IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-20828-2025 (O&M)
Date of decision : 31.07.2025

KOTAK MAHINDRA BANK LIMITED

…Petitioner

Versus

STATE OF HARYANA AND OTHERS

…Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Aman Vasisth, Advocate
and Mr. Mahip Datta Parashar, Advocate
for the petitioner.

Ms. Upasana Dhawan, A.A.G., Haryana.

HARSH BUNGER, J. [ORAL]

1. Petitioner-Kotak Mahindra Bank Limited has filed the instant writ petition under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of *mandamus*, for directing respondent Nos.1 to 3 to take necessary steps for impounding of passports of respondent Nos.4 to 7, under the provisions of the Passport Act, 1967.

1.1 A further prayer has been made for directing the respondents No.1 to 3 and the concerned police authorities to secure the presence of respondents No.4 to 7 in relation to investigation of case FIR No.0259 dated 04.05.2025 registered at Commissionerate of Police, Gurugram, Haryana.

2. Briefly, M/s Ashiana Ispat Ltd., being the principal borrower

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through its Director namely, Sh. Naresh Chand (respondent No.4) and Sh. Puneet Jain (respondent No.5) approached the petitioner-Bank for availing financial facilities in the nature of loan against property for an amount of Rs.11,02,00,000/- (Rupees Eleven Crores Two Lakhs only). It is stated that the immovable property i.e. Industrial Property located at A-1117, RIICO Industrial Area, Bhiwadi, Phase-III, Rajasthan, was already mortgaged with Yes Bank against the financial facilities availed by Ashiana Ispat Ltd (borrower company from Yes Bank). It is stated that the petitioner-Bank sanctioned the loan facility in the nature of loan against property upon the request of the borrower Company/Directors vide sanction letter dated 17.05.2024 (Annexure P-3).

2.1 Petitioner claims that the financial facility so availed by the borrower Company/Directors was for the purpose of closure of liabilities of Yes Bank with the condition that the immovable property i.e. the Industrial Property at Bhiwadi (Rajasthan) shall continue to be charged/mortgaged with the petitioner-Bank and therefore, it was agreed between the borrowers and the petitioner-Bank that the loan amount will be disbursed directly to the Yes Bank and upon receipt of the said amount, the original title deeds of the mortgaged property will be released by the Yes Bank to the petitioner-Bank. It is stated that respondents No.4 to 7 herein executed various documents in favour of the petitioner-Bank so as to avail the loan facility like `Home Equity Loan Agreement', `Addendum Agreement', `Undertaking cum Indemnity', `Power of Attorney', `Authority Letter' and `Deed of Indemnity" (Annexures P-4 to P-9, respectively). It is further stated that the borrower company/Directors had also agreed to secure the financial facility by creation of equitable mortgage over the above-referred Industrial Property at Bhiwadi (Rajasthan) and even the title documents of

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the property, which was earlier mortgaged with the Yes Bank, was to be handed over directly to the petitioner-Bank upon the closure of the liability with Yes Bank. When the petitioner-Bank issued the banker's cheque of Rs.11,00,00,000/- (Rupees Eleven Crores only) for closure of accounts of the borrower company with the Yes Bank, they requested for handing over the original title deeds of the mortgaged property to the petitioner-Bank. However, it is alleged that despite receipt of Rs.11,00,00,000/- (Rupees Eleven Crores only) by Yes Bank from the petitioner-Bank and having been duly acknowledged the same by way of an *e-mail*, the officials of the Yes Bank released the original title deeds of the mortgaged property to respondents No.4 and 5 herein. It is stated that when the petitioner-Bank confronted respondent No.5 with the afore-said fact, then instead of submitting the original title deeds, he stated that they are in the process of closing the loan account maintained with the petitioner-Bank and made a part payment of Rs.1,75,00,000/- (Rupees One Crore Seventy Five Lacs only) towards the loan account facility extended by the petitioner-Bank. However, even thereafter, the respondents borrowers/directors have failed to close the loan account of the petitioner-Bank and illegally sold the mortgaged property to one M/s JD Infra Estates Pvt. Ltd. in conspiracy with Mr. Pankaj Jaiswal and Mr. Deepak Arora (officers of Yes Bank) along with one Mr. Raman Arora.

2.2 It appears that on account of afore-said act and conduct of the borrower company/its directors and their other accomplices, the petitioner-Bank has already got an FIR No.0259 dated 04.05.2025 (Annexure P-17A) registered against respondents No.4 to 7 and other accused persons at Police Station DLF Gurugram. It transpires that the petitioner-Bank has also initiated recovery proceedings before the Debt Recovery Tribunal-II,

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Chandigarh by filing an Original Application (***OA No.433 of 2025***) and even the insolvency proceedings have been initiated under the Insolvency Act before the National Company Law Tribunal, Delhi and NCLT, Jaipur.

2.3 In the backdrop of the afore-mentioned facts and circumstances, the petitioner has filed the present writ petition on the plea that respondents No.4 to 7 have caused wrongful loss to the petitioner-Bank for their own wrongful gains and they are likely to evade the due process of law by leaving the country; therefore, their passports be impounded.

3. Heard.

4. Hon'ble Supreme Court of India in ***Suresh Nanda Versus CBI, (2008) 3 SCC 674;*** observed as under:-

> *"............In our opinion, while the police may have the power to seize a passport under Section 102(1) Criminal Procedure Code, it does not have the power to impound the same. Impounding of a passport can only be done by the passport authority under Section 10(3) of the Passports Act, 1967.*
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> *12. It may be mentioned that there is a difference between seizing of a document and impounding a document. A seizure is made at a particular moment when a person or authority takes into his possession some property which was earlier not in his possession. Thus, seizure is done at a particular moment of time. However, if after seizing of a property or document the said property or document is retained for some period of time, then such retention amounts to impounding of the property/or document. In the Law Lexicon by P. Ramanatha Aiyar (2nd Edition), the word "impound" has been defined to mean "to take possession of a document or thing for being held in custody in accordance with law". Thus, the word "impounding" really means retention of possession of a good or a document which has been seized.*
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> *13. Hence, while the police may have power to seize a passport under Section 102 Criminal Procedure Code if it is*

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permissible within the authority given under Section 102 of Criminal Procedure Code, it does not have power to retain or impound the same, because that can only be done by the passport authority under Section 10(3) of the Passports Act. Hence, if the police seizes a passport (which it has power to do under Section 102 Criminal Procedure Code), thereafter the police must send it alongwith a letter to the passport authority clearly stating that the seized passport deserves to be impounded for one of the reasons mentioned in Section 10(3) of the Act. It is thereafter the passport authority to decide whether to impound the passport or not. Since impounding of a passport has civil consequences, the passport authority must give an opportunity of hearing to the person concerned before impounding his passport. It is well settled that any opportunity of hearing to a party vide ***State of Orissa Versus Binapani Dei [AIR 1967 Supreme Court 1269]****.*

14. In the present case, neither the passport authority passed any order of impounding nor was any opportunity of hearing given to the appellant by the passport authority for impounding the document. It was only the CBI authority which has retained possession of the passport (which in substance amounts to impounding it) from October, 2006. In our opinion, this was clearly illegal.Under Section 10A of the Act retention by the Central Government can only be for four weeks. Thereafter it can only be retained by an order of the Passport authority under Section 10(3).

15. In our opinion, even the Court cannot impound a passport. Though, no doubt, Section 104 Criminal Procedure Code states that the Court may, if it thinks fit,impound any document or thing produced before it, in our opinion, this provision will only enable the Court to impound any document or thing other than a passport. This is because impounding a "passport" is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while the Criminal Procedure Code is a general law. It is well settled that the special law prevails over the general law vide G.P. Singh's Principles of

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Statutory Interpretation (9th Edition pg. 133). This principle is expressed in the maxim "Generalia specialibus non derogant". Hence, impounding of apassport cannot be done by the Court under Section 104 Criminal Procedure Code though it can impound anyother document or thing..."

5. Considering the above, since the decision to revoke or impound the passport of a citizen would be purely in the domain of passport authority, who is competent to take action in accordance with the provisions of the Passport Act, 1967 and Rules/Instructions framed thereunder; accordingly, the present writ petition is dismissed, however, leaving it open to the petitioner-Bank to pursue its remedy before the Passport Authorities. It goes without saying that in case, any such request is made by the petitioner-Bank, the same shall be considered by the Passport Authorities, in accordance with law.

5.1 As regards the second prayer, the petitioner shall be at liberty to make the said prayer during the course of proceedings/trial in case FIR No.259 dated 04.05.2025.

6. All pending application/s, if any, shall also stand closed.

July 31, 2025 **(HARSH BUNGER)**
gurpreet **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

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