IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.5894 OF 2022

Rakesh Kumar Behera ***Petitioner***
Mr. Braja Mohan Sarangi, Advocate

-versus-

Regional Manager, RBI, Bhubaneswar and another .... ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

<u>ORDER</u>

<u>Order No.</u> **24.06.2022**

3. 1. This matter is taken up through hybrid mode.

2. Office note discloses that requisites filed by learned counsel for the Petitioner are without Annexures of the brief and postal requisites and only copy of the writ petition has been filed.

3. On perusal of the order sheet, it appears that this Court vide order dated 22nd March, 2022 while issuing notice in the matter directed that if the Petitioner deposits 50% of the outstanding dues by way of account payee bank draft with the Financer-Opposite Party No.2 within fifteen days from the date of the said order, no coercive action shall be taken with regard to possession of the vehicle of the Petitioner bearing Registration No.OD-05-V-8494 (Celerio Car) till the next date, if not already re-possessed by the Financer. Subsequently, vide order dated 13th May, 2022, this Court taking note of the submission made by learned counsel for the Petitioner observed that the Petitioner has already complied with the order dated 22nd March, 2022 passed by this Court by depositing 50% of the outstanding amount. As such,

a direction was made to accept the requisites filed late and issue notice to Opposite Parties.

4. Mr. Sarangi, learned counsel for the Petitioner submits that since the Petitioner has already deposited 50% of the total outstanding amount, a direction may be issued not to seize the vehicle and to rephase the loan amount.

5. Mr. Sarangi, learned counsel for the Petitioner further submits that due to non-payment of regular installments, the Petitioner apprehends seizure of his vehicle bearing Registration No. OD-05-V-8494 (Celerio Car) at any moment by Opposite Party No.2 without following the guidelines given by the Hon'ble Supreme Court in ***ICICI Bank Ltd.- Vs.-Prakash Kaur and others***, reported in (2007) 2 SCC 711. He further submits that the Petitioner had not moved this Court earlier in respect of the aforesaid vehicle in relation to the loan account in question.

6. In course of hearing, learned counsel for the Petitioner submits that the Petitioner has already deposited 50% of the outstanding dues as on that date. He also undertakes to pay the instalments regularly on rephasement of his outstanding EMIs. It is submitted that the Petitioner has never defaulted in payment of the instalments; it is because of the COVID-19 situation, this situation arose. It is further submitted that the Petitioner has not moved this Court earlier for release of the vehicle in question.

7. The writ application against a private finance company is not maintainable in view of the ratio decided in ***Federal Bank Ltd-vs-Sagar Thomas & Ors***, reported in 2003(III) CLR 801. However, since the Petitioner is ready and willing to pay the outstanding dues and has deposited 50% of the total

outstanding dues of the aforesaid vehicle, this Court entertains the writ petition.

8. Taking into consideration the submission made by learned counsel for the Petitioner, this Court ignoring the office note made disposes of this writ petition with a direction that since the Petitioner has already deposited 50% of the total outstanding loan dues pursuant to the direction of this Court, the vehicle bearing Registration No. OD-05-V-8494 (Celerio Car) shall not be seized. The Petitioner shall also file an undertaking before the Branch Manager, HDFC Bank Ltd., Nayapalli Branch, Bhubaneswar-Opposite Party No.2 to pay the monthly installments regularly on rephasement of the rest of the loan dues. The Petitioner shall be provided with details of outstanding loan dues within two days from the date of filing of an application to that effect. The rest of the outstanding loan amount will be settled on rephasement basis keeping in mind the Regulatory Package issued by the Reserve Bank of India on 21st May, 2020.

9. It is, however, made clear that if the Petitioner has not deposited 50% of the outstanding amount, as directed by this Court, he shall make good the amount within a period of four weeks from today. It is further made clear that on failure on the part of the Petitioner to pay any of the instalments after rephasement, as stated above, the opposite party No.2 will be at liberty to take over possession of the vehicle in question.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

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