

Mother Dairy Fruit And Vegetable Pvt. ... vs Sh. Hukam Singh on 22 January, 2021

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 22nd J

+ W.P.(C) 897/2021 and CM APPL. 2381/2021

MOTHER DAIRY FRUIT AND VEGETABLE

PVT. LTD.

Through: Mr. Vivek Sood, Sr. Advoc

Mr. Firoz Khan, Advocate

versus

SH. HUKAM SINGH

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing. CM APPL. 2380/2021 (for exemption)
2. Exemption allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 897/2021 and CM APPL. 2381/2021

3. The present petition has been filed challenging the order dated 7th February, 2020, passed by the Food Safety Appellate Tribunal, New Delhi, in FSAT No. 49/16, titled Mother Dairy Fruit and Vegetable Pvt. Ltd. v. FSO, vide which the penalty amounting to Rs. 40,000/- imposed by the Adjudicating Officer on the Petitioner in the order dated 25th November, 2016, has been upheld.

4. Submission of Mr. Sood, Id. Senior counsel appearing on behalf of the Petitioner is that under Section 71 of the Food Safety and Standard Act, 2006 (hereinafter, "the Act"), a second appeal on any question of fact or law, against the order of the Food Safety Appellate Tribunal, lies before the High Court. However, according to him, the Registry of the Court has informed the counsel that the matter should be filed as a writ petition and not as a second appeal.

5. Section 71(6) of the Act reads as under :-

"71. Procedure and powers of Tribunal.

(6) Any person aggrieved by any decision or order of the Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Tribunal to him on any question of fact or law arising out of such order: Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."

A perusal of the above provision shows that an appeal would lie before this court against an order passed by the Appellate Tribunal, within 60 days from the communication of the said decision or order. Vide judgment dated 13th March 2019, a ld. Single judge considered this issue in *Ardor Restaurant and ors. v. Bal Mukund* (WP(C) 10418/2018) and held that a writ filed against the order of the Food Safety Appellate Tribunal ought to be treated as an appeal under section 71(6) of the Act. The said order reads:

"1. Although, the present petition has been styled as writ petition under Article 226 of the Constitution of India, it ought to be treated as an appeal under Section 71(6) of the Food Safety and Standards Act, 2006 (hereafter 'the FSS Act')."

6. In view of the clear legal position, the present writ may be renumbered as a 'Regular Second Appeal' by the Registry and be listed before the Roster Bench.

7. Ld. counsel for the Petitioner submits that he was informed by the Registry that the category for regular second appeals does not exist as of now. In view thereof, the Registry may also make provision in its IT Software for appropriately numbering such second appeals arising under the Act.

8. List before the Roster Bench on 1st February, 2021.

PRATHIBA M. SINGH JUDGE JANUARY 22, 2021 MR/Ak