

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 17 OF 2012
IN
FERA APPEAL NO. 86 OF 2006

Mr.Anil Madhusudan Vaidya. ... Appellant.
V/s.
The Appellate Authority for Foreign Exchange
and others. ... Respondents.

Mr.Niranjan Shimpi with Mr.Darshan Bafna for the Applicant.
Dr.G.R.Sharma with Mr.Gulab Yadav and Mr.D.P.Singh
for Respondent No.2.

CORAM : NITIN JAMDAR AND
N.R. BORKAR, JJ.

DATE : 14 June 2022.

P.C. :

This civil application is filed by the original Respondent seeking modification in respect of the order dated 30 September 2010 passed by the Division Bench of this Court whereby FERA Appeal No.86/2006 was allowed.

2. For the sake of brevity, Mr.Anil Madhusudan Vaidya is referred to as the Appellant and the Respondents are referred as Enforcement Directorate.

3. The Appellant had filed the aforesaid appeal challenging the order dated 10 July 1987 passed by the Foreign Exchange Regulatory Appellate Board confirming the order dated 5 December 1984 passed by the Assistant Director imposing penalty of Rs.3,000/- and confiscating US\$ 1,300/- as per section 63 of the Foreign Exchange Regulation Act, 1973. The Division Bench, after going through the record, opined that both the impugned orders were unsustainable, suffered from perverse appreciation of evidence and, accordingly, allowed the appeal. The Enforcement Directorate was directed to return US\$ 1,300/- to the Appellant within a period of eight weeks. Thereafter this civil application is taken out by the Enforcement Directorate seeking a clarification that the amount of US\$ 1,300 which was deposited in the Government's account be allowed to be returned in the form of Indian rupees.

4. The learned counsel for the Enforcement Directorate contended that as per section 42 of the Act of 1973, a procedure has been provided for encashment of cheques/drafts and other instruments and they have to be encashed accordingly and the Department did not have US dollars with them to be returned. The learned counsel for the Enforcement Directorate submitted that immediately the Department had offered the amount in Indian rupees to the Appellant, however, the Appellant had not taken the equivalent Indian rupees. The learned counsel for the Appellant

contesting the application relied upon the order passed by the Division Bench of this Court in the case of *Jatin C. Jhaveri v. Union of India*¹, wherein, when foreign currency was seized, it was directed to be returned in the same form. The learned counsel for the Appellant, on instructions, submitted that though the case of the Appellant is that the amount in foreign currency should be returned as it is and it is rightly so directed by this Court, to put a quietus to the litigation, the Appellant is agreeable to receive US\$ 1,300 in equivalent Indian rupees as per the rate prevailing as on today with suitable interest as the Court may determine.

5. Firstly, section 42 of the Act relied upon by the Enforcement Directorate refers to the foreign currency. Under section 4(3)(i)(a), 'foreign currency' has been specifically defined and 'currency' has been separately defined. Section 42(4) refers to the order to be obtained from the Court and considering the security risk involved foreign exchange to be deposited in the bank in such a manner as the Court may deem fit. We have not been shown any decision or a Rule, in respect of foreign currency which is seized, to be returned in rupees. In the case of *Jatin C. Jhaveri*, the Division Bench had also noted that the Department had not placed any specific directions given by the Central Government as to how to deal with such foreign currency.

1 NM No.225/2012 in WP No.2976/2004 decided on 23 January 2014.

6. The order dated 30 September 2010 passed by the Division Bench is specific and clear. The order directs the Enforcement Directorate to return 'foreign exchange' so that the Appellant would be entitled to deal with the 'foreign exchange' as per law. The Division Bench has clearly contemplated return of foreign exchange i.e., US\$ 1,300.

7. Furthermore, we note that this order was passed on 30 September 2010. This application was filed on 5 March 2012 and remained pending. In spite of mandate of eight weeks, the approach of the Enforcement Directorate in prosecuting the application has been casual. On 28 February 2020, the following order came to be passed:

“ This application taken out by the original Respondents is pending since 2012. Today, when it is called out, none appears for the Applicants. The learned counsel for the Respondent/ original Appellant makes a serious grievance that the Applicants/ Original Respondents are neither paying the amount as directed not attending the application.

2. The Registry to give notice to Respondent No.2- Assistant Director of the Enforcement Directorate to ensure that the advocate of the Applicants attend the hearing of the application on the next date. Stand over to 27 March 2020.”

It is after the court notice that the learned counsel for the Enforcement Directorate appeared to argue the application.

8. In light of the above, though the Appellant may be right in insisting on compliance of the order of this Court as it is and it is because of the pendency of the litigation that the Appellant is agreeable for receipt of the amount in Indian rupees, the Appellant cannot be penalized but must be compensated in fair manner.

9. Accordingly, we direct that the order dated 30 September 2010 passed by this Court be complied with by the Enforcement Directorate within a period of eight weeks, with a clarification that the amount of US\$ 1,300 should be converted in Indian rupees as per the rate prevailing as on today i.e. 14 June 2022 and be paid to the Appellant within a period of eight weeks along with interest. We place the responsibility of compliance with this order on the Assistant Director, Enforcement Directorate, the Respondent No.2 and if the order is not complied within a period of eight weeks as above, the Court may take serious view of non-compliance.

10. As regards the claim of interest is concerned, it is the contention of the Enforcement Directorate that since the Department had offered to return the amount immediately in Indian rupees, interest need not be imposed. The order dated 30 September 2010 stipulates 10% interest. The Department has not followed the procedure under section 42(4) of the Act and has taken

unilateral steps. The approach of the Enforcement Directorate is to keep the application pending. In the circumstances, we do not propose to deviate from the rate of interest specified in the order dated 30 September 2010.

11. Civil application is disposed of accordingly.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)