

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.L.P. 73/2003
ASSOCIATES INDIA FINANCIAL SERVICES Petitioner
Through Mr. Vishrov Mukerjee, Adv.
versus
M/S CHANNIAPPAN & SONS & ORS. Respondents
Through

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

% **24.09.2010**

1. This leave to appeal was filed in the year 2003 and vide order dated 18th July, 2003 was adjourned sine die in view of the statement made by the counsel for the petitioner that an appeal against the civil court degree was pending. Learned counsel for the petitioner today states that the civil court degree referred to in the impugned judgment dated 26th April, 2003 has attained finality.

2. Learned trial court has referred to the said degree and observed that the District Munsiff cum Judicial Magistrate had decreed the suit filed by the respondent accused seeking permanent injunction against the petitioner-complainant for restraining the petitioner-complainant from taking possession of the earth excavator. Learned trial court has also observed that as per the civil court degree it was obligation of the petitioner-complainant to get the vehicle registered with the RTO and since the vehicle was not registered by the petitioner-complainant, it amounted to an offence under the Motor Vehicle Act. Learned trial court has observed that the cheques in question for which the complaint was filed were issued in advance at the time of entering

into hire purchase agreement and it was obligatory for the petitioner-complainant to see that the earth excavator was duly registered with the RTO. Thus, there was gross misconduct and violation by the petitioner-complainant to comply with the terms of the agreement as the respondent-accused could not have used the vehicle without registration. It has also been observed that some installments were paid by the respondent-accused but despite this the petitioner-complainant did not get the vehicle registered and wanted that the balance installments should be paid. Accordingly, it has been held that cheques were not given against liability and there was no debt due and payable.

3. Learned trial court has also dismissed the complaint on the ground of jurisdiction. The petitioner-complainant has placed on record copy of the loan cum hypothecation agreement, which was executed in Bangalore now known as Bengaluru. The respondents as is clear from the cause title itself are based in Erode District, Tamil Nadu and are not residents of Delhi. Similarly, the demand promissory note dated 21st December, 2000, guarantee deed etc. also show that these documents were executed in Bengaluru. The petitioner company has its registered office in Delhi. It is alleged in the complaint that cheques were presented and dishonoured in Delhi, therefore, courts at Delhi have jurisdiction to try the complaint. The respondents-accused had filed evidence by way of affidavit before the trial court setting out the entire history, how and when the agreement/transaction was entered into between the parties at Bengaluru. It is stated that the respondent-accused had seen advertisement of a company manufacturing earth

excavators and had accordingly decided to purchase earth excavators after taking finance. Parties had meetings. In these meetings representatives of the manufacturing company had participated. After negotiations loan cum hypothecation agreement dated 21st December, 2000 was signed at Salem. It is stated that the vehicle was also delivered at Chennaimalai. It is pointed out that the cheques in question were presented for encashment only after the civil suit was filed by the respondents.

4. It appears that the petitioner-complainant had deliberately presented the cheques in question in Delhi to drag the respondents to face prosecution in Delhi, though, the entire transaction had taken place in Bengaluru or at Salem. The cheques, which were issued, were drawn on Indian Overseas Bank, Velampalayam Branch, clearing Tirupur. It is not the case of the petitioner-complainant that they do not have any office in Bengaluru, Salem and Tirupur etc. Mere issue of notice under proviso (b) to Section 138 of the Negotiable Instruments Act, 1881 will not confer jurisdiction on criminal courts in Delhi. It is submitted that de hors equities, the legal contention of the petitioner on jurisdiction requires consideration. Be that as it may, in view of the decree of the civil court which has attained finality, no ground to interfere is made out. The application for leave to appeal is dismissed.

SANJIV KHANNA, J.

SEPTEMBER 24, 2010
NA