



iti

4.FEMA.14.24 new.docx

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

***FEMA APPEAL NO. 14 OF 2024
WITH
INTERIM APPLICATION NO. 14798 OF 2024***

UCO Bank

a public sector bank,
having its registered office at
10, Brobournne road, BTM Sarani,
Kolkatta and a branch office at
359, Dadabhai Naoroji Road,
Fort, Mumbai-400001

.. Appellant/
Applicant

Versus

The Special Director

(Enforcement),
Janmabhoomi Chambers,
1st floor, Walchand Hirachand Marg,
Mumbai-400001

.. Respondent

***WITH
FEMA APPEAL (ST) NO. 25919 OF 2024
WITH
INTERIM APPLICATION NO. 14928 OF 2024***

Bank of Baroda

(Erstwhile Dena Bank)

a public sector bank,
having its head office at
Baroda Bhavan, R C Dutt Road,
Alkapuri, Baroda-390007,
Gujarat State and having its
Corporate office at C-10,
G-block, Bandra Kurla Complex,
Mumbai-400051

.. Appellant/
Applicant

Versus

The Special Director

(Enforcement),

Janmabhoomi Chambers,
1st floor, Walchand Hirachand Marg,
Mumbai-400001

.. Respondent

Mr. Vankatesh Dhond a/w Toshed Kakalia a/w Harmuz Mehta a/w
Ahsen Allance a/w Prateek Pansare i/by J/ Sagar Associates for the
Appellant.

Ms. Neha Bhide, APP a/w Mr. Piyush pande for respondent/ED.

**CORAM : M. S. Sonak &
Jitendra Jain, JJ.**
DATE : 18 December 2024

PC. (Per M.S.Sonak, J.):-

1. Heard learned counsel for the parties.
2. Given the earlier orders made in these two appeals, we admit these appeals and, with the consent of and at the request of learned counsel for the parties, proceed to dispose of the same.
3. Though Mr. Dhond raised several questions of law, we admit these appeals on the following question of law without going into those questions.

QUESTION OF LAW

Whether the inordinate and unexplained delay between the conclusion of the arguments dated 13 December 2006 and the pronouncement of the impugned order dated 9 March 2009 is sufficient to vitiate the impugned judgment and order dated 9 March 2009.

4. Learned counsel for the parties agree that the common order/judgment can dispose of these appeals.

5. The challenges in these appeals are against the following impugned judgment and order: -

(a) The judgment and order made by the Special Director (Enforcement) of 9 March 2009;

(b) The judgment and order dated 8 July 2024 by the Appellate Tribunal upholding the above judgment and order dated 9 March 2009.

6. One of the grounds raised in these appeals was that the arguments before the Special Director (Enforcement) concluded on 13 December 2006. Still, the Special Director made the impugned judgment and order only on 9 March 2009, after a delay of about three years. Mr. Dhond, learned senior counsel for the appellant, relied on *Bhagwandas Daswani vs. HPA International*¹ and *Anil Rai vs. State of Bihar*², *Kanhaiyalal & Ors Vs. Anupkumar & Ors*³ and contended that such inordinate delay is a good ground for interference.

7. Mr. Dhond also contended that South Indian Bank Limited appealed the Special Directors' order dated 9 March 2009 since the said

1 (2000) 2 SCC 13

2 (2001) 7 SCC 318

3 (2003) 1 SCC 430

order was common to the appellants herein and South Indian Bank Limited. The Chairperson of the Appellate Tribunal sitting singly allowed this appeal vide an order dated 25 January 2021 because the delay in passing the impugned order dated 9 March 2009 was sufficient to vitiate it.

8. Mr. Dhond submitted that the same logic had to necessarily apply in the context of the same impugned order made in the case of the appellant herein. On the premise that a single member made the judgment and order dated 25 January 2021 of the tribunal, it was not open to the division bench of the tribunal, which was not sitting in appeal over the decision of the Chairperson to take some different view. Mr Dhond submitted that this was more so since there was no record of the respondents having appealed or challenged the impugned judgment dated 25 January 2021 in the appeal instituted by South Indian Bank Limited.

9. Ms. Bhide learned counsel for the respondent submitted that this was a matter involving adjudication of almost 72 notices. She submitted that Shri.A.K.Bal was a Special Director between 2 July 2001 to 31 October 2003. He heard the arguments and offered personal hearing in approximately 17 notices, but before he could make any final orders, Mr. Bal was transferred and replaced by Mr. K. Nageshwar Rao. Mr. Rao then

held hearings regarding balance notices and, upon considering the material on record, passed the impugned judgment and order dated 9 March 2009. She submitted that there may have been some delay in these circumstances, but it is not as if this delay was deliberate or unexplained. Accordingly, she submitted that the impugned order dated 9 March 2009 should not be interfered with on the grounds of delay.

10. Ms. Bhide further submitted that the decision of a single member of the tribunal did not bind the division bench. In any event, the division bench considered the matter on merits and dismissed the appeals instituted by the appellant before the tribunal. Accordingly, she submitted these appeals may be dismissed.

11. The rival contentions now fall for our determination.

12. There is no dispute about the circumstance of the Special Director (Enforcement) having concluded the hearing of arguments on 13 December 2006 and the impugned order made only on 9 March 2009.

13. On 11 December 2024, we made the following order:

1. *Mr. Dhond, learned counsel for the appellant points out that the final arguments were heard by the Special Director (Enforcement) on 13 December 2016 and the impugned order is made on 9 March 2019 i.e., after three years.*
2. *Mr. Dhond refers to the judgment of the Supreme Court in the case of **Kanhaiyalal & Ors. Vs. Anupkumar & Ors.**⁴ to submit that in such circumstances, the Hon'ble Supreme Court has set aside the impugned judgment without going into the merits of the case and remitted the same for fresh disposal in accordance with law.*

4 (2003) 1 SCC 430

3. *Mr. Dhond, learned Senior Advocate for the appellant also submits that the appellant is not too sure whether the Special Director who heard the appeal was the one who has actually passed the impugned order. He submits that if some other Officer has made the order, then, the same would be ex facie vulnerable.*
4. *Ms. Bhide, learned counsel for the respondents states that she will obtain instructions on the above two aspects by the next date.*
5. *Accordingly, we list this matter on 18 December 2024 for 'Directions.'*
6. *Registry to ensure that both these appeals are tagged together.*

14. The above order was corrected on 18 December 2024 because the dates in paragraph 1 referred to the years 2016 and 2019, when the correct dates were 2006 and 2009, respectively.

15. Based on the above order, Ms. Bhide obtained instructions and made the submission we recorded above. Still, there is no clarity about the hearing. In any event, from the statements made, the arguments in at least 17 show cause notices were heard and concluded by Mr. Bal, and the arguments in respect of the balance notices were heard and concluded by Mr. K. Nageshwar Rao. There is no clarity about the category in which the present appellants' cases fall. This clarity was necessary because if it were to be established that the show cause notice were heard by Mr. Bal and the impugned order has been made by Mr. K. Nageshwar Rao then, this would violate the principles of natural justice, which says the person who heard the matters has to decide the same unless there are statutory provisions to the contrary.

16. In any event, it is evident that the hearing concluded on 13 December 2006, and the impugned judgment and order has been made on 9 March 2009. The explanation now offered cannot be accepted, given the magnitude of the delay.

17. In *Bhagwandas Daswani Vs. HPA International (supra)* the Hon'ble Supreme Court in the matter where the hearing of the appeal was concluded on 22 March 1989, but the judgment was delivered only on 24 January 1991 set aside the impugned judgment without expressing any opinion on the merits of the case and remitted the case to the High Court for deciding the appeal afresh on merits.

18. In *Kanhaiyalal & Ors Vs. Anupkumar & Ors (supra)* following *Bhagwandas Daswani (supra)* the Hon'ble Supreme Court reiterated that long delay in delivery of judgment is sufficient to set aside the judgment in appeal without expressing any opinion on merits. The Supreme Court, has quoted the observations in *Bhagwandas Daswani (supra)*, which reads as follows;

"However, it is correct to this extent that a long delay in delivery of judgment gives rise to unnecessary speculations in the minds of parties to a case. Moreover, the appellants whose appeals have been dismissed by the High Court may have the apprehension that the arguments raised at the Bar have not been reflected or appreciated while dictating the judgment — nearly after five years. ... We, therefore, on this short question, set aside the judgment under appeal...."

19. In *Anil Rai Vs. State of Bihar (supra)* the Hon'ble Supreme Court referred to its earlier decision in *R.C.Sharma Vs. Union of India*⁵ in which it was held that any unreasonable delay between the hearing of arguments and the delivery of the judgment, unless explained by exceptional or extra ordinary circumstances is highly undesirable even when written arguments are submitted. Litigants must have complete confident in the results of litigation. This confidence tends to be shaken if there is a excessive delay between hearing of arguments and delivery of judgments. Therefore, even though there is no period for pronouncement of judgment was contemplated, still, on the grounds of unreasonable and unexplained delay, the judgment or impugned order were interfered with.

20. Therefore, in the peculiar facts of the present case and upon considering the delay between the conclusion of arguments and pronouncement of impugned orders and further, also upon considering the explanation offered, we are satisfied that such an explanation hardly constitutes exceptional or extraordinary circumstances, and therefore that the impugned order dated 9 March 2009 warrants interference.

21. Apart from the above grounds, we note that the appeal instituted by the South Indian Bank Limited against the same impugned order dated 9 March 2006 was allowed by the appellate tribunal on the

5 (1976) 3 SCC 574

grounds of delay between the conclusion of the hearing and pronouncement of the said judgment and order. Considering that the tribunal, on that occasion, spoke through its single member, was not quite relevant. It was not the case of the respondent that the single member, i.e. the Chairperson was not competent to dispose of the appeal. Nothing on record states that the respondents had challenged the tribunal order dated 25 January 2021 in the appeal instituted by South Indian Bank Limited, nor was the same brought to our notice. Therefore, the appellate tribunal was not justified in taking a different view on identical facts.

22. For the above reasons, by clarifying that we have not gone into the merits, we set aside the impugned order dated 9 March 2009 and remand the matter to the Special Director (Enforcement) or the Competent Authority by whatever name called to dispose of the show cause notices issued against the appellants herein as expeditiously as possible. Needless to add, the appellants must be given a hearing, and the competent authority must pass reasoned orders within a reasonable period from the conclusion of the hearing.

23. In terms of *Ramdular Singh vs. State of UP*⁶, matters must be disposed of within a maximum of three months from the date of all parties' hearings. Though these observations have been made in the

6 2024 SCC Online SC 3660

context of Courts, there is no reason why a different timeline should apply to the facts and circumstances of the present case. In any event, this timeline could always be taken as a guideline for determining a reasonable period.

24. These appeals are allowed in the above terms. The appellants or their duly authorized representatives must appear before the Special Director on 2 January 2025 at 11.00 am so that a schedule can be set out by the competent authority for hearing in the show cause notices.

25. The appeals are disposed of in the above terms without any order for cost. The interim orders, if any, are vacated. The interim applications do not survive and are disposed of.

26. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J.)

(M. S. Sonak, J.)