

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 22454 of 2020

Date of Decision: March 03, 2021

Kulvir Kaur

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTALPresent: Mr. Amandeep Singh, Advocate
for the petitioner

Mr. Sanjay Mittal, Addl. A.G. Haryana

Mr. Harsh Chopra, Advocate
for respondent No. 3**Sudhir Mittal, J. (Oral)**

The dispute in this writ petition is regarding forcible re-possession of a truck financed by respondent No. 3.

According to the writ petition, the petitioner obtained a loan amounting to Rs. 34,02,943/- vide demand draft dated 21.09.2017 for the purposes of purchase of a truck. The said loan was to be repaid in 59 monthly installments. It has been averred that the petitioner continued to pay the installments on time but the vehicle was forcibly re-possessioned in December, 2019. The petitioner paid two installments and got her truck released but was under continuous threat from respondent No. 3 to pay installments on time. During the COVID-19 pandemic, she could not ply her truck and, thus, payment of installments was rendered impossible. Instead of being sympathetic, respondent No. 3 through muscle man again took forcible possession of the vehicle on 02.12.2020 at Uchana, District Jind. Notice dated 05.12.2020 was issued thereafter for payment of the entire outstanding balance. The petitioner has already paid Rs. 17 lacs and under the

judgment of the Supreme Court in *Manager, ICICI Bank Ltd. vs. Prakash Kaur and others, 2007(2) RCR(Criminal) 76*.

Learned counsel for respondent No. 3 has submitted that there is an arbitration clause in the loan agreement on account of which arbitration proceedings were initiated and an award has been passed in favour of respondent No. 3. The said award has not been complied with nor has it been challenged. Further, the petitioner has also filed a civil suit on the same cause of action and the same is pending. Thus, the writ petition is not maintainable.

In the judgment of *Prakash Kaur (supra)*, although the Supreme Court has deprecated the practice of forcible re-possession of hypothecated vehicle, the appeal filed by the ICICI Bank was allowed subject to payment of a sum of Rs. 50,000/- out of outstanding balance of Rs. 1,62,917/-. A direction was issued to release the seized vehicle and the owner was permitted to sit with the bank officials to finalize the accounts.

In the instant case, while issuing notice of motion this Court had noticed that counsel for the petitioner had agreed to pay 50% of the outstanding installments within two weeks from the date of the order and, thus, a direction was issued to the petitioner to pay a sum of Rs. 3.5 lacs within two weeks from the date of the order, subject to which the vehicle was to be restored to the petitioner. However, the order was not complied with and an application was filed for extension of time, which was allowed vide order dated 08.01.2021 and another seven days time was granted. Despite this extension the payment was not made and another application was filed for further extension of time, which was however, dismissed vide order dated 27.01.2021.

Under the aforementioned circumstances as well as in view of the fact that a civil suit is also pending on the same cause of action, the petitioner does not deserve to be granted any relief. Accordingly, the writ petition is dismissed.

Liberty is, however, granted to her to settle with the officials of respondent No. 3 and get her truck released. Respondent No. 3 is also directed to consider the issue sympathetically and, if possible, to waive the interest component.

March 03, 2021
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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No