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

Date of Decision: 11.12.2019

+ EFA(OS) 12/2019

NAVIN KHILNANI

..... Appellant

Through : Mr. Abhijat and Mr.Nikhil
Mehta, Advocates.

versus

MASHREQ BANK

..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

1. The present appeal is directed against the order dated 12.09.2012 read with orders dated 22.09.2019 and 30.07.2019 passed by the learned Single Judge of this court in Execution Petition No. 73/2000.

2. Despite service having been effected by way of e-mail, no one has chosen to appear in this matter on behalf of the respondent. An affidavit of service has been filed by the appellant.

3. The appellant had filed an application seeking clarification of a final order passed on 12.09.2012, by which a direction was sought for release of the appellant's passport permanently and removal of all restrictions imposed upon the applicant/appellant herein and to permit him to travel abroad as and when he desires. Learned Single Judge

was of the view that although the application was styled as one seeking clarification of the final order passed while disposing of the execution petition but the same was, in effect, an application seeking recall of the final order after a period of 6 years of passing of that order. The learned Single Judge accordingly held that if the applicant was aggrieved by the conditions imposed vide final order dated 12.09.2012, he should have filed and availed appropriate remedies as available to him.

4. The background of the case is that by order dated 04.01.2011, the learned Single Judge had passed the following directions in Execution petition No. 73/2000:

“E.A. No.560/2009

1. The judgment debtor has filed this application for return of his passport.

2. During the hearing of this application, the learned counsel for the judgment debtor submits that the visa of the judgment debtor is expiring on 9th January, 2011 and, therefore, pending the decision on this application, an interim order be passed for release of passport for the limited purpose of getting the same extended on the undertaking of judgment debtor that he shall not leave the jurisdiction of this Court and shall re-deposit the passport after renewal. It is submitted that a similar order was passed by this Court on 6th January, 2010.

3. The learned counsel for the decree holder has no objection to the aforesaid limited prayer of the judgment debtor.

4. In the facts and circumstances of this case, the Registry is directed to release the passport of the judgment debtor to him subject to his filing an undertaking to surrender his passport within three days of getting the visa extended. The judgment debtor shall also give an undertaking that he shall not leave the jurisdiction of this Court. An intimation in this regard also be sent to the FRRO that judgment debtor be not permitted to leave India from any airport.

5. Copy of this order be given dasti to the parties under signature of Court Master.

6. Copy of this order be also sent to the FRRO for information.

Ex.P.No.73/2000

1. The judgment debtor is directed to file an affidavit of his assets as well as income in Form 16A, Appendix E, under Order 21 Rule 41(2) of the Code of Civil Procedure within 10 days with an advance copy to learned counsel for the decree holder. The judgment debtor shall also remain present in Court on the next date of hearing.

2. List on 23rd February, 2011.”

5. Subsequently, the Execution Petition No. 73/2000 was disposed of by an order dated 12.09.2012, wherein the following came to be said:

“1. This execution petition is disposed of for the present with liberty to the decree holder to revive this very petition on the decree holder coming to know of existence of the properties of the judgment debtor.

2. *Since the execution petition stands disposed of, all pending applications will stand disposed of and the order by which the defendant has been given the passport will become final, subject to any further orders to be passed in the execution petition if any when it is revived.*

6. In our view, the order of 12.09.2012 is clear and unambiguous. While disposing of the execution petition, all pending applications were disposed of; and the learned Single Judge clarified that the order by which defendant/judgment debtor/appellant herein had been given the passport would become final subject to any further orders to be passed in the execution petition, if and when the same was revived. Once all the applications were disposed of and the passport was returned, there was no question of imposing any restrictions on the applicant and if the learned Single Judge had so intended, he would have ordered so in clear terms.

7. Resultantly, this appeal is allowed.

8. It is clarified that the restrictions imposed on the appellant by order dated 04.01.2011 would be deemed to have been withdrawn by order dated 12.09.2012 passed by the learned Single Judge.

9. The appeal stands disposed of in above terms.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

DECEMBER 11, 2019/j