

FMA 458 of 2022
Sri Ajit Kumar Sarkar

v.

The Union of India & Ors.

16.06.23

Sl.-03

Ct.32

(S.R.)

Mr. Sekhar Pal

Mr. Mobakshar Islam

... for the appellant.

Mr. Bhaskar Prasad Banerjee

Mr. Tapan Bhanja

... for the respondents.

The present appeal has been preferred challenging an order dated 18th June, 2018 passed in a writ petition being WP No.4095 (W) of 2018.

Mr. Pal, learned advocate appearing for the appellant submits that without considering the entire sequence of facts and without even calling for affidavits, the learned Single Judge rejected the appellant's claim by a cryptic order.

According to Mr. Pal, the writ petition was dismissed without even considering the arguments as advanced on behalf of the appellant and failing to appreciate that the respondents illegally withheld the possession of the vehicle which was the sole source of the appellant's livelihood.

Mr. Banerjee, learned advocate, assisted by Mr. Bhanja, learned advocate, appears on behalf of the Customs authorities and denies the contention of the appellant and submits that the prior writ petition preferred by the appellant challenging the confiscation of his truck by the Customs authorities was disposed of by an order

dated 3rd October, 2011. Pursuant to such direction, a panel Surveyor was appointed to assess the damage and the loss was quantified to be Rs.1,48,000/-. The said amount was received by the appellant, however, he did not take back the vehicle in spite of repeated requests made by the authorities by letters dated 5th April, 2006, 21st April, 2006 and 26th December, 2017. There was an inordinate delay in preferring the writ petition and as such, the same has been rightly rejected. In support of his contention reliance has been placed upon a judgement delivered in the case of *State of Madhya Pradesh & Anr. v. Bhailal Bhai & Ors. versus Bhailal Bhai*, reported in AIR 1964 SC 1006.

In reply Mr. Pal disputes the contention of Mr. Banerjee and submits that in spite of approaching the authorities on repeated occasions, the vehicle was not released.

Records reveal that the first writ petition being WP No.15453 (W) of 2000 preferred by the appellant was disposed of by an order dated 3rd October, 2001 directing the Customs authorities to hand over the vehicle in question to the appellant and to have the vehicle surveyed by any approved surveyor from the Customs panel and to pay the assessed amount to the appellant. Pursuant to such direction surveyor was appointed and loss was assessed to be Rs.1,48,000/-. Alleging that the Customs authorities have not complied with such directions

contained in the order dated 3rd October, 2001, the appellant filed a contempt application which was disposed of by an order dated 23rd October, 2009 observing that there had been no deliberate violation of the order, however, the alleged contemnor was directed to revalidate the cheque of Rs.1,48,000/- and send a fresh cheque to the appellant. Pursuant to such direction, the cheque was issued and accepted by the appellant in the month of December, 2009. Subsequent thereto, save and except issuance of a letter dated 20th December, 2017 the appellant did not take any step and filed the present writ petition in the month of February, 2018.

The first writ petition was disposed of in the year 2001. The appellant did not take back the vehicle in spite of repeated requests made by the authorities by letters dated 5th April, 2006, 21st April, 2006 and 26th December, 2017 and the second writ petition was preferred in the year 2018. It further appears that the contempt application was disposed of in the year 2009. The assessed amount of Rs.1,48,000/- was accepted by the appellant in the month of December, 2009. The inordinate delay in preferring the writ petition was also not explained and as such, the learned Single Judge refused to exercise discretion in favour of the appellant and we do not find any infirmity in the said order.

In view thereof, the appeal and the connected

application, if any, are dismissed.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)