



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2022

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.16451 of 2004
and
W.M.P.No.19439 of 2004

1.Mansha V. Bulchandani
2.Gautam V. Bulchandani
3.Mikhail V. Bulchandani ...Petitioners
Vs.

1. The Special Director of Enforcement
Enforcement Directorate
Foreign Exchange Regulation Act
VI Floor, Lok Nayak Bhavan
Khan Market, New Delhi 110 003.
2. Appellate Tribunal for foreign Exchange,
4th Floor, 'B' Wing, Janpath Bhavan,
New Delhi 110 001. ...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in its order dated 27.02.2004 passed in Appeal No.590 of 1986, quash the same and consequently direct the 2nd respondent to dispose of the appeal after affording an opportunity to the petitioners.

For Petitioners: Mr.K.R.Gokul Sundar
M/s.C.Seethapathy

For Respondent : Mr.N.Ramesh
CGSSC for R1

O R D E R

The subject matter of challenge in the present writ petition pertains to the order passed by the 2nd respondent dated 27.02.2004, wherein, the appeal filed by the husband of the 1st petitioner and father of the 2nd and 3rd petitioners was dismissed for default without going into the merits of the case.



2.The case of the petitioners is that proceedings were initiated against the partnership firm in which the husband of the 1st petitioner and the father of the 2nd and 3rd petitioners was a partner, for violation of the provisions of the Foreign Exchange Regulations Act, 1973 (FERA). Originally, the 1st respondent passed an order on 30.07.1986, whereby, a penalty was imposed against all the partners who were found guilty of contravening the provisions of Section 18(2) of FERA.

3.Aggrieved by the above order, two of the partners filed an appeal before the FERA Appellate Board which subsequently got transferred to the file of the 2nd respondent. This appeal was filed in the year 1986.

4.When this appeal was pending, a suit came to be filed by the Andhra bank in C.S.No.48 of 1992 for recovery of money against the firm and its partners. The issue that was involved in the suit was substantially the issue that is covered under the FERA proceedings which resulted in the imposition of the penalty. The suit ultimately came to be dismissed by a Judgment and Decree dated 04.04.1997, wherein, it was held that the transaction relating to the purchase of bills was an out right purchase and that it was the Bank which committed default in realizing the amounts due under the foreign bills from the foreign bankers. It was therefore held that the partners are not liable for the non-realization of the moneys due under the letter of credits issued by the buyers.

5.It has been specifically stated in the affidavit that the above judgment passed in the civil suit was specifically brought to the notice of the Member of the Appellate Board and the matter was also repeatedly adjourned.

6.In the meantime, the husband of the 1st petitioner and the father of the 2nd and 3rd petitioners died on 17.12.2000 and the legal representatives were not brought on record in the pending proceedings before the 2nd respondent.

7.The 2nd respondent through the impugned order dated 27.02.2004, dismissed the appeal for default even without going into the merits of the case and without taking into consideration, the findings of the Civil Court with regard to the very same transaction. Aggrieved by the same, the present writ petition has been filed before this Court.

8.Heard Mr.K.R.Gokul Sundar, learned counsel appearing on behalf of the petitioners and Mr.N.Ramesh, learned Central Government Senior Standing Counsel appearing on behalf of the 1st respondent.



9. This Court has carefully considered the submissions made on either side and also the materials available on record.

10. In the considered view of this Court, the Judgment that was passed in C.S.No.48 of 1992 has a lot of relevance while appreciating the nature of transaction that had taken place in this case. Even though, a copy of this Judgment was filed before the 2nd respondent, the 2nd respondent had dismissed the appeal summarily without going into the merits of the case and this dismissal had happened after nearly 17 years from the date of filing of the appeal. This is apart from the fact that the petitioners who are the legal heirs of one of the partners, were not even brought on record at the time of the dismissal of the appeal.

11. In view of the above, this Court is inclined to remand the matter back to the file of the 2nd respondent by fixing a time frame for the completion of the proceedings after affording opportunity to the petitioners. It goes without saying that the 2nd respondent will consider the appeal on its own merits and will take into consideration the effect of the Judgment that was passed by the competent Civil Court.

12. As a result of the above discussion, the impugned order passed by the 2nd respondent in A No.590 of 1986 dated 27.02.2004 is hereby set aside and the matter is remanded back to the file of the 2nd respondent to deal with the appeal on merits after affording opportunity to the petitioners and pass appropriate orders strictly in accordance with law, within a period of three months from the date of receipt of copy of this order. The petitioners shall file a memo before the 2nd respondent and bring to the notice of the 2nd respondent about the orders passed in this writ petition, so that, the 2nd respondent will be able to rehear the appeal and pass appropriate orders within the time stipulated by this Court.

13. This writ petition stands allowed with the above directions. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssr



To

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RK (CO)
RGA (20/06/2022)