

02.02.2024
Item No.24
RP
Ct. No.2

WPA 21479 of 2023

**Rahul Saraf
Vs.
Union of India & Ors.**

Mr. Abhrajit Mitra
Mr. Jishnu Chowdhury
Mr. S.K. Singhi
Mr. Ritobar Sarkar
Ms. Riti Basu
Ms. Piyali Pan

.....for Petitioner

Mrs. Debjani Ray
Ms. Sohini Dey

.....for Respondent No.2

Mr. Rudraman Bhattacharyya
Ms. Sarda Sha

..... for UOI

Heard the learned counsel appearing for the parties.

By filing this writ petition the petitioner has challenged the impugned show cause notice dated 28th July, 2023, being annexure P-35 to the writ petition, issued by the respondent/Enforcement Directorate Authority concerned by which the petitioner was asked to file its response within thirty days and this writ petition was filed against the aforesaid impugned show cause notice on 11th September, 2023 i.e. after expiry of the time to file response to the impugned show cause notice.

Mr. Mitra, learned senior advocate representing the petitioner submits that the aforesaid impugned show cause notice issued by the Enforcement Directorate Authority during the pendency of the application of the petitioner for

compounding the alleged offence, is not sustainable in law in view of Section 15 of the Foreign Exchange Management Act, 1999. He has referred to several correspondences between the petitioner and the Reserve Bank of India. On perusal of the said correspondences it appears that the petitioner had shown mere intention to offer for compounding of the alleged offence under the Act of 1999 but he could not show from the record annexed to the writ petition any such application for compounding the offence as per Rule 4(4) of the Foreign Exchange (Compounding Proceedings) Rules 2000 though he strongly relies on Section 15(1) of the aforesaid Act of 1999 in support of his contention that the issuance of the impugned show cause notice is not sustainable in law during the pendency of the application of a person for compounding the offence in question.

Mrs. Ray, learned advocate representing the respondent/Enforcement Directorate Authority in opposing the writ petition submits that this writ Court should not exercise its constitutional writ jurisdiction under Article 226 of the Constitution of India against the impugned show cause notice and more particularly when the petitioner has approached this Court after expiry of time to file response to the same. She further submits that the submission of Mr. Mitra with regard to pendency of the application of the petitioner for compounding of offence before the Reserve Bank of India is not supported by any documents.

On plain reading of Section 15 of the aforesaid Act of 1999 along with Rule 4(4) of the Rules of 2000 makes amply clear that a person will have to make a formal application for

compounding of offence and that should be in proper form and by mere offering for compounding of offence to the authority is not sufficient. Nowhere from the record Mr. Mitra could show such application under Rule 4(4) of the Rules of 2000 as per Section 15 of the Act of 1999. The judgment relied on by Mr. Mitra in the case of New Delhi Television Limited vs. Reserve Bank of India & Ors. reported in 2018 SCC OnLine Bom 1309 on the proposition of law that during the pendency of the application for compounding of offence, Enforcement Directorate Authority should not proceed with any proceeding is of no help to the petitioner's case in view of distinguishable facts recorded in paragraphs 8 and 9 of the aforesaid judgment upon which Mrs. Ray has relied.

I am not inclined to grant any relief in this writ petition except extending the time to file reply to the impugned show cause notice by two weeks from date and by granting liberty to the petitioner to make a formal application for compounding of offence before the Reserve Bank of India Authority concerned within a week from date in accordance with law and if any reply is submitted by the petitioner against the impugned show cause notice and any application for compounding of offence is filed before the Reserve Bank of India Authority concerned, both the authorities will consider the same expeditiously in accordance with law without granting any unnecessary adjournments. In case of failure on the part of the petitioner to make application and reply indicated hereinabove within the time stipulated hereinabove, this liberty granted will be

treated as withdrawn and the authorities concerned will be free to proceed against the petitioner in accordance with law.

(MD. NIZAMUDDIN, J.)