

GAHC010034332023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/965/2023

MAINUDDIN
S/O- ISAB ALI, A R/O- VILL- SHILBHETA, P.O. DHARAMTUL, P.S. JAGIROAD,
DIST.- MORIGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS.
TO BE REP. BY THE SECY., MINISTRY OF FINANCE, GOVT. OF INDIA,
NORTH BLOCK, NEW DELHI-1

2:THE MINISTRY OF HOME AFFAIRS
GOVT. OF INDIA
TO BE REP. BY THE HOME SECRETARY
NORTH BLOCK
NEW DELHI

3:THE RESERVE BANK OF INDIA
TO BE REP. BY ITS CHIEF GENERAL MANAGER HAVING ITS REGD. HEAD
QUARTER OFFICE AT 1ST FLOOR
MAIN BUILDING
SHAHID BHAGAT SINGH ROAD
MUMBAI-01

4:THE STATE OF ASSAM
TO BE REP. BY THE COMM. AND SECY.
TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPTT.
DISPUR
GHY-06

5:THE DIRECTOR GENERAL OF POLICE
ASSAM POLICE HEAD QUARTER

ULUBARI
GHY-07

6:THE SUPERINTENDENT OF POLICE
MORIGAON
DIST.- MORIGAON
ASSAM

7:THE OFFICER IN-CHARGE
DHARAMTUL P.S.
DIST.- MORIGAON
ASSAM

8:THE CATERPILLAR FINANCIAL SERVICES INDIA PRIVATE LIMITED
TO BE REP. BY ITS DIRECTOR
6TH FLOOR
TOWER-B
PRESTIGE SHANTINIKETAN
WHITEFIELD
BENGALURU
PIN- 560048
KARNATAK

Advocate for the Petitioner : MR. A R BHUYAN

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 11-04-2023

Heard Mr. A. R. Bhuyan, learned counsel for the petitioner. Also heard Mr. R. Talukdar, learned counsel for the State respondents.

2. The petitioner's grievance is against the respondent no. 8 (finance company), with regard to the attempt by the respondent no.8 to take possession of the vehicle Backhoe 424 B2 Loader bearing Registration No. AS 21C 9996, which had been bought with the loan amounting to Rs. 19,45,409/-,

taken from the respondent no. 8.

3. The petitioner's counsel submits that as per the loan and security agreement executed between the petitioner and the respondent no.8, the petitioner was required to repay the loan amount at the rate of 11% per annum, in 48 equal monthly installments of Rs. 51,365/- per month.

4. The petitioner's counsel submits that though the petitioner has been regularly repaying the loan amount to the respondent no. 8 and though there is no pending arrears in repaying the loan amount, the respondent no. 8 through its agents, is trying to re-possess the said vehicle.

5. The petitioner's counsel submits that the respondent no. 8 has made an application to the Court of the Additional City Civil and Sessions Judge, Bengaluru under the Arbitration and Conciliation Act 1996 against the petitioner. The petitioner's counsel submits that the petitioner has engaged a counsel for appearing in the Court of the Additional City Civil and Sessions Judge, Bengaluru. He also submits that due to an attempt made by the respondent no. 8 to recover the vehicle, the petitioner submitted an FIR to the Officer In-charge, Dharamtul Police Station. However, the police has not registered any case on the basis of the FIR submitted by the petitioner. The petitioner's counsel thus prays that a direction should be issued to the respondent no.8, not to take the possession of the aforesaid vehicle and to direct the police of the Dharamtul Police Station to register the FIR filed by the petitioner.

The learned counsel for the petitioner also submits that in the case of *ICICI Bank Vs. Shanti Devi Sharma and Others reported in (2008) 7 SCC 532*,

the Apex Court had upheld the directions passed by the High Court and held that the Finance Company could not use musclemen and goons for recovering possession of vehicle which have been taken against loans, besides giving other guidelines.

6. Mr. R. Talukdar, learned counsel appearing for the respondent nos. 4, 5, 6 & 7 submits that the dispute in this case is a private dispute, between the writ petitioner and the respondent no. 8 and as such, this writ petition is not maintainable. He also submits that if the petitioner is aggrieved with the non registration of his FIR dated 25.01.2023, the petitioner can approach the Jurisdictional Magistrate under Section 156 (3) CrPC, which would be in conformity with the judgment of the Apex Court in *Sakiri Vasu Vs. State of U. P.* reported in 2008 2 SCC 409 which is reiterated in 2016 6 SCC 277.

Mr. R. Talukdar learned counsel for the State respondents submits that the writ petition should be dismissed.

7. I have heard the learned counsels for both the parties.

8. The petitioner's FIR dated 25.01.2023 addressed to the Dharamtul Police Station is reproduced below:

“Sir,

With due respect that my JCB bearing No. AS-21C 9996 has been engaged for doing work of Tapti Gaon Panchayat. Today at around 4.30 PM, some people, by taking advantage in absence of driver of the said JCB as well as darkness, have come with a SCORPIO and introduced themselves as Caterpillar and have driven the said JCB by another key to

bring into Guwahati. But on 12/1/2023 I have deposited the instalment for the said JCB in Bank. Therefore, my said JCB has been fraudulently taken by some miscreants.

Therefore, it is most respectfully prayed before your kindself to take necessary action for taking back my JCB. "

9. On perusal of the above FIR, it would go to show that the said vehicle had apparently been taken away by some miscreants. The contents of the FIR is however contradicted in para 13 of the writ petition, in which the petitioner states that the police on being informed, vide the FIR dated 25.01.2023, immediately acted upon the same and the miscreants fled away and threatened the petitioner that they would take away the vehicle.

10. The contradictory stand of the petitioner is apparent from his submission made in this Court that no action was taken by the Police vis-à-vis para 13 of the writ petition. In that view of the matter, the correctness or truthfulness of the FIR would also have to be ascertained. The above being said, if the petitioner's FIR has not been registered by Dharamtul Police Station, the petitioner has the remedy available to him by approaching the Jurisdictional Magistrate for registering his FIR, in terms of the Section 156 (3) CrPC, which would be in consonance with the judgments of the Apex Court, as referred to above by the learned counsel for the State respondents.

11. The case filed by the respondent no. 8 before the Court of the Additional City Civil and Sessions Judge, Bengaluru under the Arbitration and Conciliation Act is to the effect that the petitioner had failed to pay his monthly installments regularly and continued to default in the said payment, despite

issuance of several verbal and written reminders. The further case of the respondent no.8 is that in the event of the default, as stipulated under Clause 15 of the agreement, the respondent no. 8 was entitled to take possession of the vehicle in terms of Clause 16 and to initiate arbitration proceedings as contemplated under Clause 21 for dispute resolution. The case of the respondent no.8 in the Court of the Additional City Civil and Sessions Judge, Bengaluru is that the petitioner has failed to pay outstanding dues amounting to Rs. 17,56,318/-.

12. As is apparent, there are disputed questions of facts between the petitioner and the respondent no. 8, keeping in view the notice issued by the Court of the Additional City Civil and Sessions Judge, Bengaluru South, Bengaluru in COM.A.A.628/2022 initiated by the respondent no. 8 against the petitioner and the stand of the petitioner that he has not defaulted in the repayment of his loan. As the petitioner has also engaged a counsel for the Court case in Bengaluru, this court is of the view that there is nothing to decide in the present writ petition, as the issue herein would have to be decided in accordance with the terms of the agreement executed between petitioner and respondent no. 8 and if required, by applying the arbitration clause for resolution of the dispute between the parties.

13. The loan and security agreement executed between the petitioner and respondent no.2, for obtaining the loan to buy the vehicle in question states at para 21.2 as follows:

“21.2 Any dispute arising out of or in connection with the Loan Documents (including any question regarding its existence, validity or termination) shall be referred to and be finally resolved by arbitration. Disputes

submitted to arbitration shall be resolved in accordance with the Arbitration and Conciliation Act, 1996 and the Arbitration & Conciliation Centre Rules, 2012 ("Rules"). The tribunal shall consist of a sole arbitrator appointed in accordance with the Rules. The language of arbitration shall be English. The place of arbitration shall be Bengaluru with the Arbitration & Conciliation Centre Bengaluru as the arbitration centre."

14. On a perusal of the writ petition, it is also seen that the Court of the Additional City Civil and Sessions Judge, Bengaluru, in its Order dated 01.12.2022, had passed an ad-interim injunction to the petitioner, restraining him from alienating or creating any third party right in respect of the vehicle.

15. As can be seen of the contents of the writ petition, the petitioner is aggrieved by the attempt of the respondent no. 8 to re-possess the vehicle, which had been bought by the petitioner from the loan taken from the respondent no.8. Apparently, the respondent no. 8 is a private entity and the dispute in question is a private dispute which would require determination of facts, by recording evidence.

16. In view of the above reasons, this court does not find any ground to exercise it's discretion in this. The petitioner may accordingly participate in the proceedings before the learned Court in Bengaluru and avail of Section 156(3) Cr.P.C, if so advised.

17. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant