00,000/- drawn on Central Bank of India, Nehru Place, New Delhi, were in the custody of Court of Additional Chief Metropolitan Magistrate. Appellant alleged that value of shares was ₹9,72,607/-, as on 31st October, 2009. Details of four immovable properties were given, according to which, value of residential house in Bhillai was ₹6,82,000/- and that of a farm house in Gadaipur, New Delhi was ₹4,32,000/-, wherein appellant alleged that he was having half share. Agricultural land in Sainik Farm and Risali District Durg, Bhillai were worth ₹1,95,000/- and ₹42,930/- respectively. Appellant alleged that the immovable properties were under attachment by the Income Tax Authorities since 12th March, 2004. Appellant is 75 years of age and his gross income during the assessment year 2010-2011, 2011-2012 and 2012-2013 was between ₹4,50,000/- to ₹5,00,000/-. In support of this plea, income tax returns were filed. Aforesaid facts were not disputed by respondent's counsel but it was contended that appellant had not taken steps for release of properties from attachment deliberately.

Keeping in mind the above facts, I am of the view that it would be suffice to direct the appellant to deposit 10% of the penalty amount as pre-condition of hearing of appeal. Impugned order is modified in the above terms. Amount be deposited within four weeks.

Appeal is disposed of. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

OCTOBER 06, 2016/dk