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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment pronounced on: 23.03.2018

+ W.P.(C) 2862/2018 & CM Nos.11574-576/2018

FELIX STEFAN KAYE Petitioner
Through : Mr. Akhil Sibal, Sr. Adv.
with Mr. Arjun Mukherjee
and Mr. Pradeep, Adv.
versus

FOREIGNERS REGIONAL REGISTRATION OFFICE
(FRRO) DELHI Respondent
Through : Mr. Akshay Makhija, CGSC
with Ms. Mahima Bahl and
Mr. Seerat Singh, Adv.
Mr. Harwinder Singh,
Inspector/OCI/CEIC, FRRO
with Mr. Satwinder Singh,
Inspector FRRO.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SHAKDHER

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RAJIV SHAKDHER, J. (ORAL)

CM Nos.11575-76/2018 (exemption)

1. Allowed subject to just exceptions.

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2. Issue notice. Mr. Akshay Makhija accepts notice on behalf of the respondent.

3. In view of the order that I propose to pass, Mr. Makhija says that a counter affidavit may not be required.

4. The Petitioner claims he married an Indian Citizen, one, Ms. Ritika Singh in 2009 and from wedlock a child was born on 24.1.2018.

4.1 The record shows that the petitioner has obtained, in the interregnum, a stay permit till 31.3.2018.

4.2 It appears that petitioner has also applied for X visa and for grant of status as an Overseas Citizen of India (in short "OCI").

4.3 There has been no formal rejection of either of the applications referred to above; a fact which is conceded by Mr. Makhija.

5. As a matter of fact, the petitioner had approached this court by way of criminal writ petition which was disposed of by this court vide order dated 13.9.2017.

5.1 The learned Single Judge in fact had called upon the respondent to consider the representation of the petitioner for grant of OCI status, sympathetically and while doing so had observed that the petitioner and his spouse were artist who, perhaps, did not pose any threat to the national security. Accordingly, the learned judge proceeded to grant interim protection to the petitioner.

6. I may also indicate that the petitioner has obtained, in the meanwhile, since his travails commenced a certificate of marriage from the Registrar of Marriage. This certificate is dated 29.9.2016.

6.1. A perusal of the certificate of marriage, which is, appended at page 66 of the paper book would show that the marriage between the petitioner and his spouse Ms. Ritika Singh was performed on 26.12.2009 and an application to have the same

registered was preferred on 28.8.2014.

6.2 The two year delay in the issuance of certificate of registration evidently, occurred on account of the police verification report having been sent to SDM, Kalkaji instead of SDM, Lajpat Nagar.

7. Mr. Sibal has in fact drawn my attention to the provisions of Section 7(A)(1)(d) of the Citizenship Act, 1955 (in short “Act”) and sub-section (3) of the very same section.

7.1 A perusal of the provisions referred to by Mr. Sibal would show that in order to obtain OCI status, the petitioner’s marriage should have subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under Section 7A. If a literal view on the provisions is taken, then, perhaps the petitioner may not qualify. However, given the wide powers conferred on the central government, it would have the power to, perhaps, relax the rigour of clause (d) of Section 7A(1) of the Act, in the circumstances obtaining in this case. An application for registration of marriage which was filed on 28.8.2014 was not processed till 26.9.2016 for no fault of the petitioner.

8. This apart, perhaps, what is required to be examined from a legal and factual point of view is as to whether the delay in the issuance of a marriage registration certificate could be attributed to the petitioner, and should it not, if the delay is not attributable, relate back to the date when the application was filed with the concerned authority?

9. Given this factual matrix, the respondent is directed to consider the petitioner's application for grant of OCI status as also his application for grant of X visa.

10. The respondent will pass speaking order(s); copy of which will be furnished to the petitioner. Pending consideration of the petitioner's application for grant of OCI status and X visa, no coercive measures will be taken against the petitioner.

11. In case the order(s) passed by the respondent are adverse to the interest of the petitioner, the same will not be acted upon by the respondent for the period of 30 days thereafter to enable the petitioner to take recourse to an appropriate remedy, albeit, in accordance with law.

12. This writ petition and pending application are disposed of in the aforesaid terms.

MARCH 23, 2018

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RAJIV SHAKDHER, J