

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.4682 of 2016

M/s.Kotak Mahindra Bank Ltd.,  
Rep by its Authorised Signatory  
Saral Loan Division, Chennai 8<sup>th</sup> floor  
TVH Agnitio Park, Zone-2,  
Old Mahabalipuram Road, Kandhanchavadi,  
Chennai-96.

.. Petitioner

Vs.

1.D.Jayanthi  
2.M.Perumal  
3.R.Dhandapani

4.The Government of Puducherry  
Office of the Deputy Collector (Revenue) South  
Vilianur, Puducherry.

5.The Station house officer  
J2 Katterikuppam Police Station,  
Pondicherry.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of mandamus to direct the respondents 4 and 5 to release the vehicle being Heavy Commercial Vehicle Tipper-Ashok Leyland AL 1613 Tipper bearing Registration No.TN23 AS 0445 bearing Engine No.FPH 438802 and Chassis No.FPE 609150 to the petitioner subject to terms, if any, to be fixed by this Court.

For Petitioner : M/s.Elayarajkumar  
for M/s.Ramalingam and Associates

For Respondents: Mr.A.Tamilvanan, AGP(Pondy) for R4 & R5

O R D E R

With the consent of both sides, the Writ Petition is taken up for final disposal.

2.The petitioner has come up with the present writ petition for issuance of writ of mandamus to direct the respondents 4 and

5 to release the Heavy Commercial Vehicle Tipper - Ashok Leyland AL 1613 Tipper bearing Registration No.TN23 AS 0445 bearing Engine No.438802 and Chassis No.FPE 609150 to the petitioner subject to terms, if any.

3.The petitioner is carrying on business under the licence from Reserve Bank of India. It is one of the scheduled banks of the Country being included in the Schedule to the RBI Act and licensed to carry on business throughout the country, engaged in the business of hire purchase, leasing and advancing loans to industrial equipment/machineries, trucks, other equipments and vehicles.

4.The petitioner submits that the respondents 1 to 3 applied for a vehicle loan for purchase of Heavy Commercial Vehicle Tipper Ashok Leyland AL 1613 on 04.06.2012. One P.Arulmurugan stood as guarantor for the said loan transaction. Considering the request made by the respondents 1 to 3, the petitioner sanctioned a loan to the tune of Rs.7,98,979/-. The respondents 1 to 3 along with the guarantor entered into a loan agreement No.SA452781 with the petitioner on 21.06.2012 for due repayment of loan in 35 monthly installments. From and out of the sanctioned loan amount, the respondents 1 to 3 have purchased the vehicle bearing Registration No.TN23 AS 0445 bearing Engine No.FPH 438802 and Chassis No.FPE 609150. The factum of hypothecation of the vehicle by the respondents with the petitioner is endorsed by the Registering Authority in the registration certificate.

5.In the said loan transaction the respondents 1 to 3 agreed to repay the loan amount with 20.74% interest in 35 monthly installments commencing from 15.08.2012, the last installment being on 15.06.2015. As per Articles 5.2 of the agreement, the respondents agreed that the petitioner shall be entitled to recall the loan or demand payment of the loan balance by giving the respondents three days notice in writing and upon expiry of period of notice, the loan balance shall stand immediately repayable to the petitioner. As per Clause 7.1 of the said agreement, in the event of default in repayment of installments, the respondents 1 to 3 and the said Arulmurugan shall jointly and severally on demand promptly pay to the petitioner without any delay or demur.

6.The petitioner further states that the respondents 1 to 3 had been very irregular in repayment of monthly installments. On 05.08.2013, the petitioner was constrained to send a loan recall notice through RPAD to the respondents 1 to 3 calling upon them to pay the total balance installment amount of Rs.7,51,170.60 under the aforesaid loan account as on the date, within seven days from the receipt of the notice and also informed that in case of failure, the petitioner will be

constrained to initiate appropriate legal action as contemplated under the above said agreement. The respondents had not taken any steps to pay the balance dues. Hence, the petitioner approached this Court by filing Application under Section 9 of the Arbitration and Conciliation Act, seeking for appointment of an Advocate Commissioner. In the said application in A.No.6194 of 2014 this Court was pleased to appoint an Advocate Commissioner as prayed for, by an order dated 04.09.2014.

7. In the meanwhile, the Advocate Commissioner while taking steps to repossess the said vehicle, it came to their knowledge that the hypothecated vehicle was confiscated by the fourth respondent for illegal transportation of sand. The fourth respondent had initiated proceedings under the Mines and Minerals (Regulation and Development) Act, 1957 and imposed a fine of Rs.50,000/- on 15.05.2014. The confiscated vehicle is kept under the custody of fifth respondent by the order of the fourth respondent. Subsequently, the above application came up for hearing, the petitioner expressed their willingness to pay the penalty amount to the fourth respondent and on such payment the vehicle may be released to the petitioner; upon hearing the arguments, this Court dismissed the application on 17.11.2014.

8. The learned counsel for the petitioner further submitted that the petitioner being a financier of the Vehicle, not aware of the offence committed by the respondents 1 to 3. The vehicle is kept idle in the place of the fifth respondent and day by day losing its value, without regular usage and maintenance, the vehicle will become scrap and eventually will be of no use either to the petitioner or to the respondents 1 to 3. The vehicle is the only security available in the hands of the petitioner and the petitioner has to recover a sum of Rs.11,65,886/- from the respondents 1 to 3 as on date. If the vehicle is kept idle and allowed to become scrap, the petitioner will not be in a position to repossess and sell the same in near future. Hence, the petitioner filed this writ petition to direct the respondents 4 and 5 to release the vehicle bearing Engine No.FPH 438802 and Chassis No.FPE 609150 to the petitioner subject to any terms.

9. Heard the submissions of learned counsel appearing for the petitioners and the learned Additional Government Pleader (Pondicherry) who accepts notice on behalf of the respondents 4 and 5. Though, due notice has been sent to the respondents 1 to 3 by RPAD, the respondents 1 to 3 refused to receive the said notice.

10. Considering the facts and circumstances that the vehicle is lying idle for nearly two years, day by day losing its value without any regular usage and maintenance and the vehicle will

become scrap. Hence, this Court permits the petitioner to pay the fine amount to the fourth respondent, on such payment of fine amount, the fifth respondent is directed to release the said vehicle to the custody of the petitioner within four weeks, from the date of payment of fine amount.

11.The writ petition is disposed of accordingly. No costs.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Government of Puducherry,  
Office of the Deputy Collector (Revenue) South,  
Vilianur, Puducherry.

2.The Station house officer,  
J2 Katterikuppam Police Station,  
Pondicherry.

+2cc to M/S.Ramalingam, Advocate, S.R.No.9881

+1cc to the Government Pleader, S.R.No.9558

W.P.No.4682 of 2016.

nm(CO)  
srg(04/03/2016)

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