IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.12854 OF 2022

Gudiya Gupta ***Petitioner***

Mr. Braja Mohan Sarangi, Advocate

-versus-

Regional Manager, Reserve Bank of India, Bhubaneswar and others .... ***Opp. Parties***

Mr. M.R. Khatua, Advocate
(For Opp. Party No.2-Financer)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

Order No.	**27.07.2022**
4.	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-09-K-9435 (Truck) by Opposite Party No.2-Financer due to non-payment of the defaulted amount.

3. Mr. Sarangi, learned counsel for the Petitioner submits that due to non-payment of regular installments, the aforesaid vehicle bearing Registration No.OD-09-K-9435 (Truck) of the Petitioner has been seized by Opposite Party No.2 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. This Court while issuing notice in the matter vide order 20th May, 2022, as an interim measure, directed that if the Petitioner deposits 60% of the outstanding dues by way of account payee bank draft with the Opposite Party No.2 within

three weeks hence from that date, no third party interest shall be created, if not already created by the Opposite Party No.2 in respect of the vehicle bearing Registration No.OD-09-K-9435 (Truck) till the next date.

5. Mr. Khatua, learned counsel for the Opposite Party No.2-Financer submits that the Petitioner has never complied with the said order. However, Mr. Sarangi, learned counsel for the Petitioner stoutly refuting the submission made by Mr. Khatua submits that the Petitioner has offered a sum of Rs.1,30,000/- on 6th July, 2022, which was not accepted, which is also refuted by Mr. Khatua, learned counsel for the Opposite Party No.2-Financer.

6. Mr. Khatua, learned counsel for the Opposite Party No.2-Financer, however, submits that as on 11th January, 2022, the outstanding amount of the loan account of the Petitioner in respect of the aforesaid vehicle was Rs.23,23,285.66.

7. In course of hearing, Mr. Sarangi, learned counsel for the Petitioner submits that the Petitioner is ready and willing to pay 60% of the outstanding dues as on date and in that event her vehicle may be released. He also undertakes to pay the installments regularly on rephasement of her 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.

8. 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.

9. 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-09-K-9435 (Truck) as well as the pandemic of COVID-19 disposes of this writ petition with a direction that in the event the Petitioner deposits 60% of the total outstanding loan dues as on 11th January, 2022 within a period of fifteen days hence, the vehicle bearing Registration No.OD-09-K-9435 (Truck) shall be released. The Petitioner shall also file an undertaking before the Branch Manager, HDP Fin. Serv. Ltd., Keonjhar-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.

10. It is made clear that on failure on the part of the Petitioner to pay any of the installments after rephasement or defaults in paying the monthly installment 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

bks