

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WP(C).No. 851 of 2015 (F)

PETITIONER :

**SHIJU P., AGED 26 YEARS
S/O. PRASANNAKUMMARA PILLAI, VADAKKEVILA VEEDU,
VILAKKUPARA.P.O., YEROOR, KOLLAM DISTRICT.**

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENTS :

- 1. SHRIRAM EQUIPMENT FINANCE COMPANY LIMITED,
REGISTERED OFFICE, 3RD FLOOR, MOOKAMBIKA COMPLEX,
NO.4, LADY DASIKA ROAD, MYLAPUR, CHENNAI - PIN-600004.
REPRESENTED BY ITS CHIEF OFFICER
SHRIRAM EQUIPMENT FINANCE COMPANY LIMITED
ANANTH TOWER, VRM ROAD, RAVIPURAM- KOCHI-682011.**
- 2. THE BRANCH MANAGER,
SHRIRAM EQUIPMENT FINANCE COMPANY LIMITED,
BRANCH OFFICE, ANCHAL, ANCHAL.P.O.
KOLLAM DISTRICT-691306.**

R1 BY ADV. SRI.K.R.VINOD

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE STATEMENT OF CLAIM MADE BY THE 1ST RESPONDENT IN ARB. NO. DK/ARB/214/2013.
- P2: TRUE COPY OF THE PROCEEDINGS INITIATED BY THE 1ST RESPONDENT BEFORE THE HON'BLE DISTRICT COURT, NEW DELHI IN ARBITRATION PETITION NO. 1669/2013.
- P3: TRUE COPY OF THE ORDER DATED 1-6-2013 IN ARBITRATION PETITION NO. 1669/2013.
- P4: TRUE COPY OF THE NOTICE DATED 3-12-1E ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
- P5: TRUE COPY OF THE COMPROMISE PETITION FILED BY THE PETITIONER ALONG WITH RESPONDENTS IN C.C. NO. 242/2013 BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM, KOLLAM.
- P6: TRUE COPY OF THE ORDER IN C.C. NO. 242/2013 ON THE FILES OF CONSUMER DISPUTES REDRESSAL FORUM, KOLLAM.
- P7: TRUE COPY OF THE EXECUTION PETITION NO.21/2014 ALONG WITH ENDORSEMENTS MADE BY THE HON'BLE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM, KOLLAM.
- P8: TRUE COPY OF THE BALANCE STATEMENT FILED BY THE DECREE HOLDER/RESPONDENTS IN E.P. NO. 21/2014.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE

bp

P.R. RAMACHANDRA MENON, J.

.....
W.P.(C)No.851 OF 2015
.....

Dated this the 12th March, 2015

J U D G M E N T

Non satisfaction of the due amount to the respondent company in connection with the financial assistance availed by the petitioner made the company to proceed with further steps before the appropriate Forum finally leading to Ext.P5 compromise executed by the parties before the CDRF, Kollam in C.C.No.242 of 2013. The terms of compromise are as given below:

"1. The complainant agrees to pay Rs.5,25,164/- which includes the pending monthly installments till the month of February, and one month installment in advance which will be adjusted to his penultimate installment (2nd last installment). The company will issue receipt for the amount of Rs.5,25,164/- today to the complainant.

2. The complainant agrees to pay Rs.55,107/- on 5.3.2014 as monthly installment together with Rs.55,107/- (2nd advance installment) which will be adjusted to his last installment .

3. The complainant agrees to pay Rs.1,75,000/- which includes ODC, Legal Charges and repossession charges in 10 equal

installments (Rs.17500/- each) along with his monthly installments which start from the month of March, 2014 onwards.

4. The complainant shall remit the future installments on or before 5th day of every month.

5. The opposite parties will hand over the JCB involved in this case to the complainant today. The company agrees to waive the yard rent, and if the complainant commits default of this agreement, the company will be entitled to recover of the same from the complainant.

6. If the complainant commits the default of 2 consecutive installments, he undertakes to voluntarily surrender the vehicle to the company in running condition.

7. The opposite parties will inform the matter of this settlement before the District and Sessions Judge, New Delhi District PHC, wherein OP.No.1669/2013 is pending.

8. The arbitral award passed in the dispute between the complainant and opposite parties by sole arbitrator S.H. Davender Kumar will be enforced only on the violation of the terms of this settlement by the complainant.

9. If the customer fails to voluntarily surrender the vehicle accordingly, the

company will be at liberty to repossesses the vehicle without any prior notice to him or through the due process of the Hon'ble CDRF, Kollam. All the conditions stipulated in the Loan cum Hypothecation Agreement No.DOTRNo.110290002 dt. 31.10.2011 executed between the parties shall prevail. "

2. The petitioner has approached this Court stating that due to some unforeseen circumstances, the commitment could not be honoured completely, by virtue of which the CDRF proceeded with further steps also by causing the petitioner to be arrested, which hence is sought to be intercepted in this writ petition.

3. When the matter came up for consideration before this Court on 12.01.2015, the petitioner was required to satisfy a sum of Rs.2 lakhs and the coercive proceedings were intercepted subject to satisfaction of the said condition. It is stated that the condition has been satisfied. The prayer is to enable the petitioner to clear the balance liability by way of reasonable installments.

4. The learned Counsel for the respondent Institution submits that there is absolutely no merit or bonafides in the writ

petition in so far as the petitioner wants to take a U -turn after executing compromise agreement vide Ext.P5. It is stated that a total sum of Rs.10,44,555/- is due as on date.

5. After hearing both the sides and also considering the particular facts and circumstances, the petitioner is directed to satisfy a further sum of **Rs.Two lakhs on or before 31.03.2015**. The balance outstanding liability shall be cleared by way of **'4' equal monthly installments**, the first of which shall be effected **on or before 30.04.2015**, followed by similar installments to be effected on or before the last working day of the succeeding months. Subject to this, coercive proceedings shall be kept in abeyance. It is made clear that if any single default is committed in satisfying the liability as above, it will be open for the respondents to proceed with further steps for realisation of the entire outstanding liability in a lump pursuing the coercive steps, from the stage where it stands now.

The writ petition is disposed of.

P.R.RAMACHANDRA MENON
JUDGE