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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 15.05.2017

+ W.P.(C) 4742/2016 & CM No.25988/2016 (for closing the right of the respondent to file counter affidavit)

WAJIHUDDIN MALIK

..... Petitioner

versus

UNION OF INDIA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Sana Ansari, Advocate.

For the Respondents : Mr. C.M. Goyal, Advocate with Mr. Aprajit Kumar , ASO, MEA.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

15.05.2017

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SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner impugns order dated 04.05.2016, whereby, the request of the petitioner for grant of permission to sue the Royal Embassy of Saudi Arabia under Section 86(1) of the Code of Civil Procedure, 1908 has been declined. Learned counsel for the petitioner draws attention to Section 86(6) of the Code of Civil Procedure and submits that no opportunity of

hearing has been granted to the petitioner prior to declining the request.

2. Learned counsel for the petitioner further submits that in view of the facts of the case, the request could not be declined even on merits.

3. Section 86 of the Code of Civil Procedure reads as under:-

“86. Suits against foreign Rulers, Ambassadors and Envoys.-

(1) No foreign State may be sued in any court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a secretary to that government:

(6) Where a request is made to the Central Government for the grant of any consent referred to in sub-section (1), the Central Government shall, before refusing to accede to the request in whole or in part, give to the person making the request a reasonable opportunity of being heard.”

4. Without going into the merits of the claim of the petitioner, it is mandatory under Section 86(6) that prior to refusal to accede to the request in whole or in part, the Central Government would be obliged to give to the person making the request a reasonable opportunity of being heard.

5. Admittedly, in the present case, the petitioner was not given an opportunity of being heard. The impugned order cannot be sustained on this technical ground alone.

6. In view of the above, the impugned order dated 04.05.2016 is set aside. The respondents are directed to reconsider the request of the petitioner in accordance with law after giving a reasonable opportunity of being heard to the petitioner.

7. In view of the fact that the request was made as far back as on 27.10.2015 and the petitioner has had to approach this Court several times, the respondents are directed to dispose of the request of the petitioner after giving a reasonable opportunity of being heard within a period of three months from today.

8. It is clarified that this Court has neither considered nor opined on the merits of the contentions of the petitioner or the merits of the stand of the respondent. The respondent would be at liberty to consider the request of the petitioner in accordance with law without being influenced by anything stated in this order.

9. The writ petition is, accordingly, disposed of.

10. *Dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J

May 15, 2017
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