

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.394 OF 2009

Ronald Fernandes ..Petitioner.

V/s.

Union of India & Others ..Respondents.

Mr.V.S. Nankani with Mr.Madhur R. Baya i/by
M/s.Nankani & Associates for the petitioner.

Ms.S.V. Bharucha for the respondents.

CORAM : SMT.RANJANA DESAI &
J.P. DEVADHAR, JJ.

DATED : 19TH MARCH, 2009.

P.C. :

1. Rule. Rule made returnable forthwith. By consent of parties, the petition is taken up for final hearing.

2. The petitioner has challenged order dated 21-10-2008 passed by the Appellate Tribunal for Foreign Exchange. By the impugned order, the petitioner has been directed to pre-deposit 40% of the penalty amount.

3. We have heard learned counsel for the petitioner. It appears that the petitioner was working as supervisor with M/s.Pheroze Framrose

Company and others. Entire case prima facie appears to be based on the retracted confession of the noticee and co-noticee. Learned counsel for the petitioner drew our attention to the judgment of the Supreme Court in **Vinod Solanki V/s. Union of India (UOI) & Another, 2008 (16) SCALE 31** in support of his submission that confessional statement when retracted, the confessional statement can be accepted only if it is corroborated by other independent evidence. He submitted that there is no independent evidence in this case.

4. In view of the above, we are of the opinion that in the facts of the present case and especially considering the fact that the petitioner was only an employee, it would be just and proper to grant waiver of pre-deposit. Accordingly, the order directing the petitioner to deposit 40% of the penalty amount is set aside. The tribunal is directed to hear and dispose of the appeal in accordance with law on merits without any pre-deposit.

5. The writ petition is disposed of in the aforesaid terms.

(Judge)

(Judge)