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

FEMA APPEAL NO. 1 OF 2025

Mr. A. P. Parekh

... Appellant

Versus

The Special Director, Enforcement
Directorate, Mumbai And Anr.

... Respondents

Mr B. Seshagopalan a/w Ms Lorna Carvalho, for Appellant.

Mr Anil D. Yadav, for Respondent No.1-ED.

Mr Vinit Jain a/w Mr A. R. Varma, Mr Gaurav Mhatre, for
Respondent No.2-UOI.

**CORAM: M.S. Sonak &
Jitendra Jain, JJ.**

DATED: 23 JULY 2025

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

1. Heard learned counsel for the parties.
2. This Appeal challenges the Tribunal's Order dated 08 July 2024. This Appeal was admitted on 11 June 2025 on the following questions of law:

A) Whether, in the facts and circumstances of the case, the impugned order of the Appellate Tribunal in passing order of remand of 16 years delay in passing the Adjudication order passed by the Respondent and non- considering any of the judgments of the various courts would amount to

non-application of mind, self-contradictory and therefore unsustainable in law?

B) Whether in the facts and circumstances of the case the Appellate Tribunal is required to take into consideration of the law declared by this Hon'ble Court with regard to jurisdiction of Adjudicating authorities not appointed with special powers under FEMA as Govt. of India has no power to appoint in the absence of amendment under FEMA, 1999 and whether such a failure would amount to statutory prejudice rendering the impugned order illegal and unsustainable in law?

3. Regarding the first question, Mr Seshagopalan submits that the issue was raised and argued before the Tribunal, but the Tribunal did not consider it. Instead, the Tribunal accepted the Appellant's contention about failure of natural justice and has remanded the matter for fresh decision after giving the Appellant an opportunity of hearing.

4. We have reviewed the impugned order dated July 8, 2024. The order indicates that the arguments were advanced on merits, as noted in the first sentence of paragraph 5 of the impugned order, and arguments were advanced on the failure of natural justice.

5. In paragraph 7 of the impugned order, the Tribunal has also quoted a paragraph from the Appeal memo, where there is a reference to the adjudicating authority passing the impugned order after the lapse of 17 years. However, the

emphasis, even in the quoted paragraph, was on the denial of an opportunity for a personal hearing.

6. Mr Seshagopalan's contention that even the point of delayed adjudication was argued cannot be entertained by us for the first time. If this point was indeed argued, then it was for the Appellant to have moved the Tribunal by filing an appropriate application and obtaining an order on the same. This is the procedure to correct the record.

7. In any event, now that the Tribunal has remanded the matter, we propose to clarify that the Appellant, upon remand, will be entitled to contend the issue of delayed adjudication. Mr Seshagopalan pointed out that the show cause notice in this case was issued on 29 November 1983 and the adjudicating authority disposed of the show cause notice only on 20 September 2000, i.e. after a delay of 17 years. Mr Seshagopalan submits that such a delayed adjudication is impermissible and warrants interference. He relied on the decision of this Court in *M/s. Esjaypee Impex Pvt. Ltd. V/s. The Union of India And Ors., Writ Petition No. 3793 of 2024*, disposed of on 11 November 2024, in support of his contention.

8. Accordingly, although we do not interfere with the Tribunal's order dated 08 July 2024, we clarify that upon remand, the Petitioner shall be entitled to raise the issue of delayed adjudication, i.e. the delay between 1983 and 2000. The adjudicating authority will have to decide on this issue in

light of the submissions made and the decisions cited before it.

9. Regarding the second question, Mr Seshagopalan contended that the remand is now to the authority constituted under FEMA. He submitted that this authority has no power or jurisdiction to adjudicate upon a show cause notice dated 29 November 1983, which was issued under the provisions of FERA, 1973. Mr Seshagopalan, therefore, submitted that the Tribunal's order of remand warrants interference on this ground.

10. Mr Anil Yadav and Mr Vinit Jain relied upon the decision of the Hon'ble Supreme Court in the case of ***First Global Stockbroking Pvt. Ltd. And Ors. V/s. Anil Rishiraj And Anr., Criminal Appeal No. 2151 of 2011***, decided on 21 September 2023, to submit that the issue now sought to be raised by Mr Seshagopalan stands answered against the Appellant.

11. Mr Seshagopalan submitted that the decision in ***First Global Stockbroking Pvt. Ltd. And Ors. V/s. Anil Rishiraj And Anr.*** (supra) will not apply in this case. He submitted that instead, the decision of the Co-ordinate Bench of this Court in the case of ***First Global Stockbroking Pvt. Ltd. and Ors. V/s. R. M. Ramchandani And Ors., Writ Petition NO. 744 of 2005***, decided on 18 November 2022, would apply.

12. Now that the matter is remanded, we will keep the above issue open. This means that the Appellant will be

entitled to raise the issue of the adjudicating authority lacking jurisdiction to adjudicate upon a show cause notice issued under FERA, 1973. All contentions of all parties in this regard are expressly left open to be decided by the adjudicating authority. Needless to add that if the adjudicating authority concludes that it has no jurisdiction or authority, then the show cause notice issued on 29 November 1983 under FERA, 1973, will have to be discharged.

13. Mr Seshagopalan states that this matter has been pending since 1983, and unless any time-bound directions are issued, it has the potential to remain pending even longer pursuant to the remand. Accordingly, he requests that directions be issued to the adjudicating authority to dispose of the proceedings on remand within a maximum period of three months from today.

14. Mr Yadav and Mr Jain submit that at least six months' time be granted.

15. Accordingly, we direct the adjudicating authority to adjudicate the show cause proceedings pursuant to the remand, as expeditiously as possible and, in any event, within four months from the date of production of an authenticated copy of this order.

16. The Appellant/his representative is directed to appear before the adjudicating authority, without prejudice to the Appellant's contention regarding jurisdiction and file an

authenticated copy of this order. The period of four months will commence from the said date.

17. Both questions are answered in the terms mentioned above.

18. The Appeal is disposed of in the above terms. No costs. All concerned must act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)