



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

% *Date of decision: 28.07.2022*

+ **LPA 351/2022, CM Nos. 24786/2022 & 32604-05/2022**

SAMARTH NARANG

.....Appellant

Through Mr Sudhir Makkar, Sr. Adv. with Ms
Rashi Bansal and Ms Soumya Gupta,
Advs.

versus

UNION OF INDIA THROUGH MINISTRY OF HOME AFFAIRS &
ORS.

.....Respondent

Through Mr Anil Soni, CGSC for-1
Mr O.P. Gaggar, Adv. for R-3

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM APPL. 24786/2022

1. This is an application filed on behalf of the appellant, seeking condonation of delay in filing the appeal.

1.1 The period of delay involved in the application is 40 days.

2. For the reasons given in the captioned application, the delay is condoned.

3. The application is disposed of in the aforesaid terms.



4. This is an application filed on behalf of the appellant seeking amendment of the appeal.

4.1. Given the order that we propose to pass, with the consent of the counsels for the parties, the application is allowed.

5. The application is disposed of in the aforesaid terms.

LPA 351/2022

6. In this appeal, we are required to consider the tenability of the grievance articulated *vis-à-vis* the conditions stipulated in the interlocutory order dated 16.03.2022 passed by the Learned Single Judge in W.P.(C) No.1177/2022.

6.1. *Via* the impugned order, the Learned Single Judge has disposed of the interlocutory application preferred by the appellant i.e., CM No.3397/2022.

7. Although the prayers sought by the appellant in the application concerned a whole array of directions, a perusal of the impugned order would show that the core submission advanced before the Learned Single Judge was that the appellant should be permitted to travel to Singapore.

8. The Learned Single Judge, while acceding to this prayer, has set down certain conditions, which stand incorporated in Clauses (A) to (J) of paragraph 16 of the impugned order.

8.1 We were told by Mr Sudhir Makkar, learned senior counsel, who appears on behalf of the appellant, that the appellant is aggrieved by the conditions stipulated in Clause (A), (C) and (F) of paragraph 16 of the impugned order.

9. Before we proceed further, certain broad aspects of the case need to be noticed.

9.1. The writ petition filed by the appellant centres around the Look Circular dated 13.12.2021 [in short “LOC”] issued by respondent no.2/Bureau of Immigration, at the behest of respondent no.3 i.e., the Union Bank of India [hereafter referred to as “UBI”] and the order dated 18.04.2019 passed by UBI, *inter alia*, declaring the appellant as a wilful defaulter. There are several strands to these essential prayers, which are not set forth herein to avoid prolixity.



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10. The record shows that UBI had sanctioned credit facilities in favour of a partnership firm, going by the name M/s United Exports.

10.1. The appellant was inducted as a partner in M/s United Exports, on 01.04.2013.

10.2. Loan facility was sanctioned in favour of M/s United Exports on 19.12.2013 for an amount equivalent to Rs.96.89 crores. Apparently, these credit facilities were renewed between 2014 and 2015. Thereafter, we are told, the credit facilities were renewed on 20.06.2016 for an amount of Rs.96.30 crores.

10.3. The appellant claims that he resigned as a partner from M/s United Exports with effect from 01.04.2015, with the execution of the deed of partnership dated 24.09.2015.

11. The record shows that the appellant had executed a fresh personal guarantee in favour of UBI on 07.11.2016, after an objection was raised by UBI in its communication dated 29.02.2016, *inter alia*, concerning the retirement of the appellant from M/s United Exports.

11.1. In this communication, UBI had adverted to the request made for the release of the appellant’s personal guarantee. The UBI, in this context, had pointed out that, as per their record, the appellant had means equivalent to

approximately Rs. 6 crores and, therefore, it should be provided “comfort letter” to enable them to release his personal guarantee.

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12. The credit facilities extended to M/s United Exports were renewed by UBI *via* sanction letter dated 28.03.2018 for a period of six months i.e., up to 25.09.2018, subject to the terms and conditions stipulated therein.

13. Apparently, because of defaults, the account of M/s United Exports was declared an Non-Performing Asset (NPA) on 30.06.2018. The appellant was sent an intimation in that behalf on 04.07.2018.

13.1. At that particular juncture, as is evident from the aforesaid communication, the amount outstanding and payable by the principal borrower, i.e. M/s United Exports and the guarantors, was pegged at Rs.93.27 crores.

14. This communication was followed by a recall letter dated 20.07.2018, and a notice dated 02.08.2018 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short “SARFAESI Act”]

15. A demand was raised by UBI against the appellant on 11.09.2018, claiming an amount of about Rs.93.53 crores as on 31.07.2018.

15.1. Likewise, a letter dated 06.11.2018 was served by UBI on the appellant, informing him that because he had failed to regularize the account, he had been classified as a wilful defaulter.

16. The record shows that the appellant, *vide* various communications, raised objections concerning his liability on various grounds, including the fact that he had resigned as a partner from M/s United Exports, and that at the time of renewing the credit facilities, his consent was not taken.



16.1. The appellant also protested, it appears, *via* a reply dated 20.11.2018, regard to the decision taken to classify him as a wilful defaulter (*via* letter dated 06.11.2018, mentioned above.)

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17. It is in this background that UBI filed a recovery action i.e., O.A.No.1245/2018, before Debt Recovery Tribunal-II, Delhi (DRT) against M/s United Exports and the personal guarantors, which includes the appellant, for recovery of debts owed to it; These proceedings, we are told, are pending adjudication.

18. Besides this, M/s United Exports, along with its remaining partners, who are none other than the father, mother and brother of the appellant i.e., Mr Harish Narang, Ms Sangeeta Narang and Mr Sudhanshu Narang have approached this Court *via* a writ petition i.e., W.P.(C) No.9523/2021 impugning UBI's action, declaring them as wilful defaulters.

18.1. In this writ petition, an interim order dated 03.09.2021 has been issued, whereby UBI was directed not to take any further steps with regard to publication of the writ petitioners' names and particulars pursuant to their declaration as wilful defaulters. Pertinently, the appellant is not a party to this writ petition.

18.2. This writ petition is also pending adjudication.

19. The record also reveals that the partners of M/s United Exports, referred to above, have approached another Learned Single Judge of this Court *via* W.P.(C) No.8330/2022 to, *inter alia*, assail the issuance of LOC against them.

19.1. In this writ petition, an order dated 25.05.2022 has been issued, whereby the writ petitioners i.e., the father, mother and brother of the appellant, have been permitted to travel outside to the countries indicated therein, subject to conditions stipulated in that behalf.

20. We may also note that UBI has taken recourse to the provisions of SARFAESI Act, which has resulted in recovery of some portion of the outstanding amount.



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21. It is in this backdrop that Mr Makkar had advanced arguments on behalf of the appellant. Mr Makkar's submissions can be broadly paraphrased as follows.

21.1. The appellant had retired as a partner from M/s United Exports way back in 2015. The credit facilities were renewed in 2018, without taking the consent of the appellant.

21.2. The appellant was working in Merrill Lynch and was a citizen of Singapore, and therefore, needed to travel outside to Singapore, where he was located.

21.3. The issuance of LOC against him was unsustainable in law. The appellant was unlawfully detained at Indira Gandhi International Airport, Terminal 3, Delhi on 19.12.2021, when he was seeking to travel out along with his wife and eight-year old child. The appellant was not a "flight risk" and/or a fugitive from law. The appellant had not been called for any enquiry or investigation by CBI, as alleged or at all.

21.4. The claim made against the appellant for recoveries of monies was a civil claim, at the highest.

21.5. The appellant had a viable defence to the claim made against him by UBI. UBI's claim against the appellant was based solely on the personal guarantee furnished by him, which had lost its efficacy.

21.6. The conditions stipulated in the impugned order for suspension of LOC for four weeks were extremely harsh and stringent. The appellant did not have

the wherewithal to provide a bank guarantee or security by way of immovable property worth Rs.20 crores.



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21.7. In contrast, the other partners of M/s United Exports, who had approached the Court for a similar permission had been allowed to leave the country, subject to conditions which were not as rigorous as those stipulated in the appellant's case.

22. On the other hand, Mr O.P. Gaggar, who appears on behalf of UBI, contended that there was no interference called for, in the facts of the case, with the impugned order. Mr Gaggar opposes the appellant's plea on the following grounds:

22.1. UBI had not granted its no objection certificate to the appellant exiting as a partner from the M/s United Exports.

22.2. The personal guarantee furnished by the appellant was a continuing guarantee, and therefore he continued to remain jointly and severally liable for the debts owed to UBI. The appellant's liability is, thus, co-extensive with that of M/s United Exports and other guarantors. M/s United Exports and the personal guarantors were jointly and severally liable to pay approximately Rs.119 crores (as on date) to UBI.

22.3. The Economic Offences Wing of the CBI had recently registered an FIR against the appellant. Given the fact that the appellant was a citizen of Singapore, he was indeed a "flight risk" and therefore, the conditions stipulated in his case for suspending the LOC ought not to be varied.

23. In rejoinder, Mr Makkar, to assuage the apprehensions of UBI, offered to deposit the passport of the appellant's wife i.e., Ms Rashi Narang.

23.1. Mr Makkar also indicated that the appellant would be willing to suffer a direction to the effect that the appellant would not operate the bank accounts

and/or deal with the assets referred to in paragraphs 5 and 6 of his affidavit dated 30.05.2022.

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23.2. The submission, in effect, was that the conditions stipulated by the Learned Single Judge for suspension of the LOC for four weeks could be supplanted with the aforementioned offer made on behalf of the appellant.

24. Mr Anil Soni, who appears on behalf of respondent nos.1 and 2, submitted that the LOC *qua* the appellant was issued based on the request of UBI and that on merits, the said respondents had no submissions to make.

25. Having heard the counsel for the parties and perused the record, we are of the view that some of the conditions stipulated in the impugned order for suspending the LOC for a period of four weeks (from the date of departure of the appellant) are harsh and stringent.

25.1. That being said, the apprehension of UBI that the appellant may not return to the country cannot be completely disregarded.

26. The civil proceedings taken out by UBI are being contested by the appellant. The appellant broadly endeavours to set up a defence that the personal guarantee furnished by him had lost its efficacy, as the renewal of credit facilities in 2018 in favour of M/s United Exports did not have his consent.

26.1. The defence may or may not sustain, which would depend on the terms and conditions of the personal guarantee, and the evidence adduced in the matter.

26.2. Suffice it to say, that it is UBI's case before us that the personal guarantee foists on the appellant, a continuing liability till debts owed to it are defrayed. It is UBI's case that the appellant is jointly and severally liable for the outstanding debts.

27. As noticed above, the firm i.e., M/s United Exports, along with remaining partners, excluding the appellant, have approached the Court against them being declared wilful defaulters. In the said writ petition i.e., W.P.(C) No.9253/2021, UBI by way of an interim order dated 03.09.2021, has been restrained from publicizing their names as wilful defaulters, as noticed above.



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28. Besides this, another Learned Single Judge of this Court *via* order dated 25.05.2022, passed in W.P.(C) No.8330/2022 has permitted the appellant's father, mother and brother from leaving the country, on conditions that are far less rigorous than those imposed on the appellant *via* the impugned order. For the sake of convenience, the conditions stipulated *via* order dated 25.5.2022 are extracted hereafter:

“In the interim and notwithstanding the issuance of the Look Out Circular at the instance of the respondent No.3, the petitioner Nos. 1 and 3 are permitted to travel to USA and the petitioner No.2 to France between 01 June 2022 to 15 July 2022 subject to the following conditions: -

(a) The petitioners shall file an undertaking in the form of an affidavit with the respondent No.3 as well as with the Registrar General of this Court undertaking therein that they shall not dispose of any of the immovable properties seized by the respondent No.3 and lying with them during the pendency of the present petition. The copies of the documents which the petitioners will file with the Registrar General, shall also be furnished to all the respondents.

(b) The petitioners shall also file a requisite undertaking before the Registrar General of this Court that they shall return to the country not later than by 15 July 2022;

(c) The petitioners will also furnish to the respondents a copy of the air tickets they have purchased for their travel, along with the complete itinerary of their stay in US and France. The petitioners will also provide a phone number which would be used by them during their stay abroad, which number will be kept operational at all times.”

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29. Therefore, the only distinction between the case concerning the appellant and that which involves the other family members, who had also furnished personal guarantees, is that the appellant is a citizen of Singapore and is working for gain in Singapore, with an entity going by the name Merrill Lynch, QVT Financial and at the House of Grains.

30. In our opinion, the possibility of the appellant not returning to the country seems remote, as his immediate family, comprising his wife and child would continue to remain in Delhi.

31. Besides this, what is to be borne in mind is that it is not the case of the respondents, which includes UBI, that the appellant has ever been summoned for inquiry and investigation; although, we were told that recently an FIR has been registered wherein the appellant has been arrayed as an accused.

32. Therefore, given the fact that the writ petition is pending adjudication and the offer made by the appellant that his wife i.e., Ms Rashi Narang, who works for gain in Delhi, will deposit her passport with the Registry of the Court, in our view, the conditions stipulated by the Learned Single Judge *via* the impugned order can be modulated/varied.

33. Thus, the impugned order is varied to the following extent:

(i) The LOC shall remain suspended for a period of four weeks from the date of the appellant's departure to Singapore.

(ii) The appellant will return to the country on or before the expiry of weeks; which would commence, as indicated above, from the date of his departure.



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(iii) The appellant will deposit the passport of his wife i.e., Ms Rashi Narang, with the Registry of this Court, at least three days prior to his intended date of departure.

(iv) Ms Rashi Narang will file an affidavit in this Court, giving her consent to the deposit of her passport with the Registry of this Court. This affidavit will be filed along with her passport.

(v) The appellant will furnish an undertaking by way of an affidavit, that he shall not operate or deal with the assets, which includes the bank accounts referred to in paragraph 5 and 6 of his affidavit dated 30.05.2022 (filed pursuant to the order of this Court dated 24.05.2022.)

(vi) Once the appellant returns to the country in the timeframe stipulated in paragraph 2 above, he would have leave to apply to the Learned Single Judge, for retrieving the passport of his wife i.e., Ms Rashi Narang.

(vii) In case the appellant was required to travel again after he returns from Singapore, he would apply to the Learned Single Judge in the pending writ petition, for necessary permission. The Learned Single Judge will be at liberty to examine the application on merits, and stipulate conditions, if any, as may be deemed fit, at the given point in time.

(viii) The appellant, if called upon to do so, will join the inquiry or investigation, upon notice being issued in that behalf. The concerned authority will issue a written notice, giving the appellant at least 15 days to join the investigation, unless an emergent situation requires lesser time being accorded to the appellant, especially if he is, at that juncture, located in India.

34. The aforesaid conditions, i.e., those stipulated in paragraphs (i) to (j) will supplant the conditions stipulated in clauses (A), (B), (C), (F) & (J) in paragraph 16 of the impugned order. Thus, apart from the conditions stipulated hereinabove, the conditions stipulated by the Learned Single Judge in clauses (D), (E), (G), (H) & (I) in paragraph 16 of order dated 16.03.2022 will continue to operate.



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35. The appeal and the pending application are disposed of in the aforesaid terms.

36. The parties will act based on the digitally signed copy of the judgment.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JULY 28, 2022

Click here to check corrigendum, if any