

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JUNE, 2022

BEFORE

THE HON'BLE MR.JUSTICE S.G.PANDIT

WRIT PETITION NO.11213/2022 (GM-PASS)

BETWEEN:

MRS. LEENA RAKESH

...PETITIONER

(BY SRI SHASHIKIRAN SHETTY, SR.COUNSEL A/W
SMT. LATHA S SHETTY, ADV.)

AND:

1. BUREAU OF IMMIGRATION
MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA
REPRESENTED BY ITS COMMISSIONER
(IMMIGRATION)

EAST BLOCK-VIII, LEVEL-V, SECTOR-1
R.K.PURAM, NEW DELHI-110066.

2. FOREIGN REGIONAL REGISTRATION OFFICER
(FRRO), BANGALORE
BUREAU OF IMMIGRATION
MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA
5TH FLOOR, 'A' BLOCK, TTMC
BMTC BUS STAND BUILDING
K.H.ROAD, SHANTINAGAR
BANGALORE-560027.

3. THE BANK MANAGER
UCO BANK, NO.47,
MM ROAD, KANNASA BUILDING
FRASER TOWN-0624 BRANCH
FRASER TOWN
BANGALORE-560005.

4. MR.RAKESH KUMAR DEVENDRAN

...RESPONDENTS

(BY SRI SHANHI BHUSHAN H, CGC FOR R1 & R2
SRI K.R.PARASHURAM, ADV. FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE ACTIONS OF THE RESPONDENTS IN ISSUING AN ENDORSEMENT OF CANCELLATION IN PASSPORT OF THE PETITIONER DATED 05.06.2022 BY R2 AND NOT PERMITTING THE PETITIONER TO TRAVEL FROM BENGLAURU TO

PHILIPPINES ANNEXURE-A IS HIGHLY ARBITRARY, ILLEGAL AND WITHOUT AUTHORITY OF LAW AND IS IN VIOLATION OF ARTICLE 14, 19 AND 21 OF THE CONSTITUTION OF INDIA AND ETC.

THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Petitioner is before this Court under Article 226 of the Constitution of India, praying for a writ of mandamus or appropriate writ or direction, declaring that the actions of the respondents in issuing an endorsement of cancellation on the passport of the petitioner by respondent No.2 and not permitting the petitioner to travel from Bengaluru to Philippines as highly arbitrary, illegal and without authority of law; for a writ of mandamus or any other appropriate writ or direction, declaring that the actions of respondent Nos.1 and 2 in preventing the petitioner from traveling out of Country on work as highly arbitrary, illegal and violation of Articles 14, 19 and 21 of the Constitution of India.

2. Heard learned Senior Counsel Sri.Shashikiran Shetty for Smt.Latha S Shetty, learned counsel for the petitioner; learned Assistant Solicitor General Sri.Shanthi Bhushan for respondent Nos.1 and 2 and Sri.Parashuram, learned counsel for respondent No.3.

3. Learned Senior counsel for the petitioner would submit that petitioner along with her husband had obtained loan from the 3rd respondent-Bank on 19.12.2014. The property which is offered as security to the loan obtained by them stands in joint name of the petitioner as well as her husband Mr.Rakesh Kumar. It is submitted that the petitioner and her husband are due in a sum of Rs.66,11,868/- as on 13.06.2022. It is also submitted that the petitioner and her husband had not paid the installments from September 2019 to the 3rd respondent-Bank. The reason for not repaying the loan is that, due to differences between the petitioner and her husband, they are before the Family Court in

M.C.No.5079/2019 praying for a judgment and decree to dissolve their marriage.

4. Learned Senior Counsel would further submit that, to tender her evidence in the pending divorce proceedings, the petitioner came down to India on 01.06.2022; on 02.06.2022, the petitioner tendered her evidence in the Matrimonial proceedings and on 05.06.2022, she was to travel back to Philippines where she is working. It is submitted that the petitioner had come to India leaving her two minor children aged about 10 and 8 years at Philippines. The petitioner was to leave India on 05.06.2022, but she was prevented from leaving the Country by the first respondent, putting cancellation seal on her passport and she was prevented from traveling to abroad at the request of the 3rd respondent-Bank. The first respondent issued Look out Circular (for short "LOC") against the petitioner.

5. Learned Senior Counsel Sri.Shashikiran Shetty would submit that action of the respondents in preventing the

petitioner from traveling outside the Country is in violation of Articles 14, 19 and 21 of the Constitution of India. It is submitted that the 3rd respondent could not have requested for issuance of LOC as the issuance of LOC is not a recovery proceedings. It is submitted that the 3rd respondent has initiated recovery proceedings and has brought the property offered as security for sale, to realize the dues from the petitioner and her husband. It is submitted that the property was brought to sale on three occasions and the 3rd respondent-Bank could not realize the amount due. Learned Senior Counsel would submit that the value of the property, according to the valuation of the 3rd respondent-Bank is around Rs.75,00,000/- whereas the market value of the property is nearly Rs.1,00,00,000/-. Thus, he submits that when security is available, the 3rd respondent-Bank could not have resorted to request for issuance of LOC, so as to recover the amount from the petitioner. It is further submitted that the 3rd respondent-Bank has not made any effort to recover the amount from the husband of the petitioner.

6. Learned Senior Counsel would submit that LOC is requested by the 3rd respondent-Bank in terms of the Official Memorandum (for short “OM”) dated 4th October 2010, which is revised from time to time. He submits that neither criminal case nor cognizable offence is registered against the petitioner. LOC could be issued in such cases, only if the authorities come to the conclusion that if a person is permitted to travel outside the Country, the economic interest of the Country would be affected. It is submitted that in the present case, when the security of the property is more than the value of the amount due, which is nearly Rs.66,11,868/-, the same would have no effect on the economic interest of the Country. Thus, learned Senior counsel relying upon the decision of the Division Bench of Punjab and Haryana High Court at Chandigarh contended that quantum of the alleged default by the borrower by itself cannot be the basis for seeking issuance of an extreme process like an LOC for restricting the personal liberty of the petitioner to travel

outside the Country. Thus, he prays for allowing the writ petition.

7. Learned Assistant Solicitor General Sri.Shanthi Bhushan appearing for respondent Nos.1 and 2 would submit that LOC was issued and the petitioner was prevented from traveling outside the Country at the request of 3rd respondent-Bank. Further, he would invite attention of this Court to O.M. dated 04.10.2016 produced along with statement of objections by respondent No.3 that wherever respondent-Bank is of the opinion that fraudsters/persons who wish to take loans, willfully default and then escape to foreign jurisdictions to avoid paying back, against such persons, request could be made to issue LOC and such persons could be restricted from traveling outside the Country. Thus, it is submitted that the whenever the Bank requests on the ground that it would not be in a possession to recover the money, if a person is permitted to travel outside, respondent Nos.1 and 2 would take action to issue LOC.

Learned Assistant Solicitor General placing reliance on the judgment of this Court in **W.A.No.315/2021** disposed of on 12.05.2021 (**Dr.Bavaguthuraghuram Shetty V/S Bureau of Immigration and Others**) contends that there need not be any criminal case registered to issue LOC, but it could be issued at Bank's request, if the Bank is of the opinion that if the borrower is permitted to leave the Country it would not be in a position to recover the dues, by which it would have adverse impact on the economic interest of the Country.

8. Learned counsel for 3rd respondent-Bank Sri.Parashuram would submit that the petitioner along with her husband obtained loan from the 3rd respondent-Bank and when they failed to repay the dues, the 3rd respondent-Bank initiated recovery proceedings under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act"). Further, he submits that even after 3 occasions, the property is not sold. Further, learned counsel

would submit that the petitioner inducted tenants by receiving Rs.22,00,000/- and the tenants have filed O.S.No.25401/2021 making the Bank as one of the parties.

It is the main contention of the respondent-Bank that because of induction of tenant in the secured property, Bank could not sell the property, even after the property is brought to sale on 3 occasions. Further, learned counsel would submit that the security offered for Bank is the Apartment, which is valued at Rs.68,00,000/- according to the Bank. It is the submission of the learned counsel for the respondent-Bank that if the petitioner is permitted to leave the Country, they will not be able to recover outstanding dues. It is submitted that the petitioner along with her husband is due in a sum of Rs.66,11,868/- as on 13.06.2022. Further, learned counsel would submit that 3rd respondent-Bank is authorized to request respondent Nos.1 and 2 for issuance of LOC wherever there is fraud and wherever the Bank is of the opinion that the loanee would leave the Country to avoid repayment of loan. Thus, it is submitted that in the financial

interest of the respondent-Bank, the Bank requested for issuance of LOC. Thus, he prays for dismissal of the writ petition.

9. Having heard the learned counsel for the parties and on perusal of the writ petition papers, the only point that falls for consideration is as to whether the respondent-Bank is justified in requesting respondent Nos.1 and 2 to prevent the petitioner from travelling outside the Country and to issue LOC against the petitioner.

10. Answer to the above point in the facts of the case would be in the negative for the following reasons:

It is an admitted fact that the petitioner and her husband obtained loan of Rs.62,00,000/- from the 3rd respondent-Bank for purchase of Apartment on 19.12.2014. It is also an admitted fact that the petitioner as well as her husband are due in a sum of Rs.66,11,868/- as on 13.06.2022. It is also to be noted that the 3rd respondent-

Bank has initiated recovery action under the provisions of SARFAESI Act and it brought the secured property for sale and no buyers have come forward to buy the secured property.

11. The petitioner who is working at Philippines to eke out her livelihood, had come to India to tender her evidence in the matrimonial case pending between the petitioner and her husband. The petitioner tendered her evidence before the Family Court on 02.06.2022, when the petitioner was to leave on 05.06.2022 from India to Philippines, the petitioner was prevented from leaving the Country and cancellation seal was put on her passport and at the request of the 3rd respondent-Bank, LOC was issued against the petitioner.

12. LOC could be issued in terms of O.M. dated 22.02.2021. No one has absolute right to travel abroad or in other words, a person's right could be curtailed by following the procedure prescribed thereunder. A person could be prevented from traveling abroad or LOC could be issued only in terms of O.M.

dated 22.02.2021. The above stated O.M. permits issuance of LOC against a person under various circumstances. In the instant case, no criminal case is registered against the petitioner nor any cognizable offence is alleged. Clause 6(L) of the O.M. dated 22.02.2021 reads as follows:

“In exceptional cases, LOCs can be issued even in such cases as may not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (B) above. If it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the stranger and/or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not be permitted in the larger public interest at any given point of time.”

The above clause empowers the authority to issue LOC if it comes to the conclusion that permitting a person to leave the

Country would have adverse impact on the economic interest of India. In the case on hand, LOC admittedly is issued at the instance of the 3rd respondent-Bank. The amount due from the petitioner to 3rd respondent-Bank is Rs.66,11,868/- as stated by the 3rd respondent-Bank in its statement of objections as on 13.06.2022. The 3rd respondent-Bank has not disclosed the value of the security held by it. Learned counsel, during the course of his submission has stated that the value of security held by the Bank is around Rs.68,00,000/-. But, nowhere in the statement of objections nor in the affidavit filed today, the 3rd respondent-Bank has disclosed the value of the security. Non-disclosure of value of the secured property itself would disclose the intention of the Bank and the Court could draw adverse inference against the respondent-Bank. At this juncture, submission of the learned counsel for the petitioner that the value of the property is more than Rs.75,00,000/- is to be believed. Moreover, issuance of LOC or preventing a person from traveling abroad cannot be a mode of recovery of dues by the

3rd respondent-Bank. The amount due by the petitioner to the 3rd respondent-Bank in a sum of Rs.66,11,868/- would have no impact or affect the economic interest of the Country, more so, when the 3rd respondent is having security of value of which is more than the amount due from the petitioner. The contention of the 3rd respondent-Bank that, since the petitioner inducted tenants, they are not in a position to sell the secured asset is liable to be rejected for the reason that the 3rd respondent-Bank is not remedy less. The provisions of SARFAESI Act, 2022 safeguard the interest of the Bank and provides mode of recovery of possession. The 3rd respondent-Bank instead of following the recovery procedure prescribed under SARFAESI Act is resorting to pressure tactics by preventing the petitioner from traveling abroad where she is working.

13. It is true that the respondent-Bank is conferred with the power to request respondent Nos.1 and 2 to issue LOC against a person who has committed fraud or default against

the Bank. It is for the Bank to take a decision as to, in which case the Bank could request LOC. Just because power is conferred to request issuance of LOC, such power cannot be exercised arbitrarily. Bank has to take a conscious decision by examining as to whether the petitioner's case falls within the ambit of fraud or default which would affect economic interest of the Country. In the instant case, value of the secured property is more than the amount due from the petitioner to the 3rd respondent-Bank. In that circumstance, 3rd respondent-Bank is not justified in requesting for issuance of LOC. At the same time, respondent Nos.1 and 2 are also not justified in issuing LOC for mere asking by the 3rd respondent-Bank. Respondent Nos.1 and 2 under O.M. dated 22.02.2021 are required to examine as to whether 3rd respondent-Bank's request to issue LOC against the petitioner would affect the economic interest of the Country. Mere due of Rs.66,11,868/- cannot be the basis for seeking issuance of LOC by 3rd respondent-Bank that too, restrict the personal liberty of the petitioner to travel outside the Country.

The petitioner is not leaving the Country to avoid repayment of loan of the Bank, but the petitioner is employed in Philippines and she had come to India to tender her evidence in a pending matrimonial case. The decision relied upon by the learned Assistant Solicitor General on **Dr. Bavaguthuraghuram Shetty** case would have no application to the facts of the present case. In the said case, the petitioner was due to the Bank in a sum of Rs.2800.00 Crores and the same would definitely affect the economic interest of the Country. Thus, I am of the opinion that action of the respondents is arbitrary, unreasonable and unfair in the peculiar facts and circumstances of the case. Any action of the State if it is arbitrary and unreasonable is liable to be interfered.

14. For the reasons stated above, the writ petition is allowed in part with the following directions:

(a) The petitioner is directed to deposit a sum of Rs.10,00,000/- with the 3rd respondent-Bank, which could be

adjusted towards the dues and furnish a solvent surety to the satisfaction of 3rd respondent-Bank;

(b) On deposit of Rs.10,00,000/- and on providing a solvent surety by the petitioner, the 3rd respondent-Bank shall forthwith request respondent Nos.1 and 2 to withdraw the LOC and to permit the petitioner to travel outside the Country.

Sd/-
JUDGE

mpk/-*
CT:bms