

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 18.09.2014

+ **W.P.(C) 157/2012**

VIJAYA BANK

..... Petitioner

versus

GOVT. OF NCT, DELHI AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr D. V. Khatri.

For the Respondents : Mr Mohammad Shariq for R-1.

Mr Manoj R. Sinha for R-2.

Mr R. K. Kohli and Mr K. R. Pamei for R-3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner is a bank and has filed the present petition, *inter alia*, praying as under:-

“Issue a writ of mandamus or any other appropriate writs directing respondent no.1 to record the petitioner's bank name at hypothecation clause in the registration certificate/registration book of the vehicle bearing registration No. DL-7CG-6730 Toyota Fortuner Car and delivered the same to the petitioner bank”

2. It is the petitioner's case that although it has financed respondent no.3 for purchase of a motor vehicle, the Registration Certificate for the said vehicle does not bear the necessary hypothecation clause.

3. Admittedly, respondent no.3 was provided an overdraft facility by the petitioner bank. Respondent no.3 purchased a motor vehicle being 'Fortuner 3.0L 4WDMT' bearing registration no. – DL 7CG 6730 (hereinafter referred to as the 'said vehicle'), from respondent no.2 and an invoice dated 07.01.2011 was issued by respondent no.2. The copy of the original invoice has been filed alongwith respondent no.3's reply and the original was also produced in Court. The said invoice also specifically mentions: "Financed/Leased By/Sold/Hypothecated To: Not Applicable."

4. Respondent no.2 states that the relevant papers indicating that the said vehicle was to be hypothecated to the petitioner bank had not been received and, thus the said vehicle had been sold and delivered to respondent no.3 without any encumbrance. Accordingly, the necessary documents for recording the encumbrance were not forwarded to respondent no.1 and, therefore, respondent no.1 has also not recorded the same on the Registration Certificate of the said vehicle.

5. The petitioner has produced copies of several documents including demand promissory note, letter of repayment (undertaking to pay the financed amount), loan agreement, authorization to debit the overdraft account by a monthly instalment of ₹59,110/- as well as copies of loan account and overdraft account. The statement of accounts maintained by the petitioner indicates that a loan of ₹18,25,000/- was disbursed to respondent no.3. The statement of the overdraft account (A/c No. 711306211000009), admittedly, maintained by respondent no.3 with the petitioner indicates that a sum of ₹1,73,675/- had been debited from the account towards "MARGIN MONEY" on 31.12.2010. The petitioner has

also filed a copy of Form 34 (i.e. “*Application For Making An Entry Of An Agreement Of Hire Purchase/Hypothecation Subsequent to Registration*”) which purportedly bears the signatures of Mr Rakesh Gupta (respondent no.3).

6. Respondent no.3 contends that it had not availed of any loan for purchase of the said vehicle and, therefore, the same is not hypothecated to the petitioner bank. According to respondent no.3, no loan was sanctioned by the petitioner and the petitioner had “*obtained various blank documents from the respondents and the same are being misused for the illegal gain and to harass the respondents*”. With respect to the Form 34 that had been sent by the petitioner to respondent no.1, respondent no.3 disputed the signatures on the said form and filed an affidavit unequivocally stating that the signatures appearing on Form 34 were not his signatures. The original Form 34 was produced by respondent no.1 in Court and the same was shown to Mr Rakesh Gupta and he affirmed his earlier statement that the signatures appearing on the Form 34 were not his.

7. The present petition, thus, raises several disputed questions of fact, which cannot be examined in these proceedings. It is apparent that the petitioner has several documents which indicate that the said vehicle had been financed by the petitioner but the same are disputed. However, the following facts are not in dispute:-

- a) That the bank draft paid to respondent no.2 as consideration for purchase of the said vehicle was made by the petitioner bank.
- b) That the consideration for the said vehicle was funded entirely by the

petitioner bank. Although the petitioner states that it has been funded by a separate loan account, respondent no.3 states that it was to be funded by the overdraft account. In either case, parties agree that funds for purchase of the said vehicle in question were provided by the petitioner.

- c) Admittedly, the said consideration is outstanding as even according to respondent no.3, the amount funded by petitioner bank has not been repaid.

8. In the given facts, the petitioner would certainly have a right to proceed against respondent no.3 for recovery of its dues and would be entitled to repossess the said vehicle. It is contended on behalf of the petitioner that if the hypothecation clause is not included in the registration certificate of the said vehicle, the procedure for repossessing the said vehicle for recovery of its dues would be unduly delayed. The learned counsel for respondent no.3 on the other hand contends that respondent no.3 is apprehensive that the petitioner would repossess the said vehicle and not take any further steps, which would result in the said vehicle being reduced to scrap. He further contends that there is also a possibility that the petitioner would sell the said vehicle at a fraction of its value.

9. In the given facts and circumstances of the case, while it is apposite to protect the rights of the petitioner, it is also necessary to address the apprehensions of respondent no.3. Accordingly, it is directed that:-

- a) The petitioner can repossess the said vehicle but if the petitioner bank does so, it shall sell the said vehicle within twelve weeks from

the date of repossession by inviting bids in a transparent manner.

- b) Respondent no.3 would have the liberty to submit his offer for purchasing the said vehicle along with other buyers.
- c) The proceeds collected by the petitioner from sale of the said vehicle shall be kept by the petitioner in a separate interest bearing account and would be subject to any orders that may be passed in any recovery proceedings that are or may be initiated by the creditors of respondent no.3, including the petitioner. It is clarified that the petitioner would not claim that by virtue of this order it is placed in a preferential position viz-a-viz other creditors of respondent no.3.

10. It is apparent that several documents which had been produced in these proceedings are tampered. The sale invoices produced by the petitioner are not copies of the original invoices. Respondent no.3 has filed an affidavit disputing his signatures on Form 34.

11. In view of the affidavit filed by respondent no.3 that the signatures appearing on Form 34 are not his signatures, this Court had directed the presence of respondent no.3 for taking a *prima facie* view in the matter. Respondent no.3 appeared in Court and affirmed his stand that the signatures on Form 34 were not his. On a plain comparison of the signatures appearing on Form 34 and the signatures of respondent no.3 appearing on the affidavit affirmed by Mr Rakesh Gupta, it *prima facie* appears that the signatures are similar and that of respondent no.3.

12. The said Form 34 is a vital document as that would enable the petitioner to claim hypothecation over the said vehicle. Thus, in the interest

of justice, it is necessary that an inquiry be conducted for an offence under Section 199 of the IPC. I find that this is a fit case where an order under Section 340(1)(c) of the CrPC be made for conduct of an inquiry by a Magistrate. Accordingly, the Registrar is directed to place the original Form 34 and the affidavit filed by respondent no.3 in a sealed cover after scanning the said documents and forward the same to the concerned Magistrate to conduct an inquiry into an offence under Section 199 of the IPC.

13. It will be open for the petitioner to initiate such proceedings as it may be advised for recovery of its dues. It is clarified that all contentions of the parties are left open. The writ petition is disposed of with the aforesaid directions.

SEPTEMBER 18, 2014
MK

VIBHU BAKHRU, J