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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 735/2020**

DIMPLE KAPOOR ..... Petitioner

Through: Ms. Reena Jain Malhotra and Mr. Vinay Attri, Advocates.

versus

ICICI BANK AND ORS ..... Respondents

Through: Mr. Punit K. Bhalla, Ms. Chetna Bhalla and Mr. Nilesh Bijlani, Advocates for R-1.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **20.01.2020**

CM APPL. 2177/2020 (exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 735/2020 CM APPL. 2176/2020 (stay)

2. The Petitioner has challenged the order of Debt Recovery Appellate Tribunal (DRAT) in appeal No. 208/2018 dated 27th August, 2019. In brief, the case of the Petitioner is that Respondent No.1 Bank had filed one Original Application (OA) bearing No.236/2017 against Respondent Nos.2 and 3 but the Petitioner has no connection with them.

3. The Bank had claimed its alleged charge in respect of the vehicle, viz., Mercedes Benz/E350 CGI bearing registration No. DL-3CU-1111. As per

the Bank, the borrowers had hypothecated the said vehicle and took some financial assistance. On 2nd March, 2017 DRT permitted the Respondent Bank to take possession/cease the vehicle and in view of the said order on 23rd June, 2017 at about 1:50 p.m. the Respondent No.1 Bank took position of the vehicle of the Petitioner by force and with assistance of the police.

4. As per Petitioner, she had bought the said vehicle from one Mr. Vikas for sale consideration of Rs.10,00,000/- out of which Rs.7,00,000/- was paid through RTGS on 31st January, 2017 and Rs.3,00,000/- by cash. A No Objection Certificate (NOC) was issued by the Respondent No.1 Bank on 7th July, 2016 for removing the hypothecation with respect to the aforesaid vehicle. Since, the said NOC had expired before presenting it to the concerned RTO, a fresh NOC was issued on 3rd May, 2017.

5. On the basis of the said NOC, the vehicle was transferred in the name of the Petitioner and she is the exclusive owner of the said vehicle without any encumbrances. The Petitioner is a simple housewife who is in no manner known to the borrowers and she has nothing to do with the Respondent Bank. The vehicle is in the illegal possession of the Respondent No.1 Bank.

6. Aggrieved by the action on 23rd June, 2017 of the Respondent Bank, the Petitioner filed by an application being IA No.1153/2017 before the DRT for releasing the vehicle and another application being IA No. 1152/2017 under Order I Rule 10 CPC for impleadment. Respondent Bank filed reply to the application of the Petitioner for release of car and the said application was dismissed on 5th July, 2017.

7. The Bank never denied issuance of NOC with respect to the vehicle or the RC being in the name of Petitioner. She moved another IA bearing No.1267/2017 for release of the vehicle on Superdari. The said application was allowed on certain terms and conditions on 23rd August, 2017.

8. The Petitioner complied with the directions of the learned DRT but the Respondent Bank, instead of releasing the vehicle on Superdari, preferred an appeal bearing No. 365/2017 before DRAT. The Petitioner was not made as a party in the appeal. The said appeal was allowed on 30th August, 2017.

9. The Petitioner challenged the said order before this Court and the order of the DRAT was set aside. The DRT was directed to decide the application of the Petitioner for release of the vehicle afresh after deciding the application for impleadment of the Petitioner. On 28th November, 2017 the DRT allowed the application for impleadment of the Petitioner.

10. On 19th December, 2017 another application for release of vehicle was moved by the Petitioner and learned DRT vide order dated 21st December, 2017 on the request of the Petitioner treated the said application as a written statement and posted the matter for rejoinder evidence. The Petitioner and Respondent Bank filed their respective evidence.

11. On 27th June, 2018 learned DRT pronounced the final order and directed the Respondent Bank to release the vehicle to the Petitioner. On 10th July, 2018 Respondent Bank filed an appeal before the DRAT. Without

appreciating the facts of the case, DRAT passed an impugned order dated 27th August, 2019 which has been challenged by filing the present petition on the grounds that the impugned order is contrary to law; it is bad in law; the learned Chairperson has wrongly held that Defendant No.3, i.e. the Petitioner did not file any written statement; DRAT ignored that the order dated 27th June, 2018 of DRT is a well-reasoned order; the DRAT failed to give any observation regarding NOC issued by the Respondent Bank; it was not appreciated that the Petitioner is registered owner of the vehicle and had the possession of the same; there was no hypothecation registered before any local authorities in respect of the vehicle; Respondent Bank cannot take advantage of its own wrongs; Respondent Nos.2 and 3 did not contest the claim of the Bank and it was wrongly observed that the Petitioner was trying to get a relief which she never pleaded and the impugned order has been passed with pre-determined mind.

12. The Petitioner has accordingly prayed for the following reliefs:

> "a) issue a writ in the nature of certiorari or any other appropriate writ, order and directions to quash and set aside the order dated 27th August, 2018 passed by the Debt Recovery Appellate Tribunal in Appeal No. 208/2018 in O.A. No. 236/17 (Delhi-II) titled as ICICI Bank Vs Shri Amba Merchants & Ors;
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> b) issue a writ in the nature of certiorari or any other appropriate writ, order and directions to respondent no. 1 bank to immediately release the Vehicle "Mercedes Benz/E 350 CGI bearing registration no. DL-3CU-1111 to the Petitioner in good condition;
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> c) issue a writ in the nature of certiorari or any other appropriate

writ, order and directions to respondent no.1 bank to pay damages of Rs.10 Lacs to the petitioner for keeping the vehicle of the petitioner in illegal custody;

d) pass such other order or order(s) as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

13. The Respondent Bank has been served with an advance copy and counsel for the Respondent Bank is present. The arguments have been addressed by learned counsel for the Petitioner as well as learned counsel for the Respondent Bank.

14. Learned counsel for the Respondent Bank has clarified that the vehicle in question was initially financed at the time of its purchase by Respondent Nos.2 and 3 for Rs.49,00,000/- in September, 2010 and the said loan was repaid and loan account was closed. In March, 2014 Respondent Nos.2 and 3 took a loan of Rs.10,00,000/- under used car loan scheme bearing loan account No. LUDEL00027653426 on the security of the vehicle Mercedes Benz bearing No. DL-3CU-1111. The said loan was again closed by Respondent Nos.2 and 3 by making the payment and an NOC was accordingly issued. On 30th June, 2016 Respondent Nos.2 and 3 again approached the Respondent No.1 Bank for grant of a loan of Rs.20,00,000/- and entered into a loan agreement under the used car loan cum hypothecation scheme against security of the same vehicle. The said loan account No. is LUDEL00034541058.

15. In view of the said request, a sum of Rs.19,98,550/- was disbursed by

Respondent No.1 Bank to Respondent No.2 on 30th June, 2016 after deducting the processing fee and stamp duty charges. The said loan was to be repaid in 36 equated monthly instalments of Rs.67,397/- each along with interest. The hypothecation was registered in the name of the Applicant Bank in respect of the said vehicle.

16. The instalments were not paid on time. So, the loan was recalled and on 30th January, 2017 as more than Rs.21,00,000/- was due from Respondent Nos.2 and 3. Hence, OA No.236/2017 was filed before the DRT. On 2nd March, 2017 DRT appointed an Officer of the Bank as receiver for taking over the possession of the vehicle and in pursuance thereto, possession of the vehicle in question was taken on 23rd June, 2017 from the custody of the Petitioner. Thereafter, the present Petitioner approached the DRT as detailed herein above.

17. The contentions raised by the learned Counsel for Respondent Bank are as under:

i) There is no document on record like agreement to sell, etc. which shows that the present Petitioner had entered into an agreement to sell with Respondent Nos.2 and 3 regarding the car in question. Hence the transaction of the sale of car as projected by the Petitioner itself is in doubt.

ii) The vehicle was in the name of Respondent No.2, which is a duly registered company and case setup by the Petitioner is that she has paid Rs.3,00,000/- in cash for which there is no receipt and Rs.7,00,000/- was transferred through RTGS to the Bank account Respondent No.2 by M/s Diyanam Fashion Enterprises, which is a firm stated to be owned by the husband of the Petitioner but there is no explanation has to why her husband had paid the said amount to Respondent No.2 company and how the *inter se* account between the Petitioner and the firm of the husband of the Petitioner was settled.

iii) The third contention raised by Respondent No.1 Bank is that the NOC, which was issued after clearance of the second loan by the Respondent No.2 and 3 was misused for getting the vehicle transferred in the name of the present Petitioner after the grant of third loan on 30th June, 2016. It is pertinent to mention here that the case of the Petitioner herself is that the first NOC dated 7th July, 2016 had expired and a fresh NOC in lieu thereof was issued on 3rd May, 2017 on the basis of which car was transferred in her name.

iv) The E class Mercedes of 2011 was worth more than Rs.20,00,000/- in the year 2017 but why the said car was purchased by the Petitioner for Rs.10,00,000/-, there is no explanation.

18. All these queries were put to learned counsel appearing for the Petitioner who has given only evasive replies. As far as the question of valuation of the car is concerned where Respondent No.1 has specifically argued that the car was valued more than Rs.20,00,0000/- as the Respondent No.1 Bank had financed it for Rs.20,00,000/- in June, 2016, the answer given is that it is between the buyer and the seller as to at what price the vehicle is to be sold

and no explanation is required to be given.

19. This Court in writ jurisdiction is not convinced with this explanation. Apparently, the vehicle was valued more than Rs.20,00,000/- on the date of alleged purchase by the Petitioner and as per her own admission, she had purchased it for Rs.10,00,000/-, it means that she was well aware about the circumstances under which the hypothecated vehicle was sold in a desperate sale by Respondent Nos.2 and 3.

20. As far as the question of entering into any agreement to sell regarding the purchase of car, the answer given is that there was no such document for purchase of the said car.

21. As far as the transaction of Rs.3,00,000/- paid in cash is concerned, the answer is that there is no receipt to prove the said transaction. As far as the *inter se* settlement of accounts between the firm of the husband of the Petitioner, which paid Rs.7,00,000/- to Respondent No.2, and the Petitioner is concerned, it has been submitted that it is a matter between the husband and the wife and no explanation is required. It is pertinent to note here that a sum of Rs.7,00,000/- paid by a business firm for purchase of car in the name of a third party, i.e. wife of the owner of the said business has to be properly accounted for in the books of the accounts of the said firm as well as in the income tax returns of the said firm, besides owner of the said firm as well as in the return of the present Petitioner but no explanation has been offered in this regard.

22. The writ remedy under Article 226 and 227 of the Constitution of India is a discretionary relief and the person has to approach the High Court with clean hands. It appears that the Petitioner has not approached this Court with clean hands and has hidden many vital facts of the case and when she was asked specific questions, she had no clear-cut replies to the said questions posed by learned counsel for the Respondent Bank. It appears to be a case where with a view to usurp the funds of Respondent No.1 Bank, Respondent Nos.2 and 3 herein have transferred the vehicle in the name of the present Petitioner, who posed herself to be a bona fide purchaser and in this way the Respondent Nos.2 and 3 have tried to avoid the recovery of the loan amount for which the Respondent No.1 Bank was forced to file the OA against them in which the present Petitioner also got herself impleaded.

23. The DRAT was right in observing that there was no material before DRT to come to the conclusion that present Petitioner was a bona fide buyer of the hypothecated car. Moreover, the DRAT was right that DRT had no jurisdiction to grant the relief of release of car in favour of the present Petitioner for which either she had to sue the Respondent Bank or she could have filed a counter-claim by paying the proper Court fees.

24. In an OA filed by the Bank for recovery of the amount due to the Bank which was raised by hypothecating the car in question, there was no occasion to release the said car to the present Petitioner without there being a counter-claim or without deciding the bona fides on the present Petitioner, which are shrouded in mystery in view of the above discussion.

25. In view of the above, this Court refuses to exercise the discretion under Article 226 and 227 of the Constitution of India in favour of the present Petitioner, who has not come to the Court with clean hands.

26. The writ petition is without any merits and the same is hereby dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 20, 2020
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