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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
INSOLVENCY JURISDICTION

APPEAL NO. 205 OF 2017
IN
NOTICE OF MOTION NO. 4 OF 2014
IN
INSOLVENCY PETITION NO. 82 OF 2002
WITH
NOTICE OF MOTION NO. 1119 OF 2017

The Official Assignee

..... Appellant

Versus

Avinash Bansi Jaising & Ors.

..... Respondents

Mr. J. P. Sen, Sr. Advocate a/w Ms. Kavita Shah for appellant.

Mr. Gaurang Mehta a/w Ms. Rhea Mehta i/by Ms. Dipal Mehta for respondent no.1.

Mr. Milind D. Narvekar, Official Assignee and Ms. Chandan Bhatt, Dy. Official Assignee present.

CORAM: NARESH H. PATIL &
Z. A. HAQ, JJ.

AUGUST 08, 2017.

ORAL JUDGMENT [Per Naresh H. Patil,J.] :

1. Admit. Heard finally by consent of the parties.
2. We have heard the learned counsel appearing for the parties.

We have perused the record placed before us and the impugned order. We find that the parties have agreed to certain terms. Therefore, in the peculiar facts, we are inclined to set aside the order dated 27/4/2017 impugned in the present appeal for the reasons and conditions recorded herein below.

3. The Undertaking given by Respondent No.1 [Original Insolvent No. 1] to this Hon'ble Court, as recorded in its Order dated 3rd September 2002, that he will not leave the country without the permission of the Insolvency Court is hereby discharged and replaced by the statements and undertakings in the present Order.

4. It is clarified that there is no impediment from the Appellant to Respondent No.1 accepting employment or Professional assignment/s in India or abroad and the Respondent No. 1 is free to take up and to accept such employment or Professional assignment/s in India or abroad subject, however to Respondent No. 1's Undertaking to deposit with the Appellant, 30% of his net earnings (after tax) including all emoluments (after tax), on a monthly basis, or within 15 days of receipt of any amount, by way of salary or other emoluments and Respondent No. 1 so accordingly undertakes to do so. In the event of any over payment or short

payment to the Appellant, on the tax liability of Respondent No. 1 becoming crystallized for any particular financial year, the adjustment for such over or short payment will be made in the installments to be paid by the Respondent No. 1 immediately following such crystallization.

5. As and when Respondent No. 1 intends to travel abroad, Respondent No. 1 shall intimate to the Appellant's office, by way of a letter in writing, of his such intention to travel abroad, specifying therein (i) the purpose of travel, (ii) Name of the country or countries, (iii) Intended date of departure and return.

6. Respondent No. 1 shall be permitted to travel out of India for taking up employment and / or professional assignment/s and / or for any personal reason, and Respondent No. 1's Passport shall be released to him subject to and upon Respondent No. 1 furnishing Indemnity / Security Bond of the value of Rs. 5,00,000/- (Rupees Five Lakhs only) through a well wisher to the Appellant on each occasion that he travels out of India and the furnishing of such Security Bond of Rs. 5 lacs shall be condition precedent for release of Respondent No. 1's Passport. Such Indemnity/ Security Bond, on the return of Respondent No. 1 to India and returning

his Passport to the Appellant, shall stand discharged.

7. Respondent No. 1 shall disclose the amounts to be earned and received by him on taking up employment and/or each such professional assignment/s and undertakes to maintain an income diary and to deposit with the Appellant 30% of the net income including all emoluments earned by him in respect of employment and each such assignment/s, in Indian currency, as set out in clause 3 above. Any permission that may be required to be obtained for conversion of foreign currency into Indian Rupees and for remittance of amounts to the Appellant from any Regulatory Authority shall be secured by the Respondent No. 1.

8. Respondent No. 1 shall also be entitled to release by the Appellant of his Passport to him in a single working day on a written request, in the event he is required to present the same to the Passport Authorities for renewal of his Passport or that of his minor daughter, Avisha Jaising. Respondent No. 1 undertakes, in the event of renewal of his Passport, to deposit with the Appellant, the new Passport issued to him within three working days of receipt of the said Passport by him. In the event of Respondent No. 1 being required to present his Passport to the

Authorities for the renewal of his daughter's Passport, he hereby undertakes to redeposit his Passport with the Appellant immediately after such presentation or in any event within one week thereafter. The Appellant shall offer such co-operation as may be necessary for renewal of the Passport of Respondent No. 1, from time to time.

9. The Appellant shall handover to the Respondent No. 1 his Passport for traveling abroad forthwith and not later than a single working day, on compliance by Respondent No. 1 of the conditions stipulated in clause nos. 4 and 5 hereinabove and in other cases, on a written request being made by the Respondent No. 1 to the Appellant, as set out in clause No. 7 above.

10. Respondent No. 1 shall, after obtaining Visas for traveling to the intended country or countries of destination and after arranging for to and fro Airline Tickets for travel to the country or countries of destination, at least 24 hours prior to his travel date, furnish to the Appellant, the details of his travel plans, including the following:

- (i) Name of the country or countries of destination,

- (ii) Duration of his stay / itinerary,
- (iii) Photocopies of Air Tickets and Visa,
- (iv) Nature of the trip; employment or professional Assignment or personal visit,
- (v) Contact number of Respondent No. 1,
- (vi) Address/es of the Respondent No. 1, during such stay,
- (vii) Name, Address, E-mail ID, Phone numbers of the Employer in case of employment and / or professional assignment and of the relative/s, if any, in case of personal visits.
- (viii) Furnish copies of the Contract / Agreement / Appointment letter, if any, entered into with / issued by the Employer.
- (ix) Name, Address, E-mail ID, Phone numbers of the well wisher or person or Company bearing the cost of travel of the Respondent No. 1.

11. In the event, Respondent No.1 is required to extend his stay abroad, he undertakes to inform the Appellant of his revised duration of stay / itinerary and his revised date of arrival in India.

12. In the event after taking up employment and / or professional assignment/s with a particular employer/s abroad, if Respondent No. 1 for any reason whatsoever, changes or takes up another employment and / or professional assignment/s or is transferred by his employer/s to a different country, he undertakes to inform the Appellant of such change or taking up of a new employment and / or professional assignment/s or transfer, revised duration of stay/ itinerary, name of the other country, his changed /new address, phone numbers, addresses, email address of the new employer/s and his revised date of arrival in India.

13. Respondent No. 1 undertakes to deposit his Passport with the office of the Appellant, within three working days of his return to India.

14. In the event Respondent No. 1 commits breach of any condition, obligation and/or undertaking contained herein, the Appellant shall be at liberty to issue a Notice to Respondent No. 1 at his last known address [by Registered Post/Courier] & E-mail ID, as declared by Respondent No.1 to Appellant, to remedy such breach within two weeks of the date of such Notice, failing which, the Appellant shall be at liberty to

approach the Passport Office and/or any statutory authority for cancellation of Respondent No. 1's Passport/Visa and also to forfeit the security amount of Rs. 5,00,000/- (Rupees Five Lakhs only) and / or enforce the security given by the well wisher of the Respondent No. 1 as per clause 5 hereinabove.

15. The Appellant and Respondent No. 1 shall be at liberty to approach the Insolvency Court for seeking such further and other directions, as may be necessary from time to time, for implementing and / or for giving effect to this Order.

16. As and when the Appellant requires the Respondent No. 1's presence for the purpose of further conduct of Insolvency proceedings, the Respondent No. 1 shall present himself before the Appellant's office or seek another suitable appointment and attend the same.

17. This Order is passed in the peculiar circumstances of the present case, to facilitate and enable Respondent No. 1 to take up employment and professional assignment/s and to travel abroad on a regular basis. It is clarified that this Order shall not be treated as a

precedent in any other matter and is being passed on account of the fact that Respondent No. 1 [Insolvent] has by all accounts co-operated with the Appellant [Official Assignee] in completing his private and public examination and in effecting the sale of his assets.

18. The Appeal stands partly allowed in the above terms with no Order as to costs. All interim Orders stand vacated. Notice of Motion No. 1119 of 2017 filed by the Appellant therefore does not survive and stands disposed off.

(Z. A. HAQ,J.)

(NARESH H. PATIL,J.)