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WPO/1564/2023

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SHIULI BHATTACHARYA

-Versus-

UNION OF INDIA AND ORS.

BEFORE

The Hon'ble Justice SABYASACHI BHATTACHARYYA

Date: 6th September, 2023

APPEARANCE:

Mr. Sakya Sen, Adv.
Mr. Rohit Banerjee, Adv.
Mr. Arindam Paul, Adv.
...for the petitioner.
Mr. Arjun Mukherjee, Adv.
Ms. Ankita Choudhury, Adv.
Mr. Sayantan Bose, Adv.
...for respondent 6
Mr. Debasish Choudhuri, Adv.
Mr. Tapan Bhanja, Adv.
..for Union of India

The Court:- Affidavit of service filed today be kept on record.

Learned Counsel for the petitioner argues that the petitioner was served with a notice under the Smugglers And Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976. The date of such notice was February 1, 2023. Apparently, the respondent authorities placed reliance on an

order passed on February 27, 2020 against the father of the petitioner, since deceased, of which the present notice is one for execution.

It is argued by the petitioner that since the petitioner was never served with a copy of the original order dated February 27, 2020 and the petitioner's father met his demise in the month of June 2020, a copy of the order needs to be furnished to the petitioner to effectively give an opportunity to the petitioner to challenge the parent order.

It is argued that in the absence of any proof of service of the order on the petitioner or the predecessor of the petitioner, the period for preferring the appeal within the contemplation of Section 12 of the 1976 Act ought to commence from service of a copy of the order for the first time on the petitioner.

Learned Counsel for the respondent authorities submits that an application was filed by the writ petitioner under the Right to Information Act asking for similar relief.

Hence, it is contended that the writ petition is not maintainable, in view of the petitioner having availed of an alternative remedy under the Right to Information Act. Against any order passed by the First Appellate Authority under the

said Act, an appeal is available in any event, it is submitted.

Upon hearing learned Counsel for the parties it is evident that the petitioner apparently stepped into the shoes of her father, against whom an order was passed under Section 7(i) and 3d of the 1976 Act on February 27, 2020. The petitioner has rightly contended that since a notice virtually for execution of the said order has been served on the petitioner, the petitioner falls within the category of "affected party" under Section 12 of the said Act, empowering the petitioner to prefer an appeal if the petitioner so chooses against the parent order.

However, in the absence of any copy of the said order dated February 27, 2020, the petitioner would not be equipped to prefer such appeal.

Even without going into the question as to the starting point of limitation, since it will be premature to adjudicate on the issue as to whether a copy of the order was ever served on the petitioner's predecessor to commence the starting point of limitation, it is clear that the petitioner, being an affected/aggrieved party is at least entitled to get a copy of the parent order to enable her to prefer an appeal, if otherwise maintainable in law.

In so far as the queries made by the petitioner under the Right to Information Act pertaining to whether any notice was given to the predecessor of the petitioner or regarding other queries, the same are not being touched in the present writ petition, since an alternative forum has already been chosen by the petitioner by making enquiries under the Right to Information Act, 2005.

In such view of the matter, WPO 1564 of 2023 is disposed of by directing the respondent No. 2 to serve a copy of the order dated February 27, 2020 passed against the predecessor in interest under Section 7(1) and 3 of the 1976 Act to the petitioner within three weeks from date.

However, the question of limitation shall remain open to be adjudicated by the appellate authority, in the event the petitioner prefers a challenge against the said parent order dated February 27, 2020.

No order as to costs.

(SABYASACHI BHATTACHARYYA, J.)

pkd/GH.