

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No. 564 of 2015 (U)

PETITIONER :

**BAIJU K.T.,
S/O.LATE. GANGADHARAN,
AGED 42 YEARS, RESIDING AT AMBILI VILLA
NEAR HIGH SCHOOL, MUZHAPPILANGADI P.O.- 670 662
KANNUR DISTRICT.**

BY ADV. SRI.R.SURENDRAN

RESPONDENT(S) :

- 1. THE REGIONAL TRANSPORT OFFICER
OFFICE OF THE RTO, CIVIL STATION, KANNUR-670 002.**
- 2. HDFC BANK LIMITED
KOZHIKODE BRANCH, KOZHIKODE P.O.- 673 001.**
- 3. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
TRANSPORT DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001.**

**R1 & R3 BY GOVT. PLEADER SRI. R. RANJITH
R2 BY ADV. SRI.T.RAJESH, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P1. TRUE COPY OF THE REGISTRATION CERTIFICATE IN RESPECT OF THE MOTOR CAR BEARING REGISTRATION NO.KL-13Q-9097.
- EXT.P2. TRUE COPY OF THE MEMORANDUM OF SETTLEMENT DATED 23/12/2011, ISSUED BY THE 2ND RESPONDENT IN FAVOUR OF THE PETITIONER'S FATHER K.GANGADHARAN.
- EXT.P3. TRUE COPY OF RECEIPT OF PAYMENT ISSUED BY THE 2ND RESPONDENT TO SRI. K.GANGADHARAN.
- EXT.P4. TRUE COPY OF RECEIPT FOR THE PAYMENT ISSUED BY THE 2ND RESPONDENT TO SRI.K.GANGADHARAN.
- EXT.P5. TRUE COPY OF DEATH CERTIFICATE DATED 23/12/2012 IN RESPECT OF PETITIONER'S FATHER K.GANGADHARAN.
- EXT.P6. TRUE COPY OF LEGAL HEIRSHIP CERTIFICATE DATED 24/4/2012 ISSUED BY THE TAHSILDAR, KANNUR TALUK.
- EXT.P7. TRUE COPY OF THE APPLICATION IN FORM NO.31 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P8. TRUE COPY OF COVERING LETTER ACCOMPANYING THE APPLICATION IN FORM NO.31 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P9. TRUE COPY OF LETTER DATED 25/7/2014 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

K.VINOD CHANDRAN, J

W.P.(C).No. 564 of 2015

Dated 4th March, 2015

JUDGMENT

The petitioner is aggrieved with the non acceptance of the application for transfer of ownership. The petitioner is said to be the son of one Gangadharan who was the registered owner of a motor car bearing registration No.KL-13Q-9097. On the death of the petitioner's father, the petitioner allegedly filed an application for transfer of ownership to his name, as evidenced by Exts.P7 and P8.

2. The learned Government Pleader submits that the petitioner has not complied with the mandate of Rule 56 and hence the application was returned. It is also submitted that the registration certificate of the vehicle shows an endorsement made in favour of a financier under Section 51 of the Kerala Motor Vehicles Act, 1988

(for short 'the Act'), hence the consent of the financier is required to permit transfer of registration.

3. On admission of the above writ petition, the financier, who is the 2nd respondent, was issued with notice. The learned counsel appearing for the 2nd respondent/financier submits that the hire purchase account has been satisfied. But the petitioner's father had taken two other loans which are in arrears and on that default, the 2nd respondent has exercised a bankers lien on the vehicle, which was hypothecated to the 2nd respondent. In such circumstances, no consent would be granted, is their contention.

4. The learned counsel for the petitioner would specifically point to sub-section (6) of Section 51 of the Act where transfer of ownership is not taken into account. Hence, the financier's No Objection Certificate is not required to transfer the ownership of a motor vehicle, is the plea. It is

contended that, what is required for transfer of ownership is only the compliance of Rule 56 of the Central Motor Vehicles Rules, 1989 (for short 'the Rules'). Sub-section (2) of Rule 56 of the Rules specifically provides for production of certain documents before the authority for such transfer of ownership and that alone is required, is the contention.

5. Immediately, it is to be noticed that the learned Government Pleader has specifically contended that the documents under Rule 56 has not been produced. Even ignoring that submission, it is not as if the petitioner, the legal heir of the registered owner, could be granted transfer of registration on mere production of documents prescribed under sub-section (2) of Section 56. The protection to a financier, granted under Section 51, by sub-section (4) stipulates a consent from the financier for transfer of ownership. Sub-section (4) of Section 51 of the Act is extracted hereunder:

"No entry regarding the transfer of ownership of any motor vehicle which is held under the said agreement shall be made in the certificate of registration except with the written consent of the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement".

6. In such circumstances, without the consent of the 2nd respondent/financier, definitely there could be no transfer of ownership granted. The petitioner could either approach the financier and obtain his consent on whatever terms agreed between them or if the petitioner's contention is against the banker's lien exercised by the 2nd respondent as such, then the petitioner's remedy would be before the appropriate civil forum.

The writ petition is dismissed reserving the liberty of the petitioner to approach the appropriate forum. Parties are left to suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs