

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

W.P.(C).No.31756 of 2014 (T)

PETITIONER(S):-

M/S. INDUS IND BANK LTD.,
HAVING ITS REGIONAL OFFICE AT 'RAMA BHAVAN',
PARUTHELI PALAM, TOLL JUNCTION, EDAPALLY,
KOCHI-682024, REPRESENTED BY ITS LEGAL EXECUTIVE AJAY M.

BY ADVS.SRI.G.HARIHARAN
SRI.PRAVEEN.H.

RESPONDENT(S):-

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1. JOINT REGIONAL TRANSPORT OFFICER,
SUB REGIONAL TRANSPORT OFFICE, KOTHAMANGALAM,
PIN-686691.
 2. MRS.SHIBI MATHEW, W/O.MATHEW,
PARAKKATTU HOUSE, KADAVOOR P.O.,
KOTHAMANGALAM, PIN-686691.

R1 BY GOVERNMENT PLEADER SRI.R.RANJITH.
R2 BY ADVS. SRI.SINU.G.NATH
SRI.S.M.RAJEEVAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 TRUE COPY OF THE APPLICATION DATED 30.08.2010 FILED BY
 THE PETITIONER BEFORE THE 1ST RESPONDENT FOR ISSUANCE
 OF FRESH REGISTRATION CERTIFICATE.
- EXT.P2 TRUE COPY OF THE AWARD MADE IN ACP.NO.285/2010 DATED
 20.08.2010 PASSED BY THE ARBITRATOR AGAINST THE
 2ND RESPONDENT.
- EXT.P3 TRUE COPY OF THE NOTICE OF HEARING DATED 11.01.2012
 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS:-

- EXT.R2(a) TRUE COPY OF THE REQUEST LETTER DATED 9.3.15 FOR
 COPY OF HYPOTHECATION AGREEMENT.
- EXT.R2(b) TRUE COPY OF THE NOTICE DATED 23.04.2010 ISSUED
 UNDER SECTION 13(2) OF THE SARFAESI ACT, 2002.
- EXT.R2(c) TRUE COPY OF THE SPOT NOTICE ISSUED BY THE
 ADVOCATE COMMISSION TAKING POSSESSION OF THE
 VEHICLE.
- EXT.R2(d) TRUE COPY OF EP.NO.618/2012.
- EXT.R2(e) TRUE COPY OF THE OBJECTION FILED BEFORE THE
 1ST RESPONDENT.

vku/

[true copy]

K. Vinod Chandran, J

W.P.(C).No.31756 of 2014-T

Dated this the 08th day of April, 2015

JUDGMENT

The petitioner is before this Court seeking issuance of a duplicate Registration Certificate for the vehicle bearing registration No.KL-44-7108. Admittedly the said vehicle was purchased by the 2nd respondent under a Hire Purchase Agreement with the financier, being the petitioner herein. An endorsement of the financier under Section 51 of the Motor Vehicles Act, 1988 [for brevity “the MV Act”] was duly made in the Registration Certificate.

2. The 2nd respondent, having defaulted payments under the agreement, the petitioner was before the Arbitrator as per the terms of the agreement, the award in which, is produced at Exhibit P2. Even prior to that, the petitioner had approached the High Court of Judicature at Chennai and obtained an order to take possession of the vehicle. The possession of the vehicle is also said to have been taken in the year 2010. The vehicle

having remained with the petitioner for the last 4½ years, the petitioner was also before the Registering Authority seeking transfer of the registration, in the name of the petitioner, who was the financier, as per sub-section (5) of Section 51 of the MV Act. The said application dated 30.08.2010, Exhibit P1, having not been considered, the petitioner was before this Court earlier, and since notice of hearing was issued by the authority pending the writ petition; the same was not pressed. The 2nd respondent too filed a writ petition, which was dismissed for default.

3. The 2nd respondent, who was the registered owner of the vehicle, has filed a counter affidavit raising contentions against the taking possession of the vehicle. It is the contention of the 2nd respondent that the petitioner had been issued notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for brevity "SARFAESI Act"] and without approaching the Chief Judicial Magistrate Court for taking possession of the vehicle, possession was taken illegally. In the circumstance of notice having been issued under the SARFAESI Act, no proceedings

could have been taken before the High Court of Judicature, Chennai, is the specific contention taken. The 2nd respondent also allege that the petitioner never approached the High Court at Chennai and the vehicle was taken possession of by an imposter, styling himself as the Advocate Commissioner. The learned counsel for the 2nd respondent also places before me a judgment of a Division Bench of this Court reported in ***Sakthi Finance Ltd. v. T.C.Anilkumar* [2003 (2) KLT SN 90 (Case No.118)]**.

4. This Court has looked into the full text of the decision afore-cited. Therein, the financier obtained a duplicate Certificate of Registration under Section 51(5) and the registered owner challenged the same in a writ petition. The specific contention raised before Court was that there was a suit pending, filed by the registered owner and that the possession of the vehicle was not taken for reason of any default committed by the registered owner. A Division Bench of this Court found that Section 51(5) specifically speaks of a satisfaction to be arrived at by the Registering Authority that the possession of the vehicle

was taken over by reason of a default by the registered owner. The language employed in sub-section (5) was also noticed to find that any objection filed has to be considered by the Registering Authority. It is also to be noticed that eventually, by the time the judgment was passed by the Division Bench, the suit filed by the registered owner was decreed in his favour.

5. None of such facts exist in the present case. The petitioner has not challenged the taking over of possession for the last 4½ years. The default is concluded by the arbitration award, produced at Exhibit P2. However, there can be no dispute that on an application being filed under sub-section (5) of Section 51, the Registering Authority will necessarily have to consider the objections and reject the same, if satisfied that the financier has made out a case for transfer of registration.

6. It is to be noticed that the 2nd respondent had not challenged the possession taken by the petitioner before any of the forums. The arbitration case was also not contested. The writ petition filed before this Court too stood rejected on default. Only when the petitioner, who had possession of the vehicle for the

last 4½ years, approached the Registering Authority for transfer of the vehicle in the name of the petitioner and then approached this Court; did the 2nd respondent file objection contending that the possession was taken illegally. At this distance of time, there is no warrant for this Court to consider such objection made by the 2nd respondent. The application under Section 51(5), evidenced at Exhibit P1, has to be necessarily considered on the terms of the said provision.

7. Sub-section (5) of Section 51 specifically speaks of an opportunity to make such representation as the registered owner of the vehicle wishes to make. The 2nd respondent is said to have filed an objection before the Registering Authority. In such circumstance, the application filed under sub-section (5) of Section 51 of the MV Act shall be taken up and considered by the Registering Authority within a period of two months from the date of receipt of a certified copy of this judgment. The petitioner and the 2nd respondent shall appear before the Registering Authority on 21.04.2015, upon which the Registering Authority shall take up the matter and consider the same as directed

herein above. If the 2nd respondent does not turn up, the Registering Authority has to consider the issue and pass final orders within the time stipulated above.

The Original Petition is disposed of as above. Parties to bear their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vkul/-

[true copy]