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

+ W.P.(C) 11329/2015

ALISHAH IBRAHIM PARKAR ..... Petitioner  
Through: Mr.Bahar U. Barqui, Advocate.  
versus

UNION OF INDIA & ANR ..... Respondent  
Through: Mr.Navin Chawla and Ms.Nidhi  
Parashar, Advs.

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE JAYANT NATH**

**ORDER**  
**02.05.2016**

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1. The present writ petition is filed seeking an appropriate order declaring the Smugglers And Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as "SAFEMA Act") more particularly its provisions contained in Section 12 (4) as null and void and with a further prayer, for directing the respondents to incorporate appropriate provisions providing for condonation of delay in filing an appeal against the orders passed by the Competent Authority beyond the period of 60 days.

2. The brief facts which led to filing of the present writ petition are that the Competent Authority, Mumbai under SAFEMA Act vide its order dated 14.07.1998 held that the appellants were relatives/associates of Dawood Ibrahim, who was ordered to be detained under Conservation of Foreign

Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) by the Government of Maharashtra under the detention order dated 13.10.1992 and that the properties are illegally acquired properties and are liable for forfeiture under SAFEMA. The Competent Authority under Section 19(2) of the SAFEMA Act directed the appellants to handover peaceful vacant possession of Flat No.12A, Garden Hill Apartments, Sofia Zuber Marg, Nagpada, Mumbai by 26.10.1998 failing which necessary force will be used to take over the said flat. The relatives in question were Mrs.Amina Bi Kaskar, the mother of Dawood Ibrahim and Mrs.Hasina Ibrahim Parker, the sister of Dawood Ibrahim. The relatives/appellants filed an appeal before the Appellate Tribunal for Forfeited Property under Section 12(4) of the SAFEMA Act challenging the said order dated 14.07.1998. The Tribunal vide its order dated 26.10.1998 held that an appeal under Section 12(4) of SAFEMA Act has to be preferred within 45 days from the date on which the order is served on the appellant. Further, as per the said section, the Tribunal may entertain an appeal after the expiry of 45 days, but not after 60 days provided the Tribunal is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. Admittedly, the appeal in this case was filed beyond a period of 60 days. The Tribunal held that the appeal as barred by limitation and that the Tribunal had no power to condone the delay beyond the period of 60 days. The appeal and the application were accordingly dismissed.

3. Against the order of the Appellate Tribunal dated 26.10.1998, the appellants preferred a review petition for reviewing of the said order before the Tribunal. The review petition was dismissed on 10.02.1999.

4. Against the said order of the Tribunal, the appellants filed a writ petition before this court being W.P.(C) 1426/1999. In the writ petition, the petitioners challenged the orders dated 11.02.1999 and 10.02.1999 respectively of the Appellate Tribunal. This court dismissed the writ petition burdening the appellants with costs of Rs.1 lac each.

5. The above order of the learned Single Judge was upheld by the Division Bench in LPA No. 656/2011 dated 27.09.2012. It is urged that against the said order of the Division Bench, SLPs have been filed before the Supreme Court being SLP Nos. 34261/2012 and 34647/2012 which are said to be pending before the Supreme Court. On 26.11.2012, status quo orders were passed by the Supreme Court.

6. Both the original appellants have expired. The present petition is filed by the petitioner stating that she is the sole successor of her mother, Mrs. Hasina Ibrahim Parker and her grandmother, Mrs. Amina Bi Kaskar. It is urged that notwithstanding pendency of the special leave petitions, the petitioner feels aggrieved against the absence of any provision in SAFEMA Act for condonation of delay in filing an appeal beyond a delay of 15 days by the Appellate Tribunal. Hence, despite their being grounds for delay, an appeal cannot be entertained by the Appellate Tribunal. It is on these grounds that the petitioner seeks to challenge the validity of Section 12(4) of SAFEMA Act.

7. We have heard the learned counsel for the parties and gone through the written submissions filed by the petitioner.

8. Learned counsel for the petitioner has urged that the provisions of the SAFEMA Act curtail the power of the Tribunal to condone a delay of more than 15 days. It is urged that this virtually tantamounts to ouster of judicial

scrutiny of an order passed by the Competent Authority, who happens to be a Joint Secretary to the Government of India. It is urged that judicial scrutiny by the Appellate Tribunal, which is headed by a retired judge of the High Court or of the Supreme Court would be an appropriate remedy for an aggrieved person. It is pointed out that if an aggrieved person suffers from an acute ailment, or hospitalization, or meets with an unfortunate accident, etc. then even under such circumstances, the Appellate Tribunal is debarred from entertaining an appeal after 60 days. It is further urged that such a provision is also in violation of the cardinal principle of law and right of fair hearing. Such a law is clearly a draconian law.

9. In our view, the petition is liable to be dismissed for various reasons. Firstly, for the same set of facts, the petitioner cannot be permitted to keep repeatedly filing different writ petitions seeking different reliefs. In the earlier round of litigation, which round is yet to come to an end as the matter is pending before the Supreme Court, the petitioner had filed W.P.(C) Nos. 1426/1999 and 1439/1999 which were dismissed by the learned Single Judge on 14.07.2011. In that writ petition the petitioner had sought to challenge the order of the Appellate Tribunal whereby a review petition filed against the earlier order was dismissed. The Tribunal had dismissed the appeal of the petitioners/petitioner inasmuch as it was filed beyond a period of 60 days from the date of the service of the order. In fact, the learned Single Judge while dismissing the earlier writ petition being W.P.(C) No. 1426/1999 had burdened the petitioners with costs of Rs.1 lac each for causing unnecessary delay in delivery of the possession of the Forfeited Property. It was open to the appellants to have at that stage itself raised a

challenge to Section 12(4) of the SAFEMA Act. The petitioner chose not to do so then and has now again approached this court.

Secondly, the petitioner has filed the present writ petition seeking to challenge the constitutional validity of Section 12(4) of the SAFEMA Act 18 years after the order of the Competent Authority. Apart from the above, the petition would also not be maintainable on grounds of gross delay and laches.

10. We have in any case examined the matter on merits and in our view the petitioner has failed to make out any case. It is settled by a catena of decisions of the Supreme Court that the right of an appeal inheres in no one. For an appeal to be maintainable there has to be a clear provision of law. The right can be circumscribed by conditions in the grant. Further the right is not an ingredient of natural justice.

11. Reference in the above context may be had to the judgment of the Supreme Court in the case of *Shyam Kishore and Ors. vs. Municipal Corporation of Delhi & Anr.*, AIR 1992 SC 2279/MANU/SC/0440/1992, relevant portion of which reads as follows:-

“31. In *Ganga Bai v. Vijay Kumar and Ors.* MANU/SC/0020/1974: [1974] 3 SCR 882 Chandrachud, J. (as His Lordship then was) held that “there is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of a civil nature, but the right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law.”

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33. Similarly in *Vijay Prakash D. Mehtal/Sh.Jawahar O. Mehta v. Collector of Customs (Preventive) Bombay* MANU/SC/0570/1988 : [1989] 175 ITR 540 (SC) the Supreme

Court had occasion to deal with the right of appeal created under Sections 129A and 129 B of the Customs Act, 1962. The appeal provided was against the duty demanded or penalty levied under the Customs Act. The provision for appeal contemplated a condition for deposit of the duty or the penalty pending the appeal. Same plea was taken that the provision for deposit of duty or penalty pending appeal whittled down the appellants right of appeal and is ultra vires. The Supreme Court speaking through Sabasachi Mukharji J. held as under:

(ii) Right to appeal is neither an absolute nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant.”

12. Similarly, in the case of *Competition Commission of India vs. Steel Authority of India & Anr.*, (2010) 10 SCC 744 the Supreme Court held as follows:-

“50. The principle of “appeal being a statutory right and no party having a right to file appeal except in accordance with the prescribed procedure” is now well settled. The right of appeal may be lost to a party in face of relevant provisions of law in appropriate cases. It being a creation of a statute, legislature has to decide whether the right to appeal should be unconditional or conditional. Such law does not violate Article 14 of the Constitution. An appeal to be maintainable must have its genesis in the authority of law. Reference may be made to *M. Ramnarain (P) Ltd. vs. State Trading Corpn. of India Ltd.* and *Gujarat Agro Industries Co. Ltd. vs. Municipal Corpn. of the City of Ahmedabad.*

51. Right of appeal is neither a natural nor an inherent right vested in a party. It is a substantive statutory right regulated by the statute creating it. *Kondiba Dagadu Kadam v. Savitribai*

Sopan Gujar and Kashmir Singh v. Harnam Singh may be referred to on this point. Thus it is evident that the right to appeal is not a right which can be assumed by logical analysis much less by exercise of inherent jurisdiction. It essentially should be provided by the law in force. In absence of any specific provision creating a right in a party to file an appeal, such right can neither be assumed nor inferred in favour of the party.”

13. In the light of the legal position, it is clear that the contentions of the petitioner are completely without merit. Merely because the right of appeal in SAFEMA Act has been curtailed by the period within which an appeal has to be filed cannot in any manner be said to render the said provisions nugatory or void.

14. In fact, reference in this context may also be had to the judgment of the Supreme Court rendered in the context of the Arbitration and Conciliation Act, 1996. Section 34 of the said Act provides for a period of limitation of three months to a party who seeks to file objections against an arbitral award under Section 34 of the said Act. The court is given a power to condone the delay in making these objections by a maximum period of 30 days. This provision came up for interpretation before the Supreme Court in the case of *Union of India vs. Popular Construction Company, 2001 (8) SCC 470*. In those facts, the Supreme Court held that the provisions of Section 5 of the Limitation Act pertaining to condonation of delay in filing of an application would not be applicable to the Arbitration and Conciliation Act, 1996 and any objections filed beyond the period stated in Section 34 of the Arbitration and Conciliation Act would be barred by limitation.

15. Given the settled legal position, in our view there is no merit in the present writ petition. The same is accordingly dismissed.

**CHIEF JUSTICE**

**JAYANT NATH, J**

**MAY 02, 2016**

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