

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 49 OF 2014

Abida Mohd. Ahmed Dossa.	..Petitioner.
Vs.	
The Competent Authority & anr.	..Respondents.

**WITH
WRIT PETITION NO. 51 OF 2014**

Haroon Ahmed Merchant.	..Petitioner.
Vs.	
The Competent Authority & anr.	..Respondents.

**WITH
WRIT PETITION NO. 52 OF 2014**

Rehmat Haroon Merchant.	..Petitioner.
Vs.	
The Competent Authority & anr.	..Respondents.

**WITH
WRIT PETITION NO. 55 OF 2014**

Sabira Salim Memon.	..Petitioner.
Vs.	
The Competent Authority & anr.	..Respondents.

**WITH
WRIT PETITION NO. 56 OF 2014**

Yasmin Hanif Landa.	..Petitioner.
Vs.	
The Competent Authority & anr.	..Respondents.

Mr. P.K. Dhakephalkar, Senior Advocate, Mr. S.K. Srivastav a/w. Ms. Simeen Shaikh and Ms. Priyanka Garge i/b. S.K. Srivastav & Co., advocate for the

Petitioners.

Mr. H.S. Venegaonkar, advocate for respondent Nos. 1 and 2.

Mrs. P.P. Shinde, APP for State.

**CORAM : RANJIT MORE, J &
SMT.SADHANA S. JADHAV,J
DATE : SEPTEMBER 6, 2017**

P.C.

1 Since aforesaid Writ Petitions arise out of the common order, they are being disposed of by this common order.

2 Heard Mr. Dhakephalkar, learned Senior Counsel for the Petitioners and Mr. Venegaonkar, learned Counsel for the Respondent Nos. 1 and 2.

3 By these Petitions, the Petitioners are challenging the common order dated 29/11/2013 passed by the Appellate Tribunal for Forfeited Property, New Delhi, below Misc. Application Nos. 41/BOM/2012 to 45/BOM/2012, thereby rejecting the applications for stay of the proceedings of the appeals FPA 46/BOM/2003 to 50/BOM/2003.

4 The Petitioners are the relatives of the original absconding

accused against whom the detention order was issued under Section 3(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974(hereinafter referred to as COFEPOSA).

5 The first show cause notice is issued by the first respondent to the Petitioners as to why the properties mentioned therein should not be forfeited under section 6(i) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (for short referred to as SAFEMA). The Competent Authority after hearing the parties forfeited the properties mentioned in this notice. The Petitioners thereafter preferred appeals which came to be dismissed. Thereafter, the Petitioners have approached this Court by filing Writ Petition No. 677 of 2011 and other Writ Petitions in this Court. On 10/6/2011 this Court admitted these Writ Petitions and status quo granted on 8/4/2011 in respect of disputed property mentioned in this show cause notice was continued.

6 On 5/2/2001 second show cause notice was issued by the first respondent to the Petitioners as to why the tenanted premises should not be forfeited. The Competent Authority on 12/8/2003 by passing an order forfeited the properties mentioned in this notice. The Petitioners being aggrieved by the same, approached the Appellate Tribunal by filing appeals

FPA 46/BOM/2003 to 50/BOM/2003 and these appeals are pending.

7 The Landlord and Trustees of Ali Mohd. Abba Juma Trust also filed appeal bearing FPA-5/BOM/2006 before Appellate Tribunal, being aggrieved by the order of Competent Authority in respect of the second show cause notice dated 5/2/2001. This appeal filed by the landlord came to be dismissed by Appellate Tribunal by order dated 27/7/2011 holding that the Appeal is not maintainable as barred by limitation. The said Trust thereafter filed Criminal Writ Petition No. 2969 of 2011 in this Court. This Court by order dated 27/8/2012 pleased to admit the said Writ Petition and the parties are directed to maintain status quo.

8 The third show cause notice was issued on 10/10/2001 by the first respondent to the Petitioners in respect of the other properties. The Competent Authority forfeited the properties in pursuant to the show cause notice after hearing the parties. The Petitioners have filed Appeals FPA – 4 to 10/BOM/2005 which are pending before the Appellate Tribunal. In these appeals, the Petitioners took out stay applications bearing 46 to 51/BOM/2011 for staying the said appeals till disposal of the Criminal Writ Petition No. 677 of 2011 and other Writ Petitions before this Court. The said applications came to be dismissed by the Hon'ble Appellate Tribunal.

9 In Appeals FPA 46/BOM/2003 to 50/BOM/2003 the Petitioners took out Misc. Application bearing 41/BOM/2012 to 45/BOM/2012 to stay the said appeals till disposal of the Writ Petition No. 677/2011 and other Writ Petitions alongwith Criminal Writ Petition No. 2969/2011 filed by the Trustees. These applications were opposed by the first Respondent and the Tribunal dismissed the said applications by passing common order, which is under challenge in the above Writ Petitions.

10 The Petitioners sought stay to the further proceeding of the appeals invoking provisions of Section 10 of Code of Civil Procedure as well as on the ground that the issue involved in the subject appeals and the above referred Writ Petitions are one and the same.

11 The Tribunal in paragraph-23 of its order held that the subject properties are different from the properties which are the subject matter of the Writ Petitions pending in the High Court. It was also held that there may be some overlapping as the Petitioners are associates or relatives of the detenu but the matters in issue are not substantially or directly the same. It was further held that the properties are different and the Petitioners have to establish that they have acquired the properties from their own legal means.

The Tribunal concluded that it cannot be held that two proceedings namely, the subject appeals and the matter in issue in the Writ Petitions pending before this Court are parallel proceedings and the decisions in these proceedings may become conflicting decisions. Having considered the rival contention we do not find fault in the above findings arrived at by the Tribunal.

12 Be that as it may, we have also perused the interim orders passed in the Writ Petition No. 677 of 2011 alongwith connected Petitions and Writ Petition No. 2969 of 2011 which Petitions are admitted and the parties are directed to maintain status quo. The High Court did not grant any stay to the subject proceedings pending before the Appellate Tribunal. In the circumstances, there is no impediment for the Tribunal to proceed further and dispose of the appeals on merits. In the event, the outcome of the appeals is adverse to the interest of the Petitioners, they are always at liberty to challenge the same before this Court. We are not inclined to entertain these Petitions. The same are accordingly dismissed.

[SMT.SADHANA S. JADHAV,J]

[RANJIT MORE, J]