BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON :22.01.2019
DELIVERED ON : 18.03.2019
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.24829 of 2018

M/s.Sundaram Finance Limited,
represented by its Assistant Manager (Legal)
S.K.Kamalanand. ... Petitioner

Vs.

1.The Transport Commissioner,
Government of Tamil Nadu,
Chepauk, Chennai - 600 005.

2.The Regional Transport Officer,
Collectorate Office Campus,
Palayamkottai Main Road,
Korampallam, Tuticorin - 628 001.

3.M.Seyathu Ali Bathusha ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the second respondent to consider the representation of the petitioner dated 01.12.2018 and issue fresh certificate of registration in the name of the petitioner herein in respect of the vehicle viz., 2016 Model Fiat Punto Car bearing registration No.TN-69-BB-3218.

For Petitioner : Mr.S.Pon Senthil Kumaran
For R1 and R2 : Mr.K.Mu.Muthu
Additional Government Pleader
For R3 : Mr.S.Moorthy

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ORDER

The writ petitioner is a non-banking finance company registered under the provisions of the Indian Companies Act, 1913. It is engaged in the business of extending hire purchase / loan facilities on Automobiles & Machinery and leasing of vehicles / equipments / machinery.

2.The third respondent herein approached the writ petitioner in the month of May 2016 requesting for loan for purchase of the petition mentioned vehicle. He entered into a loan agreement dated 01.06.2016 with the writ petitioner. As per the terms of the loan agreement, the total loan amount of Rs.8,74,250/- was repayable in 59 monthly installments. The first installment commenced on 01.06.2016 and the last installment was to end on 10.04.2021. The third respondent hypothecated the vehicle in favour of the writ petitioner and the same was duly recorded in the registration certificate also.

3.According to the petitioner, the third respondent was highly irregular in paying the installments and was a defaulter. The petitioner, therefore, sent a legal notice on 08.05.2017 calling upon the third respondent as well as the guarantor to settle the claim or surrender the vehicle. The third respondent did not comply with the demand made by the petitioner. Since the default persisted, the petitioner initiated arbitration proceedings before the Sole Arbitrator appointed in terms of the loan agreement. The Arbitrator passed the award dated 23.05.2018 directing the third respondent and the guarantor to pay a sum of Rs.5,46,446.65/- with interest @ 18% from 12.12.2017 till the date of realization. The third respondent failed to comply with the award. Therefore, the petitioner seized the vehicle on 14.03.2018. It was intimated to the third respondent vide letter dated 20.03.2018. The third respondent was given an opportunity to settle the claim and take back the vehicle. The third respondent failed to avail the said opportunity.

4.The petitioner applied to the second respondent for issuance of a fresh certificate of registration. The second respondent thereupon issued notice to the third respondent calling upon him to surrender the original certificate of registration. But nothing transpired thereafter. Therefore, the petitioner made a representation dated 01.12.2018 to the second respondent. Since no action was taken pursuant thereto, this writ petition came to be filed.

5.The second respondent has filed a detailed counter affidavit. According to the second respondent, they have taken all the necessary steps based on the financier's request. In response to the notice sent in Form-37, the third respondent submitted his objection claiming that the seizure of the vehicle was illegal and that he had lodged a complaint before the local police. The complaint is yet to be disposed of. Therefore, the second respondent has not yet issued a certificate of registration in the name of the petitioner.

6.The third respondent was duly served and he has entered appearance through counsel. According to the third respondent, the seizure of the vehicle was without prior intimation. He further alleges that the uniform of his brother's Advocate and a cash amount of Rs.40,000/- was also taken along with the seized car. In this regard, a criminal complaint has been lodged before the South Police Station, Tuticorin, and the same is pending at CSR sage.

7.As rightly contended by the learned Senior Counsel appearing for the writ petitioner, the respective rights of the parties, namely that of the writ petitioner and the third respondent, will have to be decided only in terms of the loan agreement dated 01.06.2016 entered into between them. Article 14 of the said agreement sets out the rights of the lender. Article 14(2) states that in the event of failure of the Borrower to clear the arrears of installments, the borrower shall be bound to surrender the asset to the Lender, failing which the Lender shall be entitled to seize the asset. In the present case, it is beyond dispute that the borrower had defaulted.

8.In **Orix Finance (India) Ltd. v. Jagmandar Singh and Another,** reported in *(2006) 2 SCC 598,* the Honourable Supreme Court laid down the law regarding taking of possession by financier as under:

> *"If agreements permit the financier to take possession of the financed vehicles, there is no legal impediment on such possession being taken. Of course, the hirer can avail such statutory remedy as may be available. But mere fact that possession has been taken cannot be a ground to contend that the hirer is prejudiced. Stand of learned counsel for the respondent that convenience of the hirer cannot be overlooked and improper seizure cannot be made. There cannot be any generalization in such matters. It would depend upon facts of each case. It would not be, therefore, proper for the High Courts to lay down any guideline which would in essence amount to variation of the agreed terms of the agreement."*

9.The decision of the Hon'ble Supreme Court was followed by the Delhi High Court in ***M/s.GE Capital Transportation Financial Services Limited vs M/s Raj Tours Private Limited***, reported in ***2009 SCC Online Del 969.*** The Hon'ble Delhi High Court noted in that case that one of the contractual remedies provided that the financier can take possession of the loan asset from the debtor either with or without intervention of the Court. I, therefore, hold that the seizure of the vehicle by the petitioner / financier is very much in consonance with the terms of the contract.

10.The next question that arises for consideration is whether the second respondent is justified in not issuing a fresh registration certificate in the name of the writ petitioner on the ground that the borrower had lodged his objections. As rightly pointed out by the learned Senior Counsel appearing for the writ petitioner, the second respondent ought to follow the mandate set out in Section 51(5) of the Motor Vehicles Act, 1988. The said provision reads as under:

> *"51.Special provisions regarding motor vehicle subject to hire-purchase agreement, etc.-*
>
> *(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 acknowledgement 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."

11.The third respondent is the registered owner. The third respondent had hypothecated the vehicle in favour of the writ petitioner after availing loan from them. The writ petitioner invoking their contractual power seized the vehicle following the occurrence of the event of default. Since the third respondent refused to deliver the certificate of registration, the petitioner submitted an application in Form-36 for issuance of fresh certificate of registration in their name. The second respondent also issued a notice in Form-37. The third respondent lodged his objection pointing out that a criminal complaint given by him before the jurisdictional police station is pending. Now, the question is whether the second respondent is justified in sitting over the matter.

12.A overall reading of the various statutory provisions leads this Court to only one conclusion, that is, the second respondent cannot sit over the application submitted in Form-36 by the financier and he will have to cancel the earlier certificate of registration and issue a fresh certificate of registration in the name of the financier.

13.Rule 60 of the Central Motor Vehicle Rules states that an application for making an entry of hire-purchase, lease or hypothecation agreement in the certificate of registration of a motor vehicle required under sub-section (2) of Section 51 shall be made in Form 34 duly signed by the registered owner of the vehicle and the financier. Form 34 is as under:

"Form 34

(see rule 60)

Application for making an entry of an agreement of Hire-purchase/Lease/Hypothecation and subsequent to Registration.

(To be made in duplicate and in triplicate where the Original Authority is different, the duplicate copy and the triplicate copy with the endorsement of the Registering Authority to be returned to the Financier and the Registering Authority simultaneously on making the entry in the Certificate of Registration and Form 24)

To

The Registering Authority

The Motor Vehicle bearing Registration Number ...... is the subject of an agreement of Hire-purchase/Lease/Hypothecation between ...... the Registered owner/person to be registered as owner and ......

(fill the name and full address of the Financier)

We request that an entry of the agreement be made in the Certificate of Registration and the relevant records in your office. The Certificate of Registration together with the fee is enclosed.

Date..... Signature or thumb impression of Registered owner

Date..... Signature of Financier

*Strike out whichever is inapplicable

Office Endorsement

Ref.Number....... Office of the ....

The entry of the agreement of Hire-Purchase/Lease/Hypothecation as requested above is recorded in this office Registration Record in Form 24 and Certificate of Registration on ...... (date)

Date...... Signature of Registering Authority

To
The Financier ......
The Registering Authority ......
(To be sent to both the above parties by Registered Post acknowledgment due)
Specimen signatures of the Financier are to be obtained in original application for affixing and attestation by the Registering Authority with the office Seal in Form 23 and 24, in such a manner that the part of impression of seal or a stamp and attestation shall fall upon each signature."

14.As per Rule 61 of the Central Motor Vehicles Rules, 1989, an application for making an entry of termination of such an agreement shall be made in Form 35 duly signed by registered owner of the vehicle and the financier. But where there is no scope for making such a joint application in Form-35 and the financier has taken the possession of the vehicle, he could apply in Form-36. Form 36 is as under:

"Form 36.
[See rule 61(2)]
Application for issue of a fresh Certificate of Registration in the name of the Financier

To
The Registering Authority

I/We ..... (Financier) have taken possession of motor vehicle No..... Make ..... Model ..... owing to the default of the Registered Owner ...... (Name)...... (Full address) under the provisions of the agreement of hire purchase/lease/hypothecation.

*(1)The Certificate of Registration of the said vehicle is surrendered herewith.

(2)The registered owner has refused to deliver the Certificate of Registration to me/us.

(3)The registered owner is absconding.

I/We request you to cancel the certificate and issue a fresh certificate of Registration is my/our name.

I/We enclose a fee of Rs.......

Date....... Signature of the Financier

Specimen signature of the Financier

1..........

2...........

Copy to the original Registering Authority.

*Strike out whichever is inapplicable."

15.After an application in Form-36 is received by the authority, he is obliged to issue notice in Form-37 to the registered owner of the motor vehicle. The title given to it in the statutory form is significant. Form-37 is described as "Notice to the Registered owner of the motor vehicle to surrender the Certificate of Registration for cancellation and issue of fresh Registration Certificate in the name of the Financier". Form 37 reads as under:

Form 37

[see rule 61(3)]

Notice to the Registered owner of the motor vehicle to surrender the Certificate of Registration for cancellation and issue of fresh Registration Certificate in the name of the Financier

(To be made in duplicate and duplicate copy to be sent to the Financier simultaneously on issue of notice).

Office of the Registering Authority ....

Ref.Number .... Date.......

Shri/Smt./Kumari .... (Regd. owner) is/are hereby informed that ...... (Financier) has/have reported that he/they have taken possession of the motor vehicle bearing Registration Number ...... covered by an agreement of Hire-purchase/Lease/Hypothecation, owning to your default under the provisions of the said agreement and that,

*(1)you have refused to deliver the Certificate of Registration to him/her/them.

*(2)you have absconded.

He/She/they have requested to cancel the Certificate of Registration and issue a fresh Certificate of Registration in his/her/their name.

You are therefore directed to surrender the Certificate of Registration of the said motor vehicle which has been retained by you inspite of your having lost the possession and thereby the ownership of the motor vehicle under Section 2(30) and to send your representation in this regard, if any, to this office within seven days from the date of receipt of this notice by you, failing which a fresh Certificate of Registration will be issued in the name of the Financier, cancelling the Certificate of Registration held by you, in accordance with Section 51(5).

Date....... Signature of the Registering Authority

*Strike out whichever is inapplicable.

To

The Financier ......

(To be sent by Registered Post acknowledgment due)"

16.No doubt, Form-37 enables the registered owner to send his representation in that regard. Section 51(5) of the Act states that the registering authority will have to give the registered owner an opportunity of making a representation, as he may wish to make. The stand of the registering authority in this case is that when objection is received from the registered owner, the authority will have to take a decision as to whether to issue a fresh certificate of registration in the name of the financier or not.

17.I am of the view that the registering authority does not have such a choice in a case which arises under Section 51(5) of the Act. Section 51 of the Act contains special provisions regarding the motor vehicle subject to hire-purchase, lease or hypothecation agreement. The registered owner of such a vehicle before applying to the appropriate authority for renewal of a permit under Section 81 or for the issue of duplicate of registration under sub section 14 of Section 41 or for the assignment of a new registration mark under Section 47 or removal of the vehicle to another State or at the time of conversion of the vehicle from one class to another or for issue of no objection certificate under Section 48 or for change of residence or place of business under Section 49 or for the alteration of the vehicle under Section 52, has to make an application to the financier for the issue of a no objection certificate. After receiving such an application from the borrower, the financier will have to respond within 7 days. He has a choice in the matter. He may issue or refuse for reasons which shall be recorded in writing and communicated to the applicant. Where the financier fails to issue the certificate and also fails to communicate the reasons for his refusal within the said period of 7 days, the certificate applied for shall be deemed to have been issued by the financier. The appropriate authority while dealing with such an application in a case where the financier has refused to issue the certificate applied for, after giving the applicant an opportunity of being heard can either renew or refuse. This is the statutory scheme set out in Section 51 (6) to (9) of the Act.

18.Section 51(5) can be compared with Section 51(6) to (9) of the Act. While Section 51(5) contains an imperative direction to the registering authority, Section 51(9) empowers the appropriate authority to renew or refuse, to issue or refuse or to assign or refuse. Thus, the power to decide has been conferred on the appropriate authority in cases arising under Section 51(6) of the Act. But a similar power has not been conferred on the registering authority in cases arising under Section 51(5) of the Act. A doubt may arise as to whether the opportunity of making a representation given to the registered owner is an empty formality. It is not so. It is quite possible that there may be cases where the foundational matrix itself is absent. The borrower could have obtained an order in his favour from a court of competent jurisdiction in respect of the hypothecated vehicle. In his representation, he can bring it to the notice of the authority as regards the existence of such relevant and material facts. But, merely because the borrower is given an opportunity to make a representation, that would not clothe the registering authority to assume an adjudicatory jurisdiction in the matter. If any interim injunction has been granted against the financier and in favour of the borrower, the registering authority cannot ignore the same. Only to enable the registering authority to appraise himself of such facts, the statute has been worded in that fashion. It has no other purpose or object.

19.Where in the original certificate of registration, there is an entry in favour of the financier and the financier has taken possession of the vehicle in question in terms of the agreement, the authority is obliged to cancel the earlier certificate of registration and issue a fresh certificate of registration in the name of the financier.

20.It may be relevant to take note of the definition of the term “owner” as set out in Section 2(30) of the Act. It defines the owner as a person in whose name a motor vehicle stands registered, and in relation to a motor vehicle which is the subject matter of a hire-purchase agreement, or an agreement of hypothecation, the person in possession of the vehicle under that agreement. Of-course, this definition can be read either way. Even though in the case of hire-purchase agreement, the vehicle is in the name of the financier, since the borrower is in possession of the vehicle under the agreement, the expression “owner” would only refer to the borrower. Where the borrower has committed default and even though the vehicle stands in his name, if the financier has taken possession of the vehicle under the agreement, it is the financier who will have to be considered as the owner. That is why, Section 51 (5) of the Act categorically mandates the registering authority to issue a fresh certificate of registration in favour of the financier when the registered owner declines to surrender the original certificate of registration. This is the logical effect of a conjoint reading of Section 2(30) of the Act r/w Section 51(5) of the Act in the light of Rule 60 and Form-36 and Form -37.

21.Therefore, the second respondent is directed to issue a fresh Certificate of Registration in the name of the petitioner in respect of petition mentioned vehicle within a period of two weeks from the date of receipt of a copy of this order. Accordingly, the writ petition stands allowed. No costs.

22.The learned Senior Counsel appearing for the writ petitioner fairly submitted that they have filed this writ petition more as a test case. The financiers, like writ petitioner, are put to hardship and difficulty on account of the intransigent stand taken by the Regional Transport Officers. He therefore wants a direction to the first respondent to issue circular in this regard. I find the said request to be reasonable. Therefore, the first respondent is directed to issue a circular in the light of this order for the guidance of the Regional Transport Officers in the matter of their discharging the statutory function under Section 51(5) of the Act. Such guidelines shall be issued within a period of six weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (T AND P)

// True Copy //

Sub Assistant Registrar(CS II)

Skm

To

1.The Transport Commissioner,
Government of Tamil Nadu,
Chepauk, Chennai - 600 005.

2.The Regional Transport Officer,
Collectorate Office Campus,
Palayamkottai Main Road,
Korampallam, Tuticorin - 628 001.

+1 CC to M/s.SPL GP (SR-54955[F] dated 19/03/2019)
+1 CC to M/s.S.PON SENTHIL KUMARAN, Advocate (SR-54972[F])

order made in
W.P.(MD)No.24829 of 2018

18.03.2019

DS/ /SAR- (20.03.2019) 9P 5C