IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 25299 OF 2022

Jayashree Nayak .... ***Petitioner***
Mr. Braja Mohan Sarangi, Advocate
-versus-

Regional Manager, Reserve Bank of India, Bhubaneswar and another .... ***Opp. Parties***
Mr. Prakash Kumar Mishra, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
29.09.2022

Order No.

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

2. Mr. Prakash Kumar Mishra, learned counsel and his associates have entered appearance on behalf of the Opposite Party No.2-Financer by filing Vakalatnama in Court today, which is taken on record.

3. Petitioner has filed this writ petition assailing forceful seizure of his vehicle bearing Registration No.OD-05-AD-2691 (Truck) due to non-payment of the defaulted amount by Opposite Party No.2.

4. Mr. Sarangi, learned counsel for the Petitioner submits that due to non-payment of regular installments, the aforesaid vehicle bearing Registration No. OD-05-AD-2691 (Truck) of the Petitioner has been seized in September, 2022 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 Truck in relation to the loan account in question.

5. 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.

6. 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.

7. 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 vehicle bearing Registration No.OD-05-AD-2691 (Truck) 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.

7.1 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.

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

(K.R. Mohapatra)
Judge

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