

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1726 OF 2025
IN
FEMA APPEAL (ST.) NO. 4112 OF 2025
WITH
INTERIM APPLICATION NO. 1727 OF 2025
IN
FEMA APPEAL (ST.) NO. 4112 OF 2025

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Bank of Baroda

.. Applicant/Appellant

Versus

Union of India

.. Respondent

WITH
FEMA APPEAL (ST.) NO. 5062 OF 2025
WITH
INTERIM APPLICATION NO. 1832 OF 2025
IN
FEMA APPEAL (ST.) NO. 5062 OF 2025
WITH
INTERIM APPLICATION NO. 1831 OF 2025
IN
FEMA APPEAL (ST.) NO. 5062 OF 2025

Doha Bank Q.P.S.C.
(Erstwhile HSBC Bank Oman S.A.O.G)

.. Applicant/Appellant

Versus

Union of India

.. Respondent

***Adv. Rajeev Kumar Panday a/w Sachin Kanse i/b. PRS Legal
for the Appellant / Applicant / Bank of Baroda.***

***Adv. Sanjiv Punalekar a/w Madhur Rai for the Appellant
/ Applicant / Doha Bank.***

Ms. Neha Bhide, Spl.P.P. a/w Piyush Pande for the Respondent.

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: FEBRUARY 27, 2025**

P. C.

1. Interim Application No. 1726 of 2025 is filed by Bank of Baroda seeking a condonation of delay in preferring the above Appeal under Section 35 of the Foreign Exchange Management Act, 1999 [for short “FEMA 1999”]
2. Interim Application No. 1831 of 2025 is filed by Doha Bank Q.P.S.C. seeking a condonation of delay in filing the above Appeal under Section 35 of the FEMA, 1999.
3. Section 35 of FEMA, 1999 stipulates that any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal with the High Court within sixty days from the date of communication of the said decision or order on any question of law arising out of such order. The proviso to Section 35 stipulates that the High Court may, if it satisfied that the appellant was prevented by sufficient cause from filing the appeal within

the initial period of sixty days, allow it to be filed within a further period not exceeding sixty days. From the language of Section 35, it is clear that the High Court has no power to condone the delay beyond a total period of 120 days. This, in fact, has been so held by this Court in the case of ***Municipal Corporation of Greater Mumbai Vs. Anusaya Sitaram Devrukhkar & Ors. [Interim Application No.13254 of 2024 in First Appeal (ST) No.24058 of 2024 decided on 7th January 2025]*** interpreting the provisions of Section 74(1) of *the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*. Section 74(1) of *the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act*, and Section 35 of FEMA, 1999 are almost identical.

4. As far as Section 35 of the FEMA, 1999 is concerned, the limitation starts to run “from the date of communication of the decision or order of the Appellate Tribunal”. In the facts of the present case, it is the argument of the Appellants that the order of the Appellate Tribunal has never been communicated to them. They became aware of this order only when they checked the website of the Appellate Tribunal wherein the impugned order dated 24th September, 2024 was uploaded. In fact, it is the case of the Appellants that though the hearing was concluded on 21st August, 2024 and

judgment was reserved, no date was mentioned for pronouncement of the judgment. It is in these facts that the learned Counsel appearing for the Appellants submitted that there is no delay at all and the present application is filed only out of abundant caution.

5. To determine whether limitation has started to run in the present case, it is essential to ascertain when the order of the Appellate Tribunal was communicated to the Appellants, and if so, on what date. The learned Special P.P. appearing for the Enforcement Directorate was unable to definitively inform the Court as to whether the order was communicated to the Appellants, and if so, on what date. To take the necessary instructions on this aspect and file an affidavit in reply if necessary, the learned Special P.P. sought two weeks' time.

6. Considering the request made by the learned Special P.P., we place the above matter on 13th March, 2025.

7. The reply, if any, shall be filed on or before the next date and a copy of the same shall be served on the Advocates for the Appellants. If no reply is filed on or before the next date, we will presume that the order of the Appellate Tribunal has not been communicated to the Appellants and we will

then proceed to decide the above Interim Applications [seeking condonation of delay] on that basis.

8. In the meanwhile, and without prejudice to the rights and contentions of all parties, we direct that no coercive action be taken against the Appellants pursuant to the order passed by the Appellate Tribunal dated 24th September, 2024, and which is impugned in the above Appeals.

9. Stand over to 13th March, 2025.

10. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]