**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.12129 OF 2022**

***Sk. Md. Taslim Raza*** ***Petitioner***

Mr. Prasanta Kumar Satapathy, Advocate

*-versus-*

***State of Odisha and others*** .... ***Opp. Parties***

Mr. Pravakar Behera, Standing Counsel (For Transport Department)

Mr. P.K. Ray, Advocate (For Opp. Party Nos.5 and 6)

**CORAM:**
**JUSTICE K.R. MOHAPATRA**

**ORDER**

**Order No.** **19.07.2022**

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

2. The Petitioner has filed this writ petition assailing forceful seizure of his vehicle bearing Registration No.OD-16-D-5525 (Ashok Leyland Trailer) by Opposite Party No.6-Financer due to non-payment of the defaulted amount.

3. Mr. Satapathy, learned counsel for the Petitioner submits that due to non-payment of regular installments, the aforesaid vehicle bearing Registration No.OD-16-D-5525 (Ashok Leyland Trailer) of the Petitioner has been seized by Opposite Party No.6 without following the guidelines given by the Hon'ble Supreme Court in ***ICICI Bank Ltd. -V- 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.

4. In course of hearing, Mr. Satapathy, learned counsel for the Petitioner submits that the Petitioner is ready and willing to pay 50% of the outstanding dues as on date and in that event his

vehicle may be released. He also undertakes to pay the installments regularly on rephasement of his outstanding EMIs. It is submitted that the Petitioner has never defaulted in payment of the installments. 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.

5. 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, this Court entertains the writ petition.

6. Mr. Ray, learned counsel for the Opposite Parties-Financer by filing a preliminary counter affidavit to the writ petition submits that defaulted loan amount of Rs.16,26,936/- is outstanding against the Petitioner excluding last two installments of Rs.1,35,000/-. The last installment of the vehicle is scheduled to be paid on 1st September, 2022. He, therefore, submits that the Court may pass appropriate order taking into consideration the same.

7. In view of the submissions of learned counsel for the parties, this Court taking into consideration the fact that the Petitioner is earning his livelihood from the vehicle bearing Registration No.OD-16-D-5525 (Ashok Leyland Trailer) as well as the unforeseen situation due to pandemic of COVID-19, disposes of this writ petition with a direction that in the event the Petitioner deposits 50% of the total outstanding loan dues as on date within a period of four weeks hence, the vehicle bearing Registration No.OD-16-D-5525 (Ashok Leyland Trailer) shall

be released. The Petitioner shall also file an undertaking before the Branch Manager, Mahindra & Mahindra Financial Service Limited, Sundargarh-Opposite Party No.6 to pay the monthly installments regularly on rephasement of the rest of the EMIs. The Petitioner shall be provided with details of outstanding dues within two days from the date of filing of an application to that effect. The rest of EMIs will be rephased keeping in mind the Regulatory Package issued by the Reserve Bank of India on 21st May 2020 during the pandemic situation of COVID-19.

8. If the Petitioner does not pay 50% of the defaulted loan amount within the stipulated date or fails to pay the installments to be rephrased, the Financer shall be at liberty to take action in accordance with law for recovery of the amount.

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

***(K.R. Mohapatra)***
***Judge***

*bks*