

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:01.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.17609 of 2016

K.Vijayan

.. Petitioner

-Versus-

1.The State Legal Head
Tata Motors Finance Ltd.,
T.Nagar, Chennai.

2.The Road Transport Officer,
Road Transport Office,
R.T.O.Office, Cuddalore.

3.Mrs.T.Vidya

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, to direct the second respondent herein to issue the R.C. Book by transferring the same into the petitioner's name.

For Petitioner : Mr.S.Senathipathi

For Respondents : Mr.A.Raja Perumal
Government Advocate for R2

ORDER

Heard Mr.S.Senathipathi, learned counsel appearing for the petitioner and Mr.A.Raja Perumal, learned Government Advocate, accepting notice on behalf of the second respondent. With the consent of the learned counsel on either side, the Writ Petition is taken up for final disposal.

2.The petitioner's case is that he purchased the Tipper Lorry bearing Registration No.TN-31-AC 1108, in auction conducted by the first respondent viz. Tata Motors Finance Limited. The vehicle stood registered in the name of the third respondent, who borrowed money from the first respondent for purchase of the vehicle. Since the third respondent committed default in payment, the vehicle was re-possessed and brought for auction and in the said auction sale, the petitioner is said to have purchased the vehicle on 14.05.2012

and paid a sum of Rs.9.40,000/- towards the cost of the vehicle, which has been acknowledged by the first respondent. However, the third respondent has been adjudicated as an insolvent and the all the papers have been vested with the Official Liquidator. The third respondent along with her husband A.Tamilselvam, had filed an appeal before this Court in C.M.A.No.3068 of 2012 under section 173 of the Motor Vehicles Act against the fair and decreetal order dated 31.08.2012 in I.A.No.106 of 2012 in I.P.No.1 of 2012, on the file of the III Additional District Court, Puducherry and to grant an order of injunction to restrain the respondents therein, which includes the first respondent herein from seizing the schedule mentioned vehicle or forcibly removing the same from their custody and to maintain status quo till the disposal of I.P.No.1 of 2012. The said Appeal was disposed of by Judgment dated 18.10.2012 and the operative portion of which reads as follows:

"7.It is not in dispute that the Court below has not conducted any enquiry in the matter. It is seen that after initially passing an order of status quo, the Court below has proceeded to pass orders in the first instance vacating the order of status quo as regards the 4th respondent and subsequently, passed the order under challenge on the basis of mere representations before it.

8.Finding that the contention of learned counsel for the appellant viz., that an order of status-quo initially granted, came to be set aside without any enquiry, is not disputed, this Court restores the order of status-quo till disposal of the I.P.No.1 of 2012. This Court clarifies that in passing an order of status-quo, a right larger than that held by a party cannot be conferred upon him nor can a legal right of another be defeated. There is no dispute about the fact that the entire 'B' Schedule properties are hypothecated properties. Therefore, the order of status-quo shall be subject to the right of the respondents/hypothecatees to realise the securities through due process of law by way of resort to suit or arbitration.

9.Accordingly, this appeal is allowed and the order under challenge is set aside and the Court below is directed to dispose of I.P.No.1 of 2012 within a period of three months from the date of receipt of a copy of this judgment.

No costs. Consequently, the connected miscellaneous petitions are closed."

3.The learned counsel for the petitioner submitted that though the appeal was allowed and a direction was issued to dispose of the Insolvency Petition, within a period of three months from the date of receipt of the Judgment, till date the Insolvency Petition has not been disposed of.

4.In any event, since the matter is seized of by the Insolvency Court, the appropriate procedure to be adopted by the petitioner is to approach the concerned Court, file an Application for necessary relief.

5.In the light of the above, liberty is granted to the petitioner to file an Application before the III Additional District Court, Puducherry in I.P.No.1 of 2012, for necessary relief and if such Application is filed, the concerned Court shall deal with the same on merits and in accordance with law.

The Writ Petition is disposed of accordingly. No costs.

r p a

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The State Legal Head
Tata Motors Finance Ltd.,
T.Nagar, Chennai.

2.The Road Transport Officer,
Road Transport Office,
R.T.O.Office, Cuddalore.

+1cc to Mr.S.Senathipathi, Advocate S.R.No.29291
+1cc to the Government Pleader, S.R.No.29080

KR/9/6/16

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