IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 12262 of 2022

Dillip Kumar Palei ….. ***Petitioner***

Mr. R.K.Mahapatra, Advocate

-versus-

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

Mr. Prakash Kumar Mishra, Advocate
(For Opposite Party No.2)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

Order No. **30.08.2022**

2. 1. This matter is taken up through Hybrid mode.

2. Mr. Mishra, learned counsel by filing Vakalatnama in Court enters appearance on behalf of Opposite Party No.2-Financer, which is taken on record.

3. Petitioner in this writ petition prays for a direction to Opposite Party No.2-Financer to provide up-to-date statement of his loan account in respect of vehicle bearing registration No.OD-05-AZ-2247 (truck) and to release the same after regularizing the loan account in accordance with law.

4. Mr. Mohapatra, learned counsel for the Petitioner submits that the Petitioner had earlier approached this Court in W.P.(C) No.3501 of 2022, which was disposed of on 25th March, 2022 with a direction to Opposite Party No.2-Financer to release the vehicle in question on payment of 50% of the outstanding loan dues, as on that date and to re-phase the loan account. Due to inadvertency, Petitioner could not approach the Financer in time. However, due to misunderstanding between the Petitioner and the Financer, the former had lodged an FIR and no action being taken CRLMP No.2099 of 2021 was filed before this Court,

which has already been disposed of vide order dated 25th November, 2021 directing to register the FIR.

5. Mr. Mahapatra, learned counsel for the Petitioner submits that misunderstanding between the parties has already been resolved and the Petitioner seeks for sympathetic direction for release of his vehicle on payment of 50% of the loan dues as on date.

6. Mr. Mishra, learned counsel for Opposite Party No.2-Financer submits that the outstanding loan amount as against the vehicle of the Petitioner is Rs.9,88,913.16, as on date.

7. Mr. Mahapatra, learned counsel for the Petitioner submits that due to non-payment of regular installments, the aforesaid Truck bearing Registration No. OD-05-AZ-2247 of the Petitioner has been seized on 10th November, 2021 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.

8. In course of hearing, 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 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. No auction in respect of the vehicle in question has been made and the vehicle is still lying with the Financer.

9. 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.

10. In view of the above submission of learned counsel for the Petitioner, this Court taking into consideration the fact that the Petitioner is earning his livelihood from the Truck bearing Registration No. OD-05-AZ-2247 as well as the pandemic of COVID-19, this Court disposes of the 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 vehicles in question shall be released. The Petitioner shall also file an undertaking before opposite party No.2 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.

11. It is 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.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy