THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.4947 OF 2019

Date:07.08.2019

Between:

T. Reddeppa, S/o. T. Venkatesh,
Aged about 40 years, Occ: Business,
Lothkunta, Secunderabad,
Telangana State .. Petitioner

And

The State of Telangana, Transport
Department, Secretariat Buildings,
Secretariat, Hyderabad, rep., by its
Principal Secretary and others .. Respondents

The Court made the following:

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ORDER:

Heard learned counsel for the petitioner, learned Government Pleader for Transport and learned Standing Counsel for 3rd respondent - Bank.

2. Petitioner purchased contract carriage vehicle (Bus) having seating capacity of 41 in all of 2016 model with registration No.TS 08 UA 6979. The petitioner availed loan from M/s. HDFC Bank – the 3rd respondent vide agreement dated 22.06.2016 for an amount of Rs.28,60,000/- payable in 46 equal installments. It appears, petitioner defaulted in payment of the said amount. Though learned counsel for the petitioner sought to contend that only few installments were left to be paid, the Court is not entering to that aspect, as it is not the subject matter of the controversy.

3. Alleging that the petitioner defaulted in payment of loan amount, the vehicle was seized by the 3rd respondent – Bank. It appears, the 3rd respondent – Bank later conducted auction, identified the prospective buyer and determined the sale amount to be paid by the prospective buyer. At that stage, the 3rd respondent – Bank made an application to the Secretary, Regional Transport Authority – 2nd respondent for issuance of registration certificate, which was already granted, in its name. At that stage, having come to know that the 3rd respondent – Bank already sold the vehicle and applied for transfer of registration in its name, petitioner filed objections before the 2nd respondent. Alleging that objection is not considered, this Writ Petition is filed.

4. According to learned counsel for the petitioner, once the vehicle was already sold, the 3rd respondent – Bank cannot apply for transfer of registration and primary requirement of transfer of registration of the vehicle is, vehicle must be owned by him, who applied for transfer. Therefore, as the 3rd respondent – Bank has already sold the vehicle, it cannot be called as an owner/financier. Therefore, the application *per se* is illegal. He further submits that in accordance with Section 51 (5) of the Motor Vehicles Act (for short, 'the Act'), the 3rd respondent – Bank before making application for unilateral transfer of registration in its name, must call upon the petitioner to deliver certificate of registration and only if the owner does not deliver the certificate of registration, it can make application. But, admittedly, in the instant case, no such notice was issued to the petitioner and petitioner did not refuse to deliver the certificate of registration. He, therefore, submits that the said provision is not attracted.

5. According to learned standing counsel for the 3rd respondent – Bank, as the petitioner defaulted in payment of amounts due to the bank in accordance with the hypothecation agreement, the bank is entitled to take possession of the vehicle and recover the amounts due, if necessary, by selling the vehicle. The 3rd respondent - Bank is also entitled to request the registering authority to transfer the ownership rights in its favour. He submits that though vehicle is sold, possession over the vehicle could not be delivered, as the registration formalities are not completed and unless and until the registration of certificate is transferred in the name of the bank, the further formalities cannot be undertaken. Because of the pendency of this Writ Petition,

inordinate delay was caused and the subsequent purchaser is threatening to withdraw from the sale proceeds and in such an event, grave prejudice would cause to the Bank.

6. Leaving aside the respective stands and the amount due and taking possession over the vehicle, the only issue for consideration is the scope of Section 51 (5) of the Act.

7. On a bare reading of Section 51 (5) of the Act, it is apparent that the person, who applied for issuance of certificate of registration in the form of transfer of registration, made earlier, including, the financier, has to satisfy the registering authority that he has taken possession of the vehicle owing to the default of the registered owner and that he refused to deliver the certificate of registration and only on such satisfaction, the registering authority can issue the certificate, as requested. Thus, the satisfaction to be arrived at is by the registering authority and not the owner of the vehicle and not a pre-condition to apply to the registering authority. I therefore reject this contention of learned counsel for the petitioner.

8. As clarified by the 3rd respondent – Bank that though sale transaction was finalised, the vehicle was not handed over to the purchaser owing to the fact that the registration is not transferred to the 3rd respondent – Bank. Therefore, there is no need to enter into that issue.

9. The Writ Petition is accordingly dismissed leaving it open to the petitioner to work out his remedies in accordance with law

against any other controversy inter parties. There shall be no order as to costs. Miscellaneous petitions, if any, shall stand closed.

P. NAVEEN RAO, J

Date:07.08.2019

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