



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF FEBRUARY, 2024

R

BEFORE

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

WRIT PETITION NO. 4385 OF 2023 (GM-RES)

BETWEEN:

DR.BAVAGUTHU RAGHURAM SHETTY,
S/O LATE SHRI SHAMBU SHETTY,
AGED ABOUT 78 YEARS,
HAVING PERMANENT RESIDENCE AT
"ROSHNI", KADRI ROAD, KADRI,
MANGALORE CITY, MANGALORE - 575 003.
PRESENTLY RESIDING AT NO.3,
ARTILERY ROAD, ULSOOR,
BENGALURU - 560 008.
(SENIOR CITIZEN NOT CLAIMED)

...PETITIONER

(BY SRI. B V ACHARYA., SENIOR COUNSEL A/W
SRI. PRABHULING K NAVADGI., SENIOR COUNSEL A/W
SMT. KEERTHI REDDY., ADVOCATE)

AND:

1. BUREAU OF IMMIGRATION,
MINISTRY OF HOME AFFAIRS,
GOVERNMENT OF INDIA,
5TH FLOOR, A BLOCK,
TTMC, BMTc BUS STAND BUILDING,
K H ROAD, SHANTHINAGAR,
BANGALORE - 560 027.
REP BY ITS DIRECTOR.
2. PUNJAB NATIONAL BANK,
A BANKING COMPANY HAVING ITS
CORPORATE OFFICE AT PLOT NO.4,
SECTOR-10, DWARKA, NEW DELHI - 110 075.



ALSO HAVING ZONAL OFFICE AT
RAHEJA TOWERS, 26-27, M G ROAD,
BENGALURU – 560 001.
REPRESENTED BY ITS GENERAL MANAGER.

3. BANK OF BARODA,
A BANKING COMPANY ESTD. UNDER THE
BANKING COMPANIES,
(ACQUISITION AND TRANSFER OF
UNDERTAKINGS) ACT, 1970
HAVING ITS HEAD OFFICE AT
BARODA BHAVAN, RC DUTT ROAD,
ALKAPURI, BARODA – 390 007.
CORPORATE OFFICE AT:
BARODA CORPORATION CENTER,
PLOT NO.C 26, BLOCK G,
BANDRA KURLA COMPLEX,
BANDRA EAST, MUMBAI – 400 051.
REPRESENTED BY ITS AUTHORIZED OFFICER.

...RESPONDENTS

(BY SRI. H SHANTHI BHUSHAN., DSGI A/W
SRI. ADITYA SINGH., CGC FOR R1;
SRI. D R RAVISHANKAR., SENIOR COUNSEL A/W
SRI. B PRASANNA KUMAR., ADVOCATE FOR R2;
SRI. MANU P. KULKARNI., ADVOCATE FOR
SRI. DHARMENDRA CHATUR., ADVOCATE
SRI. MANOJ J RAIKAR., ADVOCATE AND
MS. ISHI PRAKASH., ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO
ISSUE WRIT DIRECTING THE RESPONDENT BANKS TO RECALL
THE LOC BY WRITING TO THE IMMIGRATION AUTHORITIES
FORTHWITH OR ALTERNATIVELY DIRECT THE IMMIGRATION
AUTHORITIES TO ALLOW THE PETITIONER TO TRAVEL BY
IGNORING THE LOCS ISSUED BY THE RESPONDENT BANK.



THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

Petitioner, an Indian Citizen, is complaining to the Writ Court against the Look out Circulars (hereafter 'LoC') that have restrained him for four years (i.e since 5th February 2020) from traveling back to United Arab Emirates.

II. Succinctly, the challenge is structured on the following grounds:

Lack of jurisdiction; absence of jurisdictional facts; violation of Fundamental Rights; abuse of power; breach of principles of natural justice; non-application of mind & arbitrariness; object of LoC is not the recovery of loan; the Respondent-Banks have secured a Mareva Injunction Order; orders/decrees have been secured by the banks; banks have not filed any criminal case against the Petitioner, in India or abroad; his presence in UAE is eminently required for fighting the legal battles there; Petitioner, who is in the late evening of life needs to be in



the company of his family; his travel to UAE cannot be restrained for an indefinite period; he is ready & willing to come back, if so directed.

III) After service of notice, the Respondent-Bureau of Immigration has entered appearance through the learned Deputy Solicitor General of India; the Respondent-Banks are represented by their Panel Advocates. The Statement of Objections has been filed by the 3rd Respondent i.e., Bank of Baroda, resisting the Writ Petition principally contending that: Petition in its present form & substance is not maintainable; Petitioner is a chronic defaulter of huge loans;, without exhausting alternate remedy; much of the petition suffers from *res judicata*; Petitioner's presence is required in India to prevent loan recovery proceedings being rendered futile; culpable conduct in not disclosing all assets in terms of court order disentitles Petitioner to any discretionary relief in writ jurisdiction; his travel to UAE or any other foreign country is not required.



IV) I have heard the learned counsel appearing for the parties and perused the records. I have gone through the Written Submissions and adverted to relevant of the Rulings cited at the Bar. Having done that, I am inclined to grant indulgence in the light of following discussion:

(A) FOUNDATIONAL FACTS:

(i) It is the specific case of the said Bank that *'the Petitioner, in his personal capacity and as a personal guarantor owes the Respondent No.3 an approximate sum of INR 2324 Crores'*. The 3rd Respondent-Bank has obtained money decrees *inter alia* against the Petitioner at the hands of courts in Abu Dhabi in a sum of Rs.830,92,52,413/-. These decrees are put in execution. It has also filed Com.O.S.No.1/2020 before the Commercial Court at Bangalore against the Petitioner & his wife seeking a decree for Specific Performance of the Negative Lien and Creation of Mortgage dated 21.04.2020 and the same is pending. The Com.Appeal No.26/2020 filed by the Bank of Barod against the Petitioner & his wife, has been favoured by the Division Bench of this court vide order



dated 17.04.2021. The Bench has granted an order of temporary injunction restraining alienation of any property, as had been sought for by the Bank in terms of I.A.Nos.I & II filed in pending Com.O.S.No.1/2020. This Bank had sought to declare Petitioner as a willful defaulter in terms of RBI Master Circular No.DBR.No.CID.BC.22/20.16.003/2015-16 dated 1.7.2015 and the same is the subject matter of challenge in Petitioner's pending W.P.No.10087/2021. 3rd Respondent-Bank claims that Petitioner is due approximately in a sum of Rs.2,324 Crore. Similarly, the 2nd Respondent-Bank has instituted proceedings in UAE for the loan recovery and the same are still pending. However, the said Bank has not filed the Statement of Objections, furnishing material particulars of the same. Be that as it may. The fact remains that Petitioner owes huge sums of money, be it as a borrower or a guarantor.

(ii) Petitioner having suffered the LoCs, had filed W.P.No.15032/2020 (GM-RES) C/w W.P.13862/2020 (GM-



PASS). A Co-ordinate Bench of this court dismissed the same vide common order dated 12.02.2021 principally on the ground that he had an alternate remedy of approaching the banks which had triggered the subject LoCs dated 8.5.2020 & 18.7.2020 for seeking their recall. Petitioner's W.A.No.315/2021 against the same also failed vide Division Bench order dated 12.05.2021. Petitioner had approached the Bank and nothing favourable yielded to him. It is his specific case that nothing would yield, even otherwise and this court shares that view because of the specific stand taken by the Banks in this Writ Petition.

(B) AS TO HOME MINISTRY'S OMs DATED 05.09.1979, 27.12.2000, 27.10.2010, 5.12.2017, 19.09.2018, 4.10.2018, 12.10.2018, 22.11.2018 & 22.02.2021:

The Home Ministry of the Central Govt. has issued a plethora of Office Memoranda from time to time for authorizing & regulating the issuance of LoCs. With the working experience, certain modifications also have been made to these OMs. A thumb nail picture of the same would be profitable:



(i) The earliest OM issued by the Govt. of India through the Ministry of Home Affairs is dated 5.9.1979 and it provided for keeping a watch on arrival & departure of Indians and foreigners. The authorities functioning this OM included Ministry of Home Affairs, Ministry of External Affairs, Customs & Income Tax Departments, Directorate of Revenue Intelligence, Central Bureau of Investigation, Interpol, Regional Passport Officers & the State Police. This was done by issuing Warning Circulars to the Immigration Authorities and they were valid only for a period of one year. The OM dated 27.12.2000 specified the steps required to be taken for opening an LoC in respect of Indian citizens. It specifically stipulated that an LoC could be opened only with the approval of an officer not below the rank of Deputy Secretary to the Govt. of India. A *pro forma* was also prescribed and the period was again one year with discretion to extend.

(ii) The scope of above OMs of 1979 & 2000 was discussed by the Hon'ble Delhi High Court in W.P.(Civil)



No.10180/2009 between **SRI.VIKRAM SHARMA vs. UOI 2010 SCC OnLine Del 2475** and **SUMER SINGH SALKAN vs. ASSISTANT DIRECTOR, ILR (2010) VI Delhi 706**, and suo moto **Crl.Ref.No.1/2006 in re STATE vs. GURNEK SINGH**. The Court specifically stated

"A. Recourse to LOC can be taken by investigating agency in cognizable offences under IPC or other penal laws, where the accused was deliberately evading arrest or not appearing in the trial court despite NBWs and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest.

B. The Investigating Officer shall make a written request for LOC to the officer as notified by the circular of Ministry of Home Affairs, giving details & reasons for seeking LOC. The competent officer alone shall give directions for opening LOC by passing an order in this respect.

C. The person against whom LOC is issued must join investigation by appearing before I.O. or should surrender before the court concerned or should satisfy the court that LOC was wrongly issued against him. He may also approach the officer who ordered issuance of LOC & explain that LOC was wrongly issued against him. LOC can be withdrawn by the authority that issued and can also be rescinded by the trial court where case is pending or having jurisdiction over concerned police station on an application by the person concerned."



(iii) In the light of Delhi High Court's observations made in the above cases, the Ministry of Home Affairs issued a comprehensive OM dated 27.10.2010. Sub-paragraphs (g) & (h) of Paragraph 8 of this OM specifically states as hereunder:

"Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed Proforma regarding 'reason for opening LOC' must invariably be provided without which the subject of an LOC will not be arrested/detained.

In cases where there is no cognizable offence under IPC or other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The originating agency can only request that they be informed about the arrival/departure of the subject in such cases."

(iv) The OM dated 5.12.2017 made a significant departure by amending the 2010 OM and thereby, providing for issuance of LoC even in respect of persons not accused of any offence, subject to proof of certain ingredients. The same being very relevant, its text is reproduced below:

"In exceptional cases, LOCs can be issued in such cases, as would 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) of the above-referred OM, 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 strategic 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 in time..."

(v) One more clarificatory OM significantly came to be issued on 24.01.2018 which *inter alia* reads:

'...It may, however, be noted that as per this Ministry's O.M. dated 27.10.2010, recourse to the LOC is to be taken only in cognizable offences under IPC or other penal laws. In cases where there is no cognizable offence under IPC or other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. In such cases, the originating agency can only request that they be informed about the arrival/departure of the subject...'

The OM dated 19.09.2018 added to the OM of 27.10.2010 one more authority who could approve issuance of LoC at the request of originator and he is an officer of Serious Fraud Investigation Office (SFIO), Ministry of Corporate



Affairs, not below the rank of Additional Director in the Government of India. Subsequently, the OM dated 12.10.2018 added yet another entity namely the Chairman/Managing Director/Chief Executive of all Public Sector Banks, who can approve the issuance of LoC.

(vi) The latest OM issued by the Home Ministry is dated 22.02.2021 supersedes all the earlier OMs and consolidates the existing guidelines after consultation with the various stakeholders and review by the Ministry. It has promulgated certain additional safeguards, one of them being the direction to the Originating Agency of LoC to appoint a Nodal Officer for coordination/updation of LoC status with Bureau of Immigration and that the BOI shall remain in constant touch with the Nodal Officer. Clause (H) of the said OM reads as under:

"Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed Proforma regarding 'reason for opening LOC' must invariably be provided without which the subject of an LOC will not be arrested/detained.



However, clause (L) is in the nature of an exception to clause (H) to the extent it provides for issuance of LoC in cases which do not involve offences. The same reads as under:

"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 strategic 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 in time."

(C) AS TO MULTIPLE OFFICE MEMORANDA PROVIDING FOR THE ISSUANCE OF LOC:

(i) Learned Sr. Advocate Mr.B.V.Acharya appearing for the Petitioner, when questioned, submitted in his usual fairness that no formal challenge to the subject Office Memoranda for the issuance of LoCs has been laid in the petition. Learned Sr. Panel Counsel Mr.Manu Kulkarni appearing for the Bank of Baroda, vehemently contended



that in the absence of challenge, Court cannot venture into adjudging their validity; Petitioner having acquiesced in their validity in the earlier round of litigation (W.P.No.15032/2020 C/w W.P.13862/2020 and W.A.No.315/2021), he should be precluded from raising the issue; even otherwise, constructive *res judicata*, *waiver & acquiescence* come in his way; several High Courts have in a way upheld the validity of these OMs.

(ii) The above version of Mr.Kulkarni is difficult to sustain. Firstly, no decision is brought to my notice wherein the issue of validity of these OMs was considered. Even the issue of their presumptive validity is also not shown to have been examined. Their scope & application were discussed in the Delhi High Court decisions, *supra* and by the Calcutta High Court in **UCO BANK vs. SITEN SAHA ROY, 2020 SCC OnLine Cal 3255** & in **MRITUNJAY SINGH vs. UOI, 2021 SCC OnLine Cal 1490**. Recently, the Delhi High Court in **VIKAS CHAUDHARY vs. UOI, 2022 SCC OnLine Del 97** and



Punjab & Haryana High Court in **CWP-12712-2022** between **VIKAS AGGARWAL vs. UOI** decided on 20.9.2022, have also examined the matter but not from the angle of competence & validity of subject Office Memoranda; the discussion revolves around the interpretation of their clauses. In the earlier round of litigation launched by the Petitioner too, the question of competence & validity was not raised, is not much disputed. However, that does not warrant the invocation of constructive *res judicata*, *waiver*, *acquiescence* or the like inasmuch as what is at stake is citizens Fundamental Right to travel abroad vide **MANEKA GANDHI vs. UNION OF INDIA, AIR 1978 SC 597** and not some ordinary legal right. The Writ Courts are custodians of the Constitution in general and protectors of the Fundamental Rights in particular, needs no reiteration. Contention of Mr.Kulkarni cannot be countenanced without offending this constitutional idea of immense significance to the native jurisprudence.



(D) AS TO CONTENTION THAT IN THE ABSENCE OF CHALLENGE, VALIDITY OF OFFICE MEMORANDA FOR ISSUANCE OF LOC CANNOT BE GONE INTO:

(i) Now let me examine the question of validity of the aforesaid Office Memoranda, in the absence of a formal challenge being laid by the citizen. It is well established by now vide **R.K.DALMIA vs. JUSTICE TENDOLKAR, AIR 1958 SC 538** that a plenary legislation enjoys a strong presumptive validity and its rebuttal is not readily accepted. A delegated legislation like Rules & Regulations promulgated under a plenary legislation also enjoy such a presumption albeit in a lesser degree, provided that a *prima facie* case as to competence, is made out. As already discussed above, the subject Office Memoranda are not shown to have been issued under any provision of the 1967 Act or any other statute. Reference to any enactment is conspicuously absent in them. When such instruments are pressed into service by the State Entities under Article 12, to repel the complaint of violation of Fundamental Rights, Constitutional Courts cannot blindfoldedly accept the same



as being valid & enforceable, merely because no challenge in the pleadings is laid to their *vires*. Even *sans* formal challenge, Courts can refuse to take cognizance of such instruments when their voidness is apparent on their face.

(ii) The above view broadly gains support from the writings of the sages of American constitutional law. In ***WILLOUGHBY ON CONSTITUTION OF THE UNITED STATES***, Second Edition, Vol. I, page 10 it is written as follows:-

"The Court does not annul or repeal the statute if it finds it in conflict with the Constitution. It simply refuses to recognise it, and determines the rights of the parties just as such statute had no application. The Court may give its reasons for ignoring or disregarding the statute, but the decision affects the parties only, and there is no judgment against the statute. The opinion or reasons of the Court may operate as a precedent for the determination of other similar cases, but it does not strike the statute from the statute book; it does repeal..... the statute. The parties to that suit are concluded by the judgment, but no one else is bound. A new litigant may bring a new suit, based on the very same statute, and the former decision can be relied on only as a precedent,..."



This is quoted by the Constitution Bench of Apex Court with approval in ***BEHRAM KHURSHED PESIKAKA vs STATE OF BOMBAY, AIR 1955 SC 123.***

(iii) The contention that in the absence of a formal challenge, the validity of an instrument of law cannot be examined, at the first blush appears to be attractive, as a general principle of adjudication. However, a deeper delve dispels such a view. What is being examined in this Writ Petition is not the violation of an ordinary statute, wherein *res judicata*, *waiver*, *estoppel* or the like may be readily applied to repel the challenge. This is not a case under Cattle Trespass Act; a citizen aged 78 years, is complaining of violation of constitutional guarantees. The duty of Writ Court to grant redressal to grievance of the kind is not diluted by the absence of a formal plea or prayer. Makers of the Constitution consciously structured writ jurisdiction much in variance with English law of writs. What is observed in ***LIFE INSURANCE CORPORATION OF INDIA vs. ESCORTS LTD, 1986 (1) SCC 264*** at para 101, supports this view:



"...We also desire to warn ourselves against readily referring to English cases on questions of Constitutional law, Administrative Law and Public Law as the law in India in these branches has forged ahead of the law in England, guided as we are by our Constitution and uninhibited as we are by the technical rules which have hampered the development of the English law..."

(iv) Conventional Rules of Pleadings that govern ordinary litigations cannot tie the hands of constitutional courts in granting remedy to the deserving. When a worthy cause is brought to their portal, Writ Courts cannot turn the injured away, by quoting some *jurisprudential theories*. In **DAVIS vs. MILLS, 194 U.S. 451 (1904)**

Justice Oliver Wendell Homes, had forewarned:

"Constitutions are intended to preserve practical and substantial rights, not to maintain theories..."

This was said more than a century ago, and the years gone by have proved its profundity.

(E) AS TO VALIDITY OF OFFICE MEMORANDA PROVIDING FOR ISSUANCE OF LOC:

(i) Now let me examine the validity of OMs dated 27.10.2010 & 19.9.2018 that are pressed into service to



resist the Writ Petition. They broadly regulate the issuance of LoCs. On being asked, the learned DSGI appearing for the 1st Respondent-Bureau of Immigration and Mr.Manu Kulkarni, Sr. Panel Counsel representing the Bank of Baroda drew attention of the court to section 21 of the Passports Act, 1967 which reads as under:

"The Central Government may, by notification in the Official Gazette, direct that any power or function which may be exercised or performed by it under this Act other than the power under clause (d) of sub-section (1) of section 6 or the power under clause (i) of sub-section (2) of that section or the power under section 24, may, in relation to such matters and subject to such conditions, if any, as it may specify in the notification, be exercised or performed- (a) by such officer or authority subordinate to the Central Government; or (b) by any State Government or by any officer or authority subordinate to such Government; or (c) in any foreign country in which there is no diplomatic mission of India, by such Consular Officer; as may be specified in the notification."

(ii) Firstly, the above text of section 21 of the 1967 Act enables the Central Government to delegate its power to *any officer sub-ordinate to the Central Govt., or to the State Govt., or to an officer sub-ordinate to the State Govt., or to officer of the Indian Consul* abroad; thus,



there can be no delegation to any other entity like the Chairman/Managing Director/Chief Executive of Public Sector Banks. Power to delegate cannot be broadly interpreted to rope in those which the Parliament itself did not intend. Secondly, the delegation can be made only by a *Notification published in the Official Gazette*. No such Notification is placed on record. It has long been settled that when power is given to do a thing, it should be done as specified; otherwise it should be left un-done vide **TAYLOR vs. TAYLOR 1875 (1) Ch.D 426**, as approved in **STATE OF UP vs. SINGHARA SINGH, 1964 SCR (4) 485**. Thirdly, it is not demonstrated that the 'Director (Immigration)' who is the author of all these OMs can exercise power of the Central Govt., as its limb in terms of extant Allocation of Business Rules. Therefore, the subject OMs being can be said to be *non est* and therefore, they would not come to the aid of Respondent – Banks.



(F) AS TO SCOPE OF SUBJECT OFFICIAL MEMORANDA AND THEIR APPLICABILITY TO PETITIONER'S CASE:

(i) As already mentioned above, the OM dated 27.10.2010 on being amended vide OMs dated 19.9.2018, 12.10.2018 & 22.2.2021, it cannot be disputed that for issuing LoC, a person need not be an accused in any criminal case, as rightly contended by Mr. Kulkarni. That being said, what is required is that the case should involve a person whose departure from India is detrimental:

*"to the sovereignty/security/integrity of the country;
to India's bilateral relations with any country;
to the strategic/economic interests of India;
or that if allowed to leave, he may potentially indulge in an act of terrorism or offenses against the State;
or that such departure ought not to be permitted in the larger public interest at any given point in time."*

These specified grounds bear a thick relation with what is enlisted under Article 19(2), as permissible legal restrictions of the fundamental freedoms guaranteed under Article 19(1) of the Constitution. Obviously, non-payment of debt howsoever huge, is not enlisted as a



ground and therefore, no LoC can be issued for the mere recovery of loans, as rightly submitted by Mr.B.V.Acharya.

(ii) It is pertinent to note that the Bank of Baroda has obtained a Mareva Injunction Order, which would arguably enure to the benefit of Respondent - Punjab National Bank, as well, because of that orders nature of universality *qua* the properties of individual concerned. Added, the Bank of Baroda has already obtained money decrees *inter alia* against the petitioner. Very significantly, these Banks have not filed any criminal case against him in India or abroad. A perusal of subject LoCs leaves no manner of doubt that they have been issued not on any of the specified grounds; they are couched in a language that gives an impression that they intend only the recovery of debts. This is impermissible, to say the least. The subject Office Memoranda purportedly being an instrument of law, cannot be used for a purpose alien to their intent vide ***Heydon's Case (1584) 76 ER 637.***



(iii) Mr.Kulkarni vehemently contended that the subject LoCs have been issued in the economic interests of India since the public money owed by the Petitioner & his spouse is in astronomical figures; the non-remittance of the same would have a cascading effect on the economic interests of the country; that the reason why the RBI has issued Master Circular On Willful Defaulters. He presses into service an Apex Court decision in **SHIVASHAKTI SUGARS LTD. vs. SHREE RENUKA SUGAR LTD (2017) 7 SCC 729** wherein, at paras 43 & 44, it is observed as under:

"It has been a developing economy for number of decades and all efforts are made, at all levels, to ensure that it becomes a fully developed economy. Various measures are taken in this behalf by the policy-makers. The judicial wing, while undertaking the task of performing its judicial function, is also required to perform its role in this direction... Similar approach is to be necessarily adopted while interpreting bankruptcy laws or even matters relating to corporate finance, etc... There is a growing role of economics in contract, labour, tax, corporate and other laws. Courts are increasingly receptive to economic arguments while deciding these issues. In such an environment it becomes the bounden duty of the Court to have the economic analysis and economic impact of its decisions... First duty of the Court is



to decide the case by applying the statutory provisions. However, on the application of law and while interpreting a particular provision, economic impact/effect of a decision, wherever warranted, has to be kept in mind. Likewise, in a situation where two views are possible or wherever there is a discretion given to the Court by law, the Court needs to lean in favour of a particular view which subserves the economic interest of the nation. Conversely, the Court needs to avoid that particular outcome which has a potential to create an adverse affect on employment, growth of infrastructure or economy or the revenue of the State. It is in this context that economic analysis of the impact of the decision becomes imperative...”

The above broad observations have been made when there was an instrument of law whose validity was free from any spec of doubt. They would have come to the rescue of Respondent-Banks, the subject Office Memoranda were shown to have been issued with competence and notified in the Gazette.

(iv) Contention of the above kind raised by some other Bank was considered & rejected by the Calcutta High Court in **MRITUNJAY SINGH**, *supra*, wherein para 19 reads as under:



"Learned counsel next relies on UCO Bank Vs. Dr. Siten Saha Roy and others, rendered by a Single Judge of this Court in RVW 23 of 2020, in connection with WP No. 23412(W) of 2012, wherein it was held, inter alia, that the "economic interests of India" could not be ascertained merely on the quantum of loan and is on a much higher footing, directly and adversely impacting the share market or the economy of the country as a whole, which would be jeopardized in the event the accused is permitted to travel abroad, to such an extent that it destabilizes the entire economy of the country. The said ground cannot be confined to individual loans on the basis of commercial transactions, it was held."

As already discussed, the subject LoCs have been issued on the sole ground that a huge loan has remained undischarged by the Petitioner, and not on any other specified grounds. There being money decrees and Mareva Injunction Order, what purpose would be served by restraining the Petitioner from travelling abroad, remains enigmatic, to say the least. The Respondent-Banks have failed to apply mind to the subject Office Memoranda and to a bunch of several decisions of the High Courts which have construed them, and thereby, fixed their contours.



(v) Mr.Acharya is justified in saying that in the earlier round of litigation, although the Petitioner was permitted to go before the Banks for seeking recall of the LoCs, a short interaction with the Banks did not raise any confidence in him that the request for recall would be considered objectively. Going by the pleadings of the Banks and the arguments submitted on their behalf, this Court gathers the same impression. Petitioner's is a case of *sheep being sent to wolf for seeking refuge*, may be a metaphorical exaggeration. On being repeatedly questioned, Mr.Kulkarni in his usual vehemence answered that, retention of the Petitioner in India would facilitate execution of Court decrees and recovery of the outstanding loans. There being Mareva Injunction Order, how Petitioner's going abroad to see his family and structure his legal battles, would defeat the loan recovery process, is simply un-understandable. The latest O.M. dated 22.02.2021 specifically states: "*Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws...*" No case of exception is made out. Even



otherwise, the apprehension of lender Banks can be taken care of by stipulating and accordingly it is done that the Petitioner shall not alienate, encumber or otherwise deal with any of his properties/assets, there already being a Mareva Injunction Order. An undertaking to this effect from him, further strengthens this.

G) AS TO UNCONSCIONABLE CONDUCT OF THE PETITIONER AND ABUSE OF PROCESS OF LAW:

(i) Mr.Kulkarni appearing for the Bank of Baroda contended that despite this Court's order dated 20.7.2023, Petitioner has not disclosed all his assets & liabilities and of his family members; he had taken up certain stand before the foreign courts which indicates that he owns huge properties that remain clandestinely hidden to this day; he has also not kept his words given to the Banks in the course of discussion that he would make some arrangement to repay a substantial loan amount. The first contention as to non-compliance of court order, is not acceptable since Petitioner has already filed the affidavit disclosing his assets & liabilities and also the civil &



criminal cases launched against him outside India. If any specific property is left out or any case remains undisclosed, it is for the Banks to point out the same which they have not done. Assuming that, some properties remain undisclosed, even that would be taken care of by the Mareva Injunction Order, as rightly submitted by Mr.Prabhuling K Navadgi, learned Sr. Advocate appearing for the Petitioner. He has also assured the Court that no property has remained undisclosed and that Petitioner would not alienate or encumber any of the properties including those which are alleged to have remained discreet. It is open to the Banks to put all the Court decrees/orders including Mareva Injunction Orders in global circulation so that any attempt to alienate or encumber any property or any interest therein from the side of Petitioner, would prove abortive.

(ii) What one has to appreciate is: Petitioner is not shown to be a fugitive offender; the Banks have not instituted any criminal case in India or outside against him



till date although they have obtained decrees/orders for recovering the outstanding loans. Petitioner, who is in the late evening of his life (78-year-old), has been retained in India since more than three & half years. His family comprising of wife & daughter is abroad; right to associate with the family, friends & relatives, especially when one is at an advanced stage of life, needs to be recognized as a facet of personal liberty constitutionally guaranteed under Article 21, which has been expanding, precedent by precedent. Petitioner assures that he would come back to India whenever his presence is ordered in any legal proceedings. He should also undertake in this regard by filing an affidavit so that his presence can be secured by this Court too on an application being moved even after the disposal of Writ Petition. In the fact matrix of the case the subject LoCs cannot operate for an indefinite period of time, merely because the time limitation of one year has been done away with. In view of all this, no case is made out as to abuse of the process of court or as to culpable conduct of the Petitioner, so as to deny him justice.



In the above circumstances, I make the following:

ORDER

[1] This Writ Petition conditionally succeeds; the impugned Look out Circulars are kept in suspended animation;

[2] A Writ of Mandamus issues to the first Respondent-Bureau of Immigration or other competent authority to permit Petitioner to travel to United Arab Emirates, forthwith, if there is no impediment other than the subject LoCs;

[3] The directions at preceding paragraph [2] shall not take effect till after Petitioner files an affidavit in the Registry of this Court, and with the Respondent-Banks as under:

(i) Petitioner shall not alienate, encumber or otherwise meddle with any of his properties anywhere in the globe (the expression 'property' being used in its generic sense) or any interest therein whether disclosed, undisclosed or otherwise.

(ii) Petitioner shall file an undertaking in the form of an affidavit along with two sureties, each worth Rs.1,00,00,000/- (Rupees One Crore) only, that he shall whenever required in any legal proceedings, come back to India, and shall not leave the country without the prior permission of Court/Tribunal/Authority concerned.



(iii) In the event, any proceedings that may be instituted under the provisions of the Fugitive Economic Offenders Act of 2018, the Extradition Act, 1962, or such other law, or any Extradition/Rendition proceedings are taken up abroad, the Petitioner shall not resist the same on any ground whatsoever.

Costs made easy.

Sd/-
JUDGE

Cbc/Snb