

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

WP(C).No. 23947 of 2014 (P)

PETITIONER :

**THE FEDERAL BANK LIMITED.,
ZONAL OFFICE, KOZHIKODE,
REPRESENTED BY ITS CHIEF MANAGER.**

**BY ADVS.SRI.MOHAN JACOB GEORGE
SMT.P.V.PARVATHI
SMT.REENA THOMAS**

RESPONDENT(S):

- 1. REGIONAL TRANSPORT OFFICER,
REGIONAL TRANSPORT OFFICE, CIVIL STATION,
KANNUR-670 001.**
- 2. SRI.SHRIJITH DAS,
S/O.KRISHNADAS, SHREYAS, NEAR ONDEN ROAD,
AZHIKODE, KANNUR DISTRICT, PIN -670 004.**
- 3. NEERAJ KUMAR NAHAR,
AASHIRWAD RAMANN ROAD, SOWCARPET,
CHENNAI-600 001.**
- 4. SOORAJ M.M.,
RATNACHITRA HOUSE, OLAVANNA P.O.,
KOZHIKODE, PIN -673 025.**

R1 BY GOVERNMENT PLEADER SMT. LILLY.K.T.

**R2 BY ADV. SMT.K.DEEPA (PAYYANUR)
SRI.V.R.NASAR**

**R4 BY ADV. SRI.P.R.SREEJITH
SRI.M.PROMODH KUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1: COPY OF THE REGISTRATION CERTIFICATE SUBMITTED TO THE BANK BY THE SECOND RESPONDENT IN RESPECT OF THE CAR BEARING REGISTRATION NO.KL 13-R-7030.
- EXHIBIT-P2: COPY OF THE SECTION 13(2) NOTICE DATED 08.05.2010 ISSUED BY THE BANK.
- EXHIBIT-P3: COPY OF THE PAPER PUBLICATION MADE IN THE MATHRUBHOOMI DAILY DATED 31.10.2011.
- EXHIBIT-P3(A): COPY OF THE PAPER PUBLICATION MADE IN THE NEW INDIAN EXPRESS DAILY DATED 31.10.2011.
- EXHIBIT-P4: COPY OF SALE NOTICE DATED 8.11.2011.
- EXHIBIT-P5: COPY OF THE LETTER DATED 16.05.2012 ISSUED BY THE BANK TO THE FIRST RESPONDENT.
- EXHIBIT-P6: COPY OF THE APPLICATION DATED 04.06.2013 SUBMITTED UNDER RIGHT TO INFORMATION ACT BY THE PETITIONER.
- EXHIBIT-P7: COPY OF THE REPLY DATED 02.07.2013 SENT BY THE 1ST RESPONDENT TO EXT.P6.
- EXHIBIT-P8: COPY OF THE LETTER DATED 19.08.2013 ISSUED BY THE PETITIONER TO THE FIRST RESPONDENT.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.23947 OF 2014

Dated this the 15th day of January, 2015

J U D G M E N T

The petitioner bank, which had financed the 2nd respondent through a car loan extended to him, resorted to SARFAESI proceedings against the secured asset when the 2nd respondent defaulted on the loan. Accordingly, pursuant to Exts.P2, P3 and P4 notices that were issued in terms of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (hereinafter referred to as 'the SARFAESI Act'), the vehicle in question namely, a Maruthi Wagon R car bearing Registration No.KL 13-R-7030, was taken possession of and sold to the 4th respondent. It is the case of the petitioner that thereafter, it approached the 2nd respondent and requested him to handover the registration certificate in respect of the vehicle. When this was not acceded to by the 2nd respondent, the petitioner approached the 1st respondent registering authority with Ext.P5 request to issue a fresh registration certificate in the name of the petitioner, so that it could be transferred thereafter in the name of the 4th respondent to whom the vehicle was sold in the auction sale conducted by the petitioner. This request was made in terms of Section 51 (5) and

(10) of the Motor Vehicles Act, 1988. When no action was forthcoming from the 1st respondent pursuant to Ext.P5 request, the petitioner preferred Ext.P6 application under the RTA Act seeking information as to whether the charge of the petitioner over the vehicle had been noted in the R.C book of the vehicle, and further, whether any person had given an application to release the charge of the petitioner over the vehicle, and if so, the details of the documents submitted by that person for the said purpose. By Ext.P7 reply to the query of the petitioner, the 1st respondent informed the petitioner that its charge over the vehicle was noted on 23.07.2007 in the registration certificate pertaining to the vehicle, and further, that the application for release of the charge of the petitioner over the vehicle had been submitted by the 2nd respondent but the documents, on the basis of which the charge of the petitioner was noted as released, were not available with the 1st respondent now. It is under these circumstances, and when faced with proceedings initiated by the 4th respondent under the Consumer Protection Act , that the petitioner approached this Court through the present writ petition seeking a direction to the 1st respondent to act on Ext.P5 application, preferred by the petitioner, and to transfer the ownership of the vehicle in favour of the 4th respondent to whom the petitioner had sold the vehicle

pursuant to the proceedings under the SARFAESI Act.

2. I have heard Sri.Mohan Jacob George, the learned counsel for the petitioner, Smt.Lilly K.T, the learned Government Pleader for the 1st respondent, Smt.K.Deepa, the learned counsel for 2nd respondent and Sri.P.R.Sreejith for the 4th respondent. There is no appearance for the 3rd respondent despite notice.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that this is a case where it is not in dispute that the hypothecation in favour of the petitioner was duly noted by the 1st respondent in the registration certificate pertaining to the vehicle in question. It is brought to my notice by counsel for the petitioner that when steps were taken by the petitioner to obtain a transfer of the registration in the name of the petitioner, in accordance with Section 51(5) of the Motor Vehicles Act, it was informed by the 1st respondent of a request that was received from the 2nd respondent to note a hypothecation in favour of the 3rd respondent, by cancelling the hypothecation in favour of the petitioner. Although the said hypothecation in favour of the 3rd respondent appears to have been noted in the files before the 1st respondent, Ext.P7 reply to the

RTI query of the petitioner would indicate that the documents, on the basis of which the 1st respondent had acted while noting the hypothecation in favour of the 3rd respondent, are not available with the 1st respondent as of today. That apart, it is not in dispute that in the instant case, prior to either cancelling the hypothecation noted in favour of the petitioner, or entering a hypothecation in favour of the 3rd respondent when there was admittedly a hypothecation noted in favour of the petitioner in the registration certificate of the vehicle, the procedure contemplated under Section 51 (5) or 51(10) was not complied with by the 1st respondent. In that view of the matter, I do not think it will be open to the 1st respondent to now legally sustain the entry of hypothecation in favour of the 3rd respondent in the registration certificate pertaining to the vehicle. Any hypothecation noted in favour of the 3rd respondent in the registration certificate of the vehicle must therefore be held to be illegal.

4. I must now consider the contention of counsel for the petitioner with regard to the inaction on the part of the 1st respondent to act on Ext.P5 application submitted by him before the said respondent. The 1st respondent being a statutory authority has necessarily to consider and pass orders on an application in the

nature of Ext.P5 that is presented before him in terms of Section 51 (5) of the Motor Vehicle Tax Act. Although the said application was submitted by the petitioner as earlier as on 16.05.2012, the 1st respondent has not passed any orders thereon till date. Perhaps it was the confusion created by the introduction of the 3rd respondent as a person, in whose favour the 2nd respondent had hypothecated the vehicle, that led the 1st respondent to defer a decision on Ext.P5. In as much as I have now found that the hypothecation noted in favour of the 3rd respondent cannot be legally sustained, I direct the 1st respondent to consider and pass orders on Ext.P5 application, preferred by the petitioner, within a period of one month from the date of receipt of a copy of the judgment after issuing a notice to the 2nd respondent and hearing him also in the matter. It is made clear that if the 1st respondent finds, as a matter of fact, that the petitioner had come into possession of the vehicle in question pursuant to the proceedings initiated under the SARFAESI Act, and that it was in the auction sale conducted by the petitioner in terms of the SARFAESI Act that the 4th respondent came into the ownership and possession of the vehicle, then the 1st respondent shall issue a fresh RC Book in favour of the 4th respondent. The matter is being remitted to the 1st respondent solely for affording an opportunity of hearing to the 2nd respondent

prior to passing orders as directed above.

With these directions, the writ petition is disposed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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