

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 1st DAY OF APRIL 2015/11TH CHAITHRA, 1937

WP(C).No. 6719 of 2015 (L)

PETITIONER(S):

**K.C.MURALEEDHARAN PILLAI, AGED 47 YEARS
S/O. CHELLAPPAN PILLAI, VISHNU BHAVANAM, KADAPRA P.O.
KUMBANAD, KOZHENCHERRY, PATHANAMTHITTA DISTRICT.**

BY ADV. SRI.M.T.SURESHKUMAR

RESPONDENT(S):

- 1. THE REGIONAL TRANSPORT AUTHORITY
PATHANAMTHITTA-689 645.**
- 2. CHOLAMANDALAM
DBS FINANCE LTD., 2ND FLOOR, KOCHUPARAMBIL COMPLEX
KANJIKUZH, MUTTAMBALAM P.O., KOTTAYAM-4
REPRESENTED BY ITS REGIONAL MANAGER.**
- 3. ROSAMMA MATHAI
W/O. MATHAI, CHENGANNOOR VILAYIL, KAIPPUZHA NORTH P.O.
KULANADA, PATHANAMTHITTA-689 645.**

R2 BY ADV. SRI.BINOY VASUDEVAN

R2 BY ADV. SMT.PG.BABITHA

R3 BY ADV. SRI.SAKIR.K.H.

R BY GOVERNMENT PLEADER SRI. BIJU MEENATTOOR

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01.04.2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 6719 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 : COPY OF THE SALE LETTER DTD.2.4.2014.

EXT.P2 : COPIES OF FORM 29 DTD.6.8.2014.

EXT.P3 : COPIES OF FORM 30 DTD.6.8.2014.

EXT.P4 : COPY OF THE RC BOOK DTD.6.4.2008.

RESPONDENT(S)' EXHIBITS: NIL

// TRUE COPY //

PA to Judge

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.6719 of 2015 - L

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Dated this the 1st day of April, 2015

J U D G M E N T

The petitioner purchased a vehicle bearing Registration No. KL-42/B-462 from the 3rd respondent, which had a finance with the 2nd respondent. The 2nd respondent appears and submits that, the finance has been completely satisfied and they are not interested in the matter.

2. The dispute however, is between the petitioner and the 3rd respondent. The petitioner obtained a sale letter in Form No.29 and 30, which is produced at Exts.P2 and P3. The petitioner applied for transfer of registration. The registering authority is said to have objected to the same, on the ground that there was an endorsement of finance and the same has to be cancelled by Form No.35.

3. The petitioner then submits that, he approached the 3rd respondent for executing Form No.35.

But, however, the 3rd respondent refused to do so, demanding an additional amount of Rs.50,000/-.

4. The 3rd respondent appears and contends that, she never demanded any amounts, but the vehicle itself was given to the petitioner only as a security. The petitioner is alleged to have fraudulently obtained the signature of the 3rd respondent in Form No.29 and 30 undertaking that, the same would never be produced before the registering authority and representing that it is taken merely as a security. Allegedly the 3rd respondent has only availed a loan from the petitioner and executed the documents of sale, merely as a security. The 3rd respondent has also initiated criminal proceedings, which is pending as Crime No. 238 of 2014 of the Koyippuram Police Station.

5. The learned Counsel for the petitioner contends that, though Form No.35 requires signature or thumb impression of the registered owner, the inclusive definition of "owner" as per the Motor Vehicles Act, 1988 (for brevity, 'M.V. Act') indicates that any person, who has an agreement

also would be entitled to sign in the place of the registered owner. The sale certificate issued by the petitioner and Ext.P1 agreement would be sufficient to find that, the petitioner is the owner of the vehicle. Reliance is also placed on Section 51(2)(4) of the M.V Act, wherein, it is stated that any transferee of the vehicle would be entitled to get endorsed the hypothecation, to a third party in a registration certificate; on a transfer effected of a vehicle with the written consent of the person in whose name, the certificate of registration stands. There should hence be no difficulty, in the petitioner herein, seeking cancellation of endorsement of finance; especially when the financier has no claim otherwise. Form Nos. 29 and 30 should evidence the petitioner's ownership goes the argument.

6. The definition of owner under Section 2(30) of the M.V Act is extracted hereunder:-

“owner” means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;

7. A reading of the definition would specifically indicate that, there is no distinction between a registered owner and an individual, who possesses a vehicle on the basis of hire-purchase agreement, agreement of lease or an agreement of hypothecation. Both are 'owners' as defined under the Act. But, herein, the possession of the petitioner is not based on any agreement, as specified in the above definition. He is in possession of the vehicle, as a valid transferee, on the basis of a sale letter.

8. Admittedly there are disputes between the petitioner and the 3rd respondent. The 3rd respondent in the counter affidavit filed, contends that, Form Nos.29 and 30 were obtained fraudulently and that the same was executed only as a security. However, it is to be noticed that, the execution of Form Nos.29 and 30 is admitted by the 3rd respondent. The 3rd respondent only contends that, the entries made therein, in hand, were not filled in by her. It cannot be disputed that, the execution of the signature was on printed forms and it is not contended anywhere in the

counter affidavit that, it was blank forms that were filled up. Even if that was so, the execution would indicate that, there was a sale intended and not merely a security created on the vehicle. Form Nos. 29 and 30, printed forms are forms evidencing transfer of ownership of the vehicle, which admittedly is executed by the 3rd respondent.

9. The learned Government Pleader on instructions submit that, what is available with the authority is only a request for issue of duplicate goods carriage permit. The learned Counsel for the petitioner however contends that, in fact application for transfer was filed with the registering authority by Form Nos.29 and 30, but the same were returned on the ground that Form No.35 has to be filed jointly by the registered owner as also the financier.

10. In the present case, the financier appears before this Court and submits that, there is absolutely no dues remaining pending in the hire-purchase agreement. In such circumstance, the financier does not claim any charge

on the vehicle and the dispute is only with respect to the ownership between the respondents 1 and 3. As per the documents produced herein, specifically Form Nos. 29 and 30, there is a sale effected by the 3rd respondent to the petitioner. If there was no finance and no endorsement regarding the hypothecation, then there would have been no difficulty in transfer of the registration of the vehicle in the name of the petitioner. Difficulty arises only in respect of an endorsement having been made in the registration certificate creating a charge on the vehicle, which charge now stands effaced, even as per the submission of the financier.

11. In such circumstance, what is to be looked into is the method by which a charge is created and protection afforded to the financier as per Section 51 of the M.V Act. For cancellation of such charge endorsed in the registration certificate, or for a transfer of the vehicle to a person different from the person who is the registered owner, necessarily there should be consent of the financier.

Section 51(4) of the M.V Act specifically speaks of a written consent of a person, whose name has been specified in the certificate of registration, as the person with whom, the registered owner has entered into the agreement.

12. The Section mandates only a consent from the hire-purchaser/financier, whose interest is sought to be protected under Section 51 of the M.V Act. The present objection raised by the registering authority is relying on the 'Form' under Central Motor Vehicles Rules, which has to be filed before the registering authority for cancellation of endorsement of hire-purchase made in the registration certificate. Form No.35 specifically refers to a notice of termination of an agreement of hire-purchase/lease or hypothecation. The objection seems to be that, the prescribed 'Form' requires the signature or thumb impression of the registered owner, as also the signature of the financier with official seal and address. When the Section mandates a written consent from the financier, it cannot be said that, the Form prescribed as per the Rules

could be relied on, to decline a transfer of registration, merely on the ground that, registered owner has not signed in the 'Form'.

13. It is trite that, the 'Form" prescribed under the Rules cannot control the provision of the statute and it is always the other way round. Section 51(4) of the M.V Act mandates only a consent from the person with whom, the registered owner has entered into the agreement. A mere consent of notice of termination would suffice and it should be in Form No.35, but the signature of the registered owner would be of no consequence, especially in the present circumstances, where the petitioner has obtained transfer of the vehicle by a valid sale letter under Form Nos. 29 and 30. The financier submits that, Form No.35 has already been handed over to the registered owner. In such circumstance, it is only required that, a Form No.35 be produced before the authority, which the 3rd respondent refuses to execute on account of the dispute with respect to the sale effected to the first petitioner.

14. That question would have to be agitated before the appropriate Civil Forum by the 3rd respondent. However, that cannot interdict the petitioner from seeking transfer of the vehicle; which definitely would be subject to any litigation initiated by the 3rd respondent on that count. As per the mandate of the statute, the transfer has to be effected. In the peculiar facts and circumstances arising in this case, on the petitioner approaching the financier, the 2nd respondent herein shall issue 'Form 35' provided there are no pending dues regarding the vehicle and on production of the same, de hors the fact that the signature of the registered owner is not available, the registering authority shall transfer the registration of the vehicle and also cancel the endorsement, but, however, subject to any litigation initiated by the 3rd respondent herein. The petitioner shall produce the originals of Form Nos. 29 and 30 along with the written consent of the financier within a period of one month from today and the registering authority shall carry out the transfer within two weeks from

the date of production of the certified copy of this judgment, and renew the permit too simultaneously.

The writ petition would stand allowed, leaving open the contentions of the 3rd respondent. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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// true copy //

P.A to Judge