

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 31.07.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.Nos. 20788 & 18452 of 2019

T.Kalaiselvi ... Petitioner in WP.No.20788/2019

M.Vijaya ... Petitioner in WP.No.18452/2019

Vs.

1. The Registering Authority,
Regional Transport Office,
Perundurai - 638052.
2. M/s Hinduja Leyland Finance Limited,
Rep. By its Authorized Signatory,
No.167-169, 3rd Floor,
Anna Salai, Saidapet,
Chennai - 600015.
3. M.N.Selvakumar ... Respondents in both WPs

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the Impugned Order Proc.R.No.16549/A2/2018 dated 03.05.2019 passed by the 1st respondent and quash the same and consequently direct the 1st respondent to transfer the name in favour of the petitioners in the RC book of the vehicle bearing Registration Nos. TN 56 J 6728 and TN 56 J 6178.

For Petitioner : Mr.Magesh D
(in both Wps)

For Respondents: Mrs.P.Rajalakshmi for R1
(in both Wps) Additional Government Pleader
Mr.K.B.Vivekanandham for R2
No appearance for R3

C O M M O N O R D E R

Since the facts involved in both these writ petitions are one and the same, the common order is passed.

2. The petitioners herein have purchased the vehicles from the second respondent-Finance Company. The said vehicles were seized by the Finance Company from the registered owner who is the third respondent herein, for the default of payment. After selling the vehicles to the petitioners, the second respondent-Finance Company has also given application under Form 36 to the first respondent herein, to effect name transfer in the RC book and issue fresh RC. However, the first respondent herein, has rejected their request vide proceedings dated 03.05.2019, citing the pendency of the Consumer Court case before the District Consumer Redressal Forum at Erode in CC.No.49 of 2018 filed by the third respondent herein, who is the registered owner of the vehicles. The first respondent has referred Section 51(5) of the Motor Vehicles Act, 1988 and held that the said provision is not applicable to the case in hand, since there is a dispute between the registered owner and the person in whose name hypothecation stands.

3. In spite of the notice to the registered owner-third respondent, there is no representation for him today. Whereas, the first respondent has filed a counter stating that the third respondent-Selyakumar is the registered owner of two lorries bearing Registration Nos. TN 56 J 6178 and TN 56 J 6728. The said lorries was under hypothecation with M/s. Hinduja Leyland Finance Limited, the second respondent herein. For the default of payment, vehicles was seized by M/s. Hinduja Leyland Finance Limited, the Financier and sold it to the petitioners herein. It is further admitted in the counter that pursuant to the orders passed by this Court in the writ petition filed by the petitioners herein, he has considered the representation given by them and passed the impugned order on 03.05.2019.

4. The contention of the first respondent is that after seizing the vehicles from the registered owner, the Financier has collected two installments from the registered owner and subsequently, has sold the vehicles to the petitioners herein. Now the registered owner has filed a case before the Consumer Court and in his representation before the first respondent, has stated that he is ready to pay the balance due amount and get back the vehicles. In such circumstance, he is not in a position to apply Section 51(5) of the Motor Vehicles Act, 1988.

5. Considering the counter filed by the first respondent and the impugned order passed by him, refusing to accept the Form 36 produced by the Financier, it is necessary to extract the provision of Motor Vehicles Act, 1988, which deals about name transfer. In case of hypothecation, Section 51 which is a special provision relevant to hire-purchase agreement which reads as below:-

51. Special provisions regarding motor vehicle subject to hire-purchase agreement, etc.—

(1) Where an application for registration of a motor vehicle which is held under a hire-purchase, lease or hypothecation agreement (hereafter in this section referred to as the said agreement) is made, the registering authority shall make an entry in the certificate of registration regarding the existence of the said agreement.

(2) Where the ownership of any motor vehicle registered under this Chapter is transferred and the transferee enters into the said agreement with any person, the last registering authority shall, on receipt of an application in such form as the Central Government may prescribe from the parties to the said agreement, make an entry as to the existence of the said agreement in the certificate of registration and an intimation in this regard shall be sent to the original registering authority if the last registering authority is not the original registering authority.

(3) Any entry made under sub-section (1) or sub-section (2), may be cancelled by the last registering authority on proof of the termination of the said agreement by the parties concerned on an application being made in such form as the Central Government may prescribe and an intimation in this behalf shall be sent to the original registering authority if the last registering authority is not the original registering authority.

(4) No entry regarding the transfer of ownership of any motor vehicle which is held under the said agreement shall be made in the certificate of registration except with the written consent of the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement.

(5) Where the person whose name has been specified in the certificate of registration as the person with whom the registered owner has

entered into the said agreement, satisfies the registering authority that he has taken possession of the vehicle [from the registered owner] owing to the default of the registered owner under the provisions of the said agreement and that the registered owner refuses to deliver the certificate of registration or has absconded, such authority may, after giving the registered owner an opportunity to make such representation as he may wish to make (by sending to him a notice by registered post acknowledgment due at his address entered in the certificate of registration) and notwithstanding that the certificate of registration is not produced before it, cancel the certificate and issue a fresh certificate of registration in the name of the person with whom the registered owner has entered into the said agreement:

Provided that a fresh certificate of registration shall not be issued in respect of a motor vehicle, unless such person pays the prescribed fee:

Provided further that a fresh certificate of registration issued in respect of a motor vehicle, other than a transport vehicle, shall be valid only for the remaining period for which the certificate cancelled under this sub-section would have been in force.

6. Under sub-section 4, the entry regarding the transfer of ownership can be made on the written consent of the person whose name has been specified in the certificate of Registration, as the person with whom the registered owner has entered into the said agreement. Under sub-section 5, if the registering authority is satisfied, the vehicle is repossessed by the Financier on receipt of Form 36, can issue fresh RC.

7. In this case, M.N.Selvakumar is the registered owner, has already approached the Consumer Court for deficiency service against the second respondent-Financier. He admits that the vehicles have been taken possession by the Financier.

8. Pendency of the Consumer Court case shall be no bar for the name transfer, since the Form 36 given by the Financier mandates the registering authority to issue a fresh RC book, if he is satisfied about repossession. If at all any deficiency on the part of the Financier, the damages can be ascertained by the Consumer Court and the Financier will be liable for payment of

the same. Since the petitioner herein, is a third party, who has purchased vehicles from the Financier, their right cannot be deprived, citing pendency of petition before the Consumer Court between the Financier and registered owner. Any loss, if at all incurred by the registered owner, it will be compensated as per law by the Consumer Redressal Forum and the Finance Company will be held liable for that. The first respondent erred in holding Section 51(5) of Motor Vehicles Act, 1988, does not apply to this case at this juncture.

9. Therefore, the first respondent is hereby, directed to effect name transfer of the vehicles in the name of the petitioners and issue fresh RC, based on Form 36 given by the second respondent, within a period of four weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petitions are disposed of. No costs.

Sd/-

Assistant Registrar (J)

//True Copy//

Sub Assistant Registrar

sni

To

The Registering Authority,
Regional Transport Office,
Perundurai - 638052.

+2ccs to Mr.K.B.Vivekanandham, Advocate, S.R.Nos.65755 & 65756
+2ccs to Mr.D.Magesh, Advocate, S.R.Nos.65753 & 65754
+1cc to the Government Pleader, S.R.No.66310

W.P.Nos. 20788 & 18452 of 2019

RRS (27/08/2019)

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