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

+ **W.P.(C) 5536/2016**

SUKH RAM

..... Petitioner

Through Mr Pavan Narang, Mr Siddharth
Handa, Mr Ketan Goel, Advocate

versus

DIRECTORATE OF ENFORCEMENT
& ANR

..... Respondents

Through Mr Amit Mahajan, CGSC for UOI
with Mr Anurag Ahluwalia, CGSC with Mr
Randeep Sachdeva, Mr Malika Hiremath, Ms
Tejaswita, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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28.01.2019

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 08.09.2015 passed by the Deputy Director (Adjudicating Officer), Directorate of Enforcement whereby, a penalty of ₹1,00,00,000/- has been imposed on the petitioner for alleged violations of the Foreign Exchange Regulation Act, 1973 (FERA).
2. Mr Narang, learned counsel appearing for the petitioner, has assailed the impugned order on a solitary ground: he contends that the impugned order is violative of the principles of natural justice.
3. The officers of the Central Bureau of Investigation had conducted a search ion the residence of the petitioner on 16.08.1996 and had

recovered a sum of ₹2,45,28,844/- and several other documents, including a document which was referred to as a 'personal diary'. One of the pages of the said diary recorded certain entries which are alleged to pertain to transactions with certain persons. Three of the said transactions as recorded in one of the said pages allegedly pertain to transactions with one Sh Chander Kant Khemka.

4. It is stated that during the course of inquiry, Sh Chander Kant Khemka (whose name and telephone number also appear in the documents) confirmed that he knew the petitioner and had taken a loan of ₹1.05 Crores from him at an interest rate of 2.5% per annum. The impugned order indicates that Sh Chander Kant Khemka was confronted with the personal diary seized by CBI and he made a statement explaining the entries therein. This is clearly evident from the impugned order, the relevant extract of which is set out below:-

“(ii) That Sh. Chandrakant Khemka (whose name and telephone no's appeared in seized documents) stated that he knew notice since 1985 and had taken loan of Rs.1.05 crore from Sh. Sukhram on an interest @ 2.5% per month. He had given 3 Cheques of Rs.35 Lakhs each to the SP CBI ACUIV, New Delhi as refund of the loan amount.

That the above statement was given in reply to a question -"Is it a fact that you had financial dealings with Sh. Sukh Ram. If so what is the nature of your such dealings."

Thereafter documents i.e. personal diary of notice and one of the pages of said diary (seized by CBI) was shown to Chandra Kanta Khemka and he explained the same. His explanation has been discussed in the SCN. As per documents and explanation therein, it is clear that Sh. Sukh Ram, a person resident in India, received

the said amount of Rs.1,39,35,000/- between March 1995 to 17.04.1995 for which he had no exemption from Reserve Bank of India. The statement of Sh. Chander Kant Khemka has been fully corroborated with the documents seized from premises of the noticee and the same has full evidentiary value.”

5. It is also stated that Sh Chander Kant Khemka was examined and his statements were recorded on 09.01.1997 and 28.01.1998. Thereafter, on 23.06.1999, the respondent issued a show cause notice alleging contravention of Section 9(1)(b) read with Section 72(i)(c) of FERA. The petitioner responded to the aforesaid show-cause notice by a letter dated 01.12.2000. Apart from contesting the allegations on merits, the petitioner also sought an opportunity to be heard in person, and to cross-examine the seizing officers as well as Sh C.K. Khemka.

6. The petitioner's counsel once again reiterated the said request by a letter dated 03.02.2005. Although, the petitioner was afforded a hearing, however, the respondent did not accede to the petitioner's request for cross-examination.

7. The impugned order also records that a request for cross-examining Sh C.K. Khemka was made by the petitioner. However, the respondent has not indicated any reasons as to why such request was not acceded to.

8. Mr Mahajan, the learned counsel appearing for the respondents submits that in view of the decision of the coordinate Bench of this Court in *Shahid Balwa v. The Directorate of Enforcement: W.P. (C) 401/2013* it is not necessary that a request for cross examination be accepted. This is disputed by Mr Narang

9. This court is not inclined to examine this controversy, as the Adjudicating Authority has not considered the same. As noticed above, even though the impugned order records the petitioner's request for cross examination of Sh C.K. Khemka and the concerned officer, the same has not been considered.

10. In view of the above, the impugned order is set aside and the matter is remanded to the adjudicating officer to consider the petitioner's plea for cross-examining Sh C.K. Khemka and pass a reasoned order.

VIBHU BAKHRU, J

JANUARY 28, 2019

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