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W.A.(MD) No.1085 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.07.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.A.(MD) No.1085 of 2023
and
C.M.P.(MD) No.8230 of 2023**

Micheal Kwaku Yeboah

... Appellant

-vs-

Foreigners Regional Registration Office
Bureau of Immigration
Ministry of Home Affairs
Government of India
Sastri Bhavan Annex
Chennai-600 006

... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 06.06.2023, passed in W.P.(MD) No.12970 of 2023, on the file of this Court.

For Appellant : Mr.G.Prabhu Rajadurai



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J U D G M E N T

[Judgment of the Court was made by S.S.SUNDAR, J.]

This writ appeal is directed against the order of the learned Single Judge, dated 06.06.2023, passed in W.P.(MD) No.12970 of 2023.

2. The brief facts, which are necessary for the disposal of this writ appeal, are as follows:

2.1. The appellant admittedly is a citizen of Ghana.

He came to India to establish a business under the name and style of “Awesie Afra Private Limited”, with a registered office at Kolkatta, West Bengal. It is the case of the appellant that the said Company was incorporated under the provisions of the Indian Companies Act, under ROC Kolkatta No.233209. The appellant is one of the Directors and it is stated that his wife is the another Director and the another Director is admittedly an Indian, by name, Sandip Majumder.

2.2. The appellant came to India on 22.04.2021 with a business Visa (B2), issued by the Indian Embassy at



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Ghana. He was permitted to stay in India for a year. It is the case of the appellant that he was settled in Tuticorin and was doing a business of importing cashew nuts and selling it to the regional purchasers. Though the visa period expired and the application for renewal of the same was due even from 12.01.2022, the appellant preferred to overstay in India and applied for extension of visa period, again on 15.03.2023. At that time, it was informed to the appellant that his earlier application had been closed with a direction to the appellant to pay a sum of Rs.68,000/- towards exit penalty.

2.3. Insofar as his subsequent application filed on 15.03.2023 is concerned, his application was rejected with a direction to the appellant to leave the shores of the country on or before 06.06.2023. Challenging the rejection of his application for extension of visa period, the appellant filed the writ petition.



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2.4. The learned Single Judge, after finding that the appellant was negligent, refused to grant any relief to him. While doing so, the learned Single Judge has also recorded the objection raised by the learned Deputy Solicitor General of India placing reliance on Section 3(2)(c) of the Foreigners Act, 1946.

3. It is admitted that the appellant came to India on 22.04.2021 with a business visa for one year and the visa period expired on 21.04.2022, however, he overstayed in India thereafter. As per Section 3(2)(c) of the Foreigners Act, 1946, the overstay of the appellant in India is illegal. The appellant, therefore, cannot be permitted to overstay in India. Even though the appellant filed an application for extension of visa period and the same was pending consideration, he was, as per law, advised to leave the country and pursue the matter. As no provision was cited, either before the learned Single Judge or before this Court that a person, whose visa period is expired, can be permitted to overstay merely because the application filed by him for extension of visa period is pending consideration. In that view of the matter, this Court finds no merit in this appeal.



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4. At this juncture, learned counsel for the appellant submits that the order of the respondent directing the appellant to pay a sum of Rs.68,000/- towards exit penalty is not valid. This ground was in fact not raised before the learned Single Judge. Therefore, we are not inclined to consider the same in this writ appeal. The learned Single Judge had also observed that the petitioner's overstay will not be put against him, while considering his application.

5. Hence, for all these reasons, this writ appeal fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.]

[D.B.C., J.]

17.07.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To:
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Ministry of Home Affairs,
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