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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO.635 OF 2015
IN
NOTICE OF MOTION (L) NO.39 OF 2015
IN
INSOLVENCY PETITION NO.34 OF 2015
WITH
NOTICE OF MOTION (L) NO.2271 OF 2015**

SICOM Limited

... Appellant.

V/s.

Lav Chadha & ors

.. Respondents

Ms. Sapna Rachure I/by T.N. Tripathi & Co. for the appellant/applicant.

Mr. N. N. Vima Dalal a/w V. N. Solanki, for Respondent Nos 1 & 2.

Ms. U.S. Srivastav, Dy. Official Assignee, present.

Mr. Dilip Talekar, Insolvency Registrar, present

**CORAM : V. M. KANADE &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 25TH AUGUST, 2015.

P.C. :

1. The appellant has filed this appeal challenging the order passed by the learned Single Judge of this Court, dated 17th August, 2015 permitting respondent No.2 to go abroad on his

furnishing Demand Draft of Rs.5,00,000/- and on execution of indemnity bond.

2. The brief facts of the appeal are that the appellant filed petition No.34 of 2005 for declaring respondents as insolvents based on judgment and decree dated 29th August, 2005, passed in Misc. Petition No.58 of 2001. On 19.8.2006, the order of adjudication was passed in Petition No.34 of 2005 and respondents were adjudged as insolvents.

3. The private examination of the respondents was over in August, 2012, however, public examination is yet to be concluded.

4. Respondent No.2 filed Notice of Motion (L) No.39 of 2015 in Insolvency Petition No.34 of 2015, seeking permission to go to United States of America for a period of six months. The said notice was opposed by the appellant herein on various grounds. The learned Single Judge, however, by the impugned order dated 17.8.2005, directed Insolvency Registrar to hand

over the passport of respondent No.2 and permitted to go abroad for a period of 15 days.

5. It is submitted by learned counsel appearing for the appellant that the respondent No.1 had earlier moved Notice of Motion No.69 of 2009 in Insolvency Petition No.34 of 2005 seeking permission to proceed to the United States for a period of six months. It was submitted, however, that the said Notice of Motion was dismissed. Secondly, it is submitted that respondent filed Discharge Application No.1 of 2014 which is still pending and is not disposed of. Thirdly, it is submitted that the public examination of the respondent is not over. It is submitted that the amount due and payable by the respondents is to the tune of Rs.18.59 crores. It is submitted that the respondent No.1 is not likely to come back if allowed to travel abroad.

6. On the other hand, learned counsel appearing on behalf of respondents submitted that the learned Single Judge asked the respondent to give demand draft of Rs.5,00,000/- and also to give indemnity of Rs.20 lacs which has been given by

respondent No.2. It is submitted that respondent No.2 wants to attend obsequies of his father-in-law, who has expired in U.S. It is submitted that the VISA had been granted by the U.S. Embassy. It was urged that therefore the appeal be dismissed.

7. In view of above facts there is much substance in the submission made by the learned counsel for the appellant. It is admitted position that the public examination is not yet over. Application of Respondent No.1 for discharge is also pending. There is no guarantee that respondent No.1 may return back since he has no any other surety besides demand draft of Rs.5 lacs. We had asked respondent No.1 to furnish solvent surety for an amount of Rs.20 lacs. However, learned counsel for respondents showed his disinclination to furnish the said solvent surety for an amount of Rs.20 lacs.

8. Under all these circumstances, this is not a fit case for permitting the appellant to go abroad as there is every possibility that he may not return back. The indemnity of Rs.20 lacs which has been given by respondent No.2 is inadequate taking into

consideration the outstanding dues. Hence the appeal is allowed. The impugned judgment and order passed by the learned Single Judge is set aside. Respondent No.2 shall return his passport to the Insolvency Registrar forthwith. It is clarified that respondent No.2 is not allowed to travel United States. This order be immediately communicated to all the Air Ports of India and in the event respondent No.2 tries to go abroad, he will be prevented from travelling on the passport and visa which was granted to him.

9. In view of disposal of Appeal, the Notice of Motion (L) 2271 of 2015 does not survive and is accordingly disposed of.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[V. M. KANADE, J]