

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

+ **CRL.M.C.No.2553/2008**

% **Date of Decision: 01.09.2008**

Indusind Bank Ltd Petitioner

Through Mr.T.S.Ahuja, Advocate

Versus

State & Anr. Respondents

Through Mr.R.N.Vats, Advocate

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner is challenging the order dated 15th March, 2008 dismissing the application of the petitioner for giving the vehicle on superdari to the petitioner which vehicle had already been released on superdari to the respondent No.2.

It is not disputed that the respondent No.2 has been shown as the owner in the papers pertaining to the vehicle and on the basis of the same the vehicle was released on superdari to him. It is also not disputed that the hire purchase agreement which was entered into between the parties, on the basis of which ownership could be claimed

by the petitioner, was terminated and a new loan agreement had been entered into between the parties.

The learned counsel for the petitioner has challenged the order on the ground that a clause in the loan agreement was about re-entry in case of default in payment of installments of the loan.

The learned Magistrate has considered the precedents relied on by the petitioner and respondent No.2 and has held that there is no reasonable cause for cancellation of superdari in the name of present superdar. The learned counsel for the petitioner is also unable to show any reason for cancellation of superdari in favour of respondent No.2. The only plea is that under the loan agreement the petitioner is entitled for possession of the vehicle on failure of the respondent no.2 to pay the installment of loan amount.

The learned counsel for the petitioner has relied on 1994 Supp(1) SCC 507, Manipal Finance Corpn. Ltd. v. T.Bangarappa & Ors. and II (2007) CCR 133, Ashok Leyland Finance v.Suresh Kumar Tiwari & Ors to contend that the petitioner is entitled for possession of the vehicle. Perusal of the precedents relied on by the petitioner reveal that the said precedents are distinguishable as in the case of Manipal Finance Corpn.Ltd (supra) the agreement was for hire purchase in contra distinction to the loan agreement executed between the petitioner and respondent No.2, after cancellation of the hire purchase agreement. Similarly, in the case of Ashok Leyland Finance (Supra) the

agreement executed between the parties was a hire purchase agreement and in the peculiar facts and circumstances the superdari of the vehicle was given to the financier.

The learned Magistrate has held that even though the loan agreement contains a re-entry clause, the owner of the vehicle in question is respondent No.2/superdar and not the applicant bank. In the circumstances, merely on account of a clause for re-entry in the loan agreement, the petitioner is not entitled for change of superdari. In case the petitioner invokes any civil remedy and he is granted any interim order for taking possession of the vehicle on the basis of such an order which may be passed in favour of petitioner, the petitioner will be entitled for release of vehicle to him though the vehicle has already been released to the owner/respondent No.2 in the facts and circumstances.

In the facts and circumstances, thus, there is no manifest error or illegality in the order dated 15th March, 2008 so as to entail interference by this Court in exercise of its powers under Section 482 of the Criminal Procedure Code. The petition is, therefore, without any merit and it is, therefore, dismissed.

September 01, 2008.
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ANIL KUMAR, J.