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C.R.P. (NPD) .No.550 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.550 of 2016

and

C.M.P.No.2769 of 2016

S.V.S.Auto Investments,
Rep. by Managing Director,
S.Sasikumar, No.12, V.O.C. Street,
Gudiyatham Town,
Vellore District.

.. Petitioner

(Cause title amended vide order of this
Court dated 15.11.2021 made in
C.M.P. No.18539 of 2021 in
C.R.P.(NPD).No. 550 of 2016)

Vs.

M.Ravi

.. Respondent

Prayer: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair and decretal order dated 08.01.2016 made in I.A.No.208 of 2010 in O.S.No.4 of 2009 on the file of the Sub Court, Gudiyatham, Vellore District.

For Petitioner : Mr.V.M.G.Ramakkannan

For Respondent : Mr.D.Rajagopal



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ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”.)

This Civil Revision Petition is filed against the fair and decretal order dated 08.01.2016 made in I.A.No.208 of 2010 in O.S.No.4 of 2009 on the file of the Sub Court, Gudiyatham, Vellore District.

2.The petitioner is plaintiff in O.S.No.4 of 2009 on the file of the Sub Court, Gudiyatham, Vellore District. The respondent is 1st defendant in the said suit. The petitioner filed the said suit against the respondent and one Suresh Kumar as 2nd defendant for recovery of money due on Hire Purchase Agreement executed by the respondent and 2nd defendant as guarantor to the petitioner firm on 26.03.2008. The respondent has deposited the amount of Rs.1,13,540/-. The suit was decreed by the judgment and decree dated 31.08.2009 for Court cost and future interest. Pending suit, JCB vehicle which was hypothecated by the respondent was ceased by the petitioner through Advocate Commissioner. According to the petitioner, the respondent by force took away the vehicle from the Advocate Commissioner and criminal case has been lodged against the respondent and Court has returned the vehicle to the petitioner. After the decree, the respondent filed present application for a direction to the petitioner to return the vehicle to the



respondent on receipt of amount legally due to the petitioner. According to the respondent, he is ready to pay the amount legally due to the petitioner and the vehicle may be returned to him. The petitioner filed counter affidavit stating that the application filed by the petitioner is not maintainable as suit is not pending. Even in the order passed by this Court in Crl.R.C.Nos.1191 & 1192 of 2009, this Court held that if the petitioner has got any such right in the Civil Court, he can file a petition. The petitioner has no right to file a petition and application is not maintainable. The Hire Purchase Agreement executed by the respondent was already terminated and there is no relationship between the petitioner and respondent and prayed for dismissal of I.A.No.208 of 2010.

3.Before the learned Judge, the respondent did not let in any oral and documentary evidence. The petitioner did not let in any oral evidence but marked 6 documents as Exs.R1 to R6. Interim report of the Advocate Commissioner was marked as Exs.C1 & C2.

4.The learned Judge allowed the I.A., holding that before this Court, a full satisfaction memo was recorded in Crl.R.C.Nos.1191 & 1192 of 2009 as respondent has paid entire due amount and petitioner has not objected for



recording the said memo of full satisfaction before this Court.

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5. Against the said order dated 08.01.2016 made in I.A.No.208 of 2010, the petitioner has come out with the present Civil Revision Petition.

6. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the entire materials on record.

7. From the averments in the affidavit filed in support of the present application, it is seen that the respondent and 2nd defendant has sought for return of JCB vehicle on paying all the amounts legally payable by the respondent to the petitioner. In paragraph No.4 of the affidavit, the respondent, who is the petitioner in the said I.A.No.208 of 2010 has stated as follows:

“I am ready to pay the amount legally due to the respondent. Hence, I am filing this application for return of vehicle which is in the possession of the respondent.”

The respondent has not stated that he has paid all the amounts due and



payable to the petitioner and full satisfaction memo was recorded before this Court. It is seen from the order of the learned Judge that during arguments, the learned counsel appearing for the petitioner has stated that a sum of Rs.4,28,500/- is due and payable by the respondent. The learned Judge has allowed the application as he misunderstood the order of this Court dated 29.01.2010 in CrI.R.C.Nos.1191 & 1192 of 2009. A reading of the order of this Court in CrI.R.C.Nos.1191 & 1192 of 2009 shows that no memo of full satisfaction was recorded by this Court. On the other hand, this Court in paragraph Nos.7 & 8, held as follows:

“ 7. The learned counsel appearing for the 2nd respondent / financier would submit that a contempt petition was filed against the petitioner in respect of the occurrence in which the vehicle was taken out of the possession of the Advocate Commissioner by force. The learned counsel has produced a copy of the order passed by this Court in Cont.P.No.150 of 2009, dated 29.06.2009 wherein the Division Bench of this Court has come down heavily upon the petitioner and imposed a fine of Rs.2,000/-. This would again go to fortify the fact that the petitioner is not entitled for interim custody of the vehicle under Section 451 of the Code. But, the learned counsel for the petitioner



would submit that the petitioner has already paid the entire amount due to the 2nd respondent / financier and as a matter of fact, a full satisfaction memo has also been filed before the learned Sub Judge, Gudiyattam.

8. In view of the above, I am of the opinion, that if the petitioner has got any such right in civil suit, so as to get possession of the said vehicle, he can very well approach the learned Sub judge, Gudiyattam to get delivery of the said vehicle, for which, neither this order nor the orders passed by the learned Magistrate shall stand in the way of the Sub Judge to pass appropriate orders in the matter. If the learned Subordinate Judge passes an order delivering the vehicle to the petitioner, on taking delivery, the petitioner shall produce the vehicle before the learned Magistrate and forthwith the Magistrate shall return the same to the petitioner on his executing a bond for Rs.1,00,000/- (Rupees One lakh only). Thereafter, the petitioner shall produce the vehicle before the Magistrate as and when required for the purpose of trial and he shall not encumber or sell or alter the nature of the vehicle in any manner without prior permission of the learned Magistrate.”



8.A reading of the above paragraphs clearly shows that no full satisfaction memo was recorded by this Court. On the other hand, the learned counsel appearing for the respondent has stated that the respondent has paid the entire amount due and full satisfaction memo has been filed before the Sub Court, Gudiyatham, Vellore District. In view of the above submission of the learned counsel for respondent and above fact, the learned Judge has committed an error in allowing the I.A.No.208 of 2010 as he misunderstood the order of this Court passed in CrI.R.C.Nos.1191 & 1192 of 2009. In view of the same, the impugned order of the learned Judge dated 08.01.2016 in I.A.No.208 of 2010 is liable to be set aside and it is hereby set aside. From the affidavit filed in support of the present application, it is seen that the respondent has stated that he is willing to pay the amount legally due to the petitioner. It is open to the respondent to pay the amount due to the petitioner as per the decree and get back the vehicle.

9.With the above directions, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

01.12.2021

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Index : Yes / No

Internet : Yes / No



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V.M.VELUMANI, J.
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To

The learned Subordinate Judge,
Gudiyatham,
Vellore District.

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01.12.2021