

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.2537 of 2020**

Ashwani Kumar Mahendru S/o Late Kuldip Rai Mahendru, Aged About 62 Years R/o 7/6, Nehru Nagar (East), Bhilai, Durg 490020, Chhattisgarh.

---- Petitioner**Versus**

1. Union of India Through The Secretary, Ministry of External Affairs, South Block, New Delhi- 110011.
2. The Regional Passport Officer, Regional Passport Office, 1st Floor, Commercial Complex, Sector- 4, Pandit Deen Dayal Upadhyay Nagar, Raipur 492010, Chhattisgarh.

---- Respondents

For petitioner	:	Shri Kshitiz Sharma, Advocate.
For respondents	:	Shri Ramakant Mishra, Asst. Solicitor General.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****03.11.2020**

1. The challenge in the present writ petition is to the order dated 02.09.2020 (Annexure P/1) passed by the respondents whereby the application of the petitioner for releasing impounding of passport has been rejected.
2. The facts of the case in brief is that the petitioner had availed a loan of around 3.30 Crores from M/s Kotak Mahindra Bank Limited (hereinafter referred to as, the Bank) in the capacity of being proprietor of firm known as Dynamic Engineering. It is said that the petitioner had repaid an amount of approximately Rs.2.69 Crores and as on date there is an outstanding of around 1.30 Crores. Towards repayment of the outstanding amount, the petitioner had issued cheques to the aforesaid Bank and upon putting the said cheques for clearance in Ludhiana, the same got dishonored and a criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short, NI Act) was filed and the proceedings are going on before

the court of Judicial Magistrate First Class, Ludhiana in the State of Punjab. Initially the summons were issued but the petitioner could not appear therefore a warrant of arrest was also issued. Subsequently, the petitioner entered appearance before the court and the warrants have since been cancelled and the petitioner also took bail and is presently on bail.

3. The said Bank filed a writ petition before this Court being WPC No.881 of 2019. The said writ petition was disposed of on 11.03.2019. While disposing of the said writ petition, this court had said that "let the petitioner move before the Passport Authorities under Sections 10(3)(e) and (g) of the Passports Act, 1967, for redressal of its grievance. If such application is filed, the passport authority shall pass necessary orders in accordance with law, as early as possible preferably within three months from the date of submission of application by the petitioner".
4. Subsequently, the Bank seems to have moved an application before the Passport Issuing Authority at Raipur for impounding the passport of the petitioner. The said authority passed an order on 24.10.2019 impounding the passport of the petitioner.
5. The said order of the Passport Issuing Authority dated 24.10.2019 was subjected to challenge before the appellate authority under Section 11 of the Passports Act, 1967 (in short, the Act, 1967). The appellate authority i.e. the Chief Passport Officer allowed the appeal of the petitioner vide his order dated 02.03.2020 and remitted the matter back to the passport issuing authority to decide the matter afresh by, firstly giving an opportunity of hearing to the petitioner and secondly to pass a reasoned and speaking order. The passport issuing authority subsequently issued notice to the petitioner calling upon him to submit his explanation as to why the petitioner should not be impounded under the provisions of Section 10(e) and Section

10(h) of the Act, 1967. Subsequently, the passport authority has now vide impugned order dated 02.09.2020 (Annexure P/1) has rejected the claim of the petitioner for releasing the impounding of the passport.

6. Before proceeding further it would be relevant at this juncture to refer to Section 10(3)(e) of the Act, 1967 i.e. the provision which is relevant for the dispute involved in the present writ petition which reads as under :

“10. Variation, impounding and revocation of passports and travel documents.—

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,—

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India.”

7. The contention of the petitioner while assailing the impugned order is that, the provisions of the NI Act cannot be construed to be a criminal proceeding so as to bring into play the provisions of Section 10(e) of the Act, 1967. The dispute between the parties i.e. the petitioner and the Bank is more of civil in nature and that too being a pure private dispute, therefore, the petitioner cannot be treated at par with an accused facing criminal trial for other serious offenses with penal consequences. Further contention of the petitioner was that the observations made by the passport issuing authority asking the petitioner to move to the criminal court for an appropriate relief so far as releasing of impounding of the passport is concerned, is again totally illegal, without competence and in excess of jurisdiction.
8. It was further the contention of the petitioner that the outstanding amount payable to the Bank is also not too huge a figure calling for such a grave action on the part of the respondents of impounding the passport. It was strongly contended by the petitioner that impounding of the passport

otherwise is an act which adversely affects the fundamental rights of an individual, which thus, is violative of Articles 14,19 and 21 of the Constitution of India.

9. Opposing the petition, learned counsel appearing for the Union of India submitted that the writ petition should not be entertained for more than one reason. According to the respondents, the first reason the writ petition should be rejected is on the ground of the same suffers from non-joinder of necessary party. The other ground was that the petitioner have an alternative statutory remedy available and therefore the writ jurisdiction need not to be exercised at this juncture and that no exceptional case has been made out by the petitioner for entertaining the present writ petition bypassing the alternative remedy.
10. Having heard the contentions put forth on either side and on perusal of records, what has to be seen is the fact that this High Court on an earlier occasion itself when the Bank had filed a writ petition had taken a stand that the powers which have to be exercised under the statutes have to be done by the authority prescribed under the Act and therefore, the Bank was directed to approach the passport issuing authority in respect of impounding of the passport of the petitioner. The said observation of the High Court clearly indicates that the High Court was not willing to substitute itself as an authority for determining the issue which otherwise has to be done by an authority notified/authorized under the statute.
11. Another aspect which needs consideration is that, in the past the petitioner himself has availed the remedy under Section 11 of the Act, 1967 by preferring an appeal before the appellate authority. Having once availed the alternative statutory remedy in the past, there is no reason why the petitioner should not challenge the subsequent order again in an appeal

under Section 11 of the Act, 1967. The contention of the petitioner for not preferring an appeal that of the appellate authority in the past having expressed its view on the dispute, is not sustainable for the reason that once when the appellate authority in the past has duly considered the appeal of the petitioner and have also allowed the appeal of the petitioner, there should be no apprehension in the mind of the petitioner that the petitioner would not get a fair and reasonable hearing before the appellate authority.

- 12.** The writ jurisdiction of the High Court should always be exercised in an extraordinary circumstances particularly when there is an alternative remedy available and the alternative remedy being provided under the statute itself. It is settled position of law that the writ court should normally refrain itself from exercising the extraordinary writ powers if the petitioner has an alternative efficacious statutory remedy. A writ petition inspite of there being alternative efficacious statutory remedy available should not be entertained as a matter of routine. There can be no doubt that the High Court under Article 226 of the Constitution has got the power of judicial review even in matters when there are alternative remedies available, but it must be sparingly exercised with great element of caution and not as a matter of course. There are catena of judgments of the Supreme Court as also practically all the High Courts in India laying down this proposition.
- 13.** Moreover, in the instant case the petitioner has in the past availed the statutory remedy provided under the law and the appellate authority had decided the same in favour of the petitioner. Therefore, the contentions of petitioner trying to bypass the remedy available is not sustainable. In view of the same, this court without entering into the merits of the case holds the writ petition to be not sustainable on the ground of there being an

alternative efficacious remedy available.

- 14.** Accordingly, reserving the right of the petitioner to avail the said remedy before the appellate authority, the present writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

inder