IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.11.2019

CORAM:

THE HON'BLE MR. JUSTICE P.D.AUDIKESAVALU

W.P. No. 18697 of 2019
and
WMP.No. 18043 of 2019

V.Vijay Babu ... Petitioner

-vs-

1. The Regional Director
   Reserve Bank of India,
   Fort Glacis,
   No.16, Rajaji Salai,
   Chennai-600001.

2. The Banking Ombudsman
   Reserve Bank of India,
   Fort Glacis,
   No.16, Rajaji Salai,
   Chennai-600001.

3. The Regional Manager,
   HDFC Bank,
   No.11, PLA Kanaku Towers, 1st Floor,
   Thillai Nagar,
   Trichy-620018.

4. The Branch Manager,
   Loan section,
   HDFC Bank,
   Muthu Shopping Complex,
   First floor, No.83 & 84, Vijayapuram,
   Thiruvarur-601001.

5. The Superintendent of Police,
   Thiruvarur,
   Thiruvarur District.

6. The Inspector of Police,
   Thiruvarur Town Police Station,
   Thiruvarur. ... Respondents

Prayer:- Writ petition filed under Article 226 of Constitution of India, seeking for a Writ of Mandamus, directing the Third Respondent to return the Petitioner JCB Vehicle Model 3DXEXCAVR Loader E11 bearing Registration No.TN50AD8141.

For Petitioner	:	S.Anbazhagan
For Respondents	:	Mr.C. Mohan for M/s. King & Patridge for R1 & R2 Mr.D.Saravanan for M/s.Pass Associates for R3 & R4 Mr.M.Karthikeyan Additional Government Pleader for R5 & R6

O R D E R

The Petitioner had availed a vehicle loan of Rs. 22,31,646/- from the Fourth Respondent for the purchase of JCB vehicle Model No. 3DXEXCAVR Loader E11 bearing Registration No. TN 50 AD 8141 and had executed Loan Agreement dated 22.06.2018 in which the aforesaid vehicle has been hypothecated as security for that borrowing and he has undertaken to repay that loan in 47 equated monthly instalments of Rs. 59,760/- each during the period from 05.08.2018 to 05.06.2022. Since the Petitioner committed default of the repayment of that loan after 05.01.2019, the Fourth Respondent on 21.05.2019 had seized the hypothecated vehicle. The Writ Petition has been filed seeking return of the same.

2. In this backdrop, reference may be made to clauses 13 and 17 of the loan Agreement executed by the Petitioner in favour of the Fourth Respondent under which the Fourth Respondent has been empowered to seize the hypothecated vehicle when there is default in repayment, and the same are reproduced below:-

"13. EVENTS OF DEFAULT

The Borrower and / or the Guarantor(s) expressly, irrevocably, jointly and severally agree with the Bank that in the event of:

13.1 The Borrower or the Guarantor(s) or any or more of them (In case of the Guarantor(s) being more than one person) fails to pay any sum due from it or him herein,

....

Then in any such case at any time thereafter without prejudice to the rights and remedies of the bank, the Bank may (but shall not be bound to do so) without the specific intervention of a court or any court order by written notices to the Borrower and Guarantor(s) declare

the loan to be immediately due and payable, whereupon the same shall become payable together with accrued interest thereon, the charges as set out in the schedule hereunder within and any other sums then owned by the Borrower herein;
On the question whether any of the above events / circumstances has / have occurred / happened, the decision of the Bank shall be final conclusive and binding on the Borrower and / or the Guarantor (s).

....

17. ENFORCEMENT

17.1 If the Borrower fails to perform any of the obligations herein and the same (if capable of remedy) is not remedied to the satisfaction of the Bank within the period to be specified by the Bank; or

17.2 any of the 'Event of Default' pursuant to the terms of Clause 13 arise (whether demand for repayment is actually made or not) then and in such case and at any time thereafter, the Bank through its officers, agents or nominees shall have the right (without prejudice to the right in Clause 7) to take any one or more than one of the following actions without the specific intervention of a Court or any Court Order,

(i) without any notice and assigning any reason and at the risk and expense of the Borrower and if necessary as Attorney for and in the name of the Borrower take charge and / or possession of, seize, recover, appoint receiver of and remove the Hypothecated Asset. The Bank will be within the rights to use tow-van to carry away the Asset / and / or,

(ii) enter into or upon any place or premises where the Hypothecated Asset may be kept or stored and inspect, value or insure the same at the costs and expenses of the Borrower, and / or,

(iii) sell by auction or by private contract or tender, dispatch or consign for realization or otherwise dispose of or deal with Hypothecated Asset in the manner the Bank may think it.”

The Hon'ble Supreme Court of India in Charanjit Singh Chada -vs- Sudhir Mehra [(2001) 7 SCC 417] and Orix Auto Finance (India) Ltd. -vs- Jagmander Singh [(2006) 2 SCC 598], has in no uncertain terms recognized the right of a creditor to seize the security for the debt from the custody of the borrower in terms of the written contract between them.

3. As there is no dispute regarding default committed by the Petitioner in repaying the monthly instalments due for the loan, no exception could be taken to the impugned action of the Fourth Respondent in seizing the hypothecated vehicle from the custody of the Petitioner exercising such right in terms of the written contract between them. The Petitioner has also not been able to show any illegality, perversity, unreasonableness, unfairness or irrationality in the impugned action of the Fourth Respondent for warranting interference in the matter.

4. Accepting the same, the Petitioner has filed a self-explanatory affidavit dated 04.11.2019, in which it has been stated as follows:-

> "3. I submit that thereafter the above said writ petition came up for hearing on 25.10.2019 and on that day the 3rd and 4th respondents herein filed the memo by stating that as per the statements of accounts relating to the payment of EMI amount due payable as on 22.10.2019 is Rs. 4,15,265/- and a sum of Rs. 25,000/- toward repossession charges a sum of Rs.19,440/- towards parking charges to the yard for the period from 21.05.2019 to 30.10.2019 and a sum of Rs. 15,000/- towards legal charges is also due and totally a sum of Rs.4,74,705/- is due payable as on 22.10.2019 towards my account.
>
> 4. I submit that now I have paid a sum of Rs. 1,00,000/- (Rupees one lakh only) on 2.11.2019 to the 3rd respondent herein and I undertake to pay the balance due amount of Rs.3,74,705/- till 21.11.2019 and also undertake to pay the future instalments regularly without any delay.
>
> 5. I submit that for the above said reasons till 21.11.2019 may be granted for the payment of balance due amount of Rs.3,74,705/- to the 3rd respondent herein. Otherwise I will be put to serious loss and hardships.
>
> It is therefore prayed that this Hon'ble Court may be pleased to accept and treat as this affidavit of Undertaking by granting time till 21.11.2019 to the petitioner for the payment of balance due amount of Rs. 3,74,705/- to the 3rd respondent and thus render justice."

5. Recording the aforesaid affidavit filed by the Petitioner, the following directions are issued:-

(i) on receipt of payment of the said sum of Rs. 3,74,705/-

from the Petitioner by 21.11.2019, the Fourth Respondent shall forthwith return the hypothecated vehicle to the Petitioner under written acknowledgment;

(ii) the Petitioner shall thereafter continue to pay the future instalments without any default in accordance with the agreement, failing which it would be open to the Fourth Respondent to re-seize the hypothecated vehicle from the Petitioner following the prescribed procedure;

(iii) in the event of the Petitioner failing to remit the aforesaid sum of Rs. 3,74,705/- to the Fourth Respondent by 21.11.2019, or if the vehicle has been re-seized for default in payment of future instalments, the Fourth Respondent may, after due intimation to the Petitioner, proceed for sale of the hypothecated vehicle in public auction in accordance with law to realize the amount due from him; and

(iv) while taking any action, the Fourth Respondent shall ensure that the same is strictly in accordance with the terms and conditions of the contract between the parties.

6. The Writ Petition is disposed on the aforesaid terms. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kv/sj

To

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LN(CO)
KKV/11/06/2020