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

+ CRL.A. 547/2004 and Crl.M.A.4741/2015

VIJAY KUMAR JHA

..... Appellant

Through: Mr. P.B.A. Srinivasan, Advocate with
Mr. Parth Tandon, Advocate

versus

APPELLATE TRIBUNAL FOR FOREIGN EXCHANGE

..... Respondent

Through: Mr. Anil Soni, CGSC with
Mr. Abhinav Tyagi, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **05.12.2018**

This appeal was filed in July 2004 under Section 35 of the Foreign Exchange Management Act, 1999 ('FEMA' for short) seeking to assail the order dated 20.04.2004 of the Appellate Tribunal for Foreign Exchange (ATFE) on an interim application in Appeal No.61/2004 which, in turn, had been taken out against the order of adjudicating authority under Section 51 of Foreign Exchange Regulation Act, 1973 ('FERA', for short).

By the order of the adjudicating authority, penalty of Rs.5 crores had been imposed against the appellant. The said order was challenged before the appellate tribunal. The provisions of law require pre-deposit of the penalty amount before the appellate authority would hear the appeal on merits. However, there is discretion given to the appellate authority by

second proviso to Section 52(2) of FERA, wherein such pre-condition of deposit may be dispensed with either unconditionally or subject to such conditions as may be deemed fit.

In the order impugned before this court by appeal under Section 35 of FEMA, the appellate authority waived pre-condition of deposit to the extent of 95% of the penalty amount, calling upon the appellant to deposit only 5% of the penalty amount, it being equivalent to Rs.25 lacs. Challenging the said direction of deposit of only 5% of the penalty amount, the present appeal was filed.

The appeal, on being perused, does not indicate any question of law having been formulated for the same to be considered by this court in appellate jurisdiction under Section 35 of FEMA, the grounds set out essentially pertaining to the merits of the adjudicating order, which is subject to challenge before the appellate authority.

The appeal has been pending for the last fourteen years, adjournments one after the other having been taken by the appellant a number of times on the ground of illness of the counsel for the appellant. It is noted that when the appeal was filed, the appellant had impleaded, highly improperly so, the ATFE as the respondent. Later, on an application moved, amendment was allowed in 2006, thereafter also, the proceedings would show, the appellant having made defaults one after the other in service of notice on the respondents.

Be that as it may, when the appeal was called out for hearing today, the proxy counsel again appeared and sought adjournment which was declined. The proxy counsel, thus, sought pass over so that he could arrange

the presence of his counsel who is to argue.

The counsel for the appellant has now appeared before the court and submits, on instructions, that he may be permitted to withdraw the present appeal and the application filed therewith, the appellant being ready and willing to abide by the directions of the appellate authority by the impugned order to deposit Rs.25 lacs, it being equivalent to 5% of penalty amount, this, subject to his rights and contentions as may be urged *vis-a-vis* the order under challenge of the appellate authority on merits.

Ordered accordingly.

The appeal and the application filed therewith stand dismissed as withdrawn.

DECEMBER 05, 2018

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R.K.GAUBA, J.