Ct. 05
Item No.23
30.09.2022
(Suvendu)

WPA 20052 of 2022

Krishan Mohta
Vs.
Union of India & Ors.

Mr. Rajarshi Dutta
Mr. Nilay Sengupta
Mr. Sujit Banerjee
...........for the petitioner
Mr. Avinash Kankani
Mr. K.Thaker
Mrs. S. Thaker
.........for the respondent no. 1 & 2
Mr. Dipanjan Datta
Mr. Atanu Basu
Mr. Sayan Datta
Ms. Reshma Chatterjee
.............for the respondent no. 3

The petitioner seeks an order of injunction on the respondents from obstructing foreign visit of the petitioner scheduled for 6th October, 2022.

The Union of India and the Bank of Baroda are represented.

From the material disclosed to the Court, it appears that the petitioner resigned as a Director of the of the concerned Company on 31st August, 2017.

Learned counsel appearing for the Bank submits that there is presently an outstanding amount of Rs. 66.41 corers due to the Bank. It is also an admitted position that the petitioner was a guarantor in respect of the Company in question.

The application for the particular Visa shows the dates of travel as 01.10.2022 – 16.10.2022. 16.10.2022 is the intended date of departure from the Schengen area.

Learned counsel appearing for the petitioner submits that the petitioner is ready to give an undertaking that the petitioner will depart from the Schengen area on 16.10.2022 and return to India on 17.10.2022.

Besides the facts presented to the Court which clearly show that the petitioner's travel dates are limited to only certain days in October, 2022, the decision of a Divison Bench of Madras High Court in *Karti P. Chidambaram Vs. Bureau of Immigration & Ors., 2018 SCC OnLine Mad 2229*, may be referred to. In the said decision, the Court was of the view that the Look Out Circulars were essentially coercive measure to compel surrender of a person to the Investigating Agency or the Court of law. The Court referred to an Office Memorandum of the Ministry of Home Affairs dated 27.10.2010 wherein certain guidelines were laid down for issuance of Look Out Circulars. The Court held that a request for issuance of LOC sould necessarily contain reasons for such request and that the condition precedent for issuance of LOC is an existence of reasons.

A Coordinate Bench of this Court in *Vishambhar Saran Vs. Bureau of Immigration & Ors.* (*W.P.No. 10241(W) of 2020*) was also of the view that the authorities cannot resort to restriction of a citizen's departure outside the country on the basis of outstanding dues to the Bank. In that case, the petitioner owed an amount of Rs. 350 crores to the Punjab National Bank. The Court was of the view that the respondent authorities had failed to justify as to why the departure of the petitioner would be detrimental to the sovereignty, security or the integrity of the country.

According to learned counsel appearing for the Union of India, the reason given in the LOC in the present case is that the petitioner is a willful defaulter being the guarantor of the company in question. The LOC is of 26th July, 2021. The Bank has since initiated recovery proceedings against the Company which are presently continuing before the DRT. The petitioner is a party to such proceeding.

The fact that the petitioner seeks to travel for business reasons and that too for a restricted period of time after which the petitioner's Visa would expire, this Court is inclined to grant relief prayed for.

There is no evidence on record to show that the petitioner may turn out to be an absconder or will not return to the country. The petitioner presently works in a Company located in Kolkata and the undertaking given by the petitioner that the petitioner will return to Kolkata on 17th October, 2022 is recorded.

WPA 20052 of 2022 is disposed of in terms of the above.

The respondent shall not prevent or obstruct the petitioner's travel to the places indicated in the Visa being part of the records and for the duration indicated above.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(**Moushumi Bhattacharya, J.**)