

S/L 2
22.8.2022
Court No.26
SD

WPA 9270 of 2021
(Assigned)

Sri Sanjay Jhunjhunwala
Vs.

Officer of the Special Director, Eastern Region, Enforcement
Directorate & Ors.

Mr. Jishnu Saha
Mr. Arindam Banerjee
Mr. Pranit Bag
Ms. Rituparna Chatterjee

...for the Petitioner.

Mr. Arijit Chakrabarti

...for the Enforcement Directorate.

This is an application under Article 226 of the Constitution of India wherein the complaint under Section 16(3) of the Foreign Exchange Management Act, 1999 dated April 17, 2020 and subsequent show cause notice bearing T-4/FEMA/KOL/SCN/2020-21/SED(ER)/453 dated April 20, 2020 and proceedings thereunder have been challenged by the petitioner.

It has been fairly submitted by learned counsel appearing on behalf of both the parties that the ratio of the judgment passed by the Division Bench presided over the Hon'ble Chief Justice in *Nillesh Parekh vs. Union of India & Ors.* in *MAT 478 of 2022 with CAN 1 of 2022* dated May 2, 2022 would apply to the particular facts and circumstances.

It appears from the show cause notice that has been issued that Rule 4 of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 have not been followed in the particular case as the show cause

notice issued under Rule 4 Sub-Rule (1) requires the adjudicating authority to give a notice requiring the persons to show cause as to why inquiry should not be held against that person. In the particular case in hand, the show cause notice is one which is under Rule 4 sub-rule (3).

Accordingly, sub-rules (1) and (2) of Rule 4 have been given a go-by by the adjudicating authority.

In light of the same, the show cause notice is quashed and set aside.

The adjudicating authority shall be at liberty to proceed in accordance with law with respect to the complaint dated April 17, 2020.

The petitioner shall be at liberty to take all grounds under the proceedings including the legality of the complaint filed under Section 16(3) of the Foreign Exchange Management Act, 1999.

With these observations, this writ petition is disposed of.

Since, no affidavit-in-opposition has been called for the allegations made in the writ petition are deemed to have not been admitted by the respondents.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Shekhar B. Saraf, J.)