IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-16842-2022 (O&M)

Date of Decision: 25.04.2022

Paramjit Singh ...Petitioner

Versus

State of Punjab & others ...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Mohit Vashishat, Advocate, for the petitioner.

GURVINDER SINGH GILL, J.

1. The petitioner seeks issuance of directions to respondent No.2 – Commissioner of Police, Ludhiana for taking stern action against respondent No.3 - M/s HDB Financial Services Limited for not following the directions issued by the Hon'ble Supreme Court and for having illegally repossessed the vehicle of the petitioner.
2. It is the case of the petitioner that on 31.03.2021, he had purchased Hyundai i20 (Asta) car and had got the same financed from respondent No.3 - M/s HDB Financial Services Limited. Although he had initially paid some instalments, but had defaulted in paying the same during the last few months and in respect of which he had approached respondent No.3 - M/s HDB Financial Services Limited. It is alleged by the petitioner that on 24.03.2022, when he was away to Jalandhar, he received a call from his son to the effect that bank officials have come to his house to recover the vehicle and were towing away the same with the help of a towing van. When the petitioner's son asked the bank officials

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2022.04.26 19:14
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and the police personnel as to where they were taking the vehicle, he was informed that the vehicle was being taken to Police Station Division No.5, Ludhiana.

3. It is further the case of the petitioner that after returning back from Jalandhar, he alongwith his son went to the Police Station at about 2.30 PM where ASI Harbans Singh told him that the vehicle has been handed over to the bank employees.

4. Learned counsel for the petitioner has submitted that there was high-handedness on the part of the bank officials in repossessing the vehicle with the help of police and such like practice has been deprecated by the Hon'ble Supreme Court in ICICI Bank Vs. Shanti Devi Sharma & others, 2008 (7) SCC 532. Learned counsel has further submitted that although respondent No.3 - M/s HDB Financial Services Limited claims to have initiated some arbitration proceedings, but in fact the petitioner was never informed about the same and *ex parte* proceedings had been conducted. It has, thus, been submitted that appropriate action be taken against respondent No.3 - M/s HDB Financial Services Limited for having resorted to illegal means for repossessing the vehicle in question in respect of which the petitioner had defaulted in paying installments.

5. I have considered the aforesaid submissions made on behalf of the petitioner.

6. A perusal of the arbitral award dated 31.03.2022 (Annexure P-2) would indicate that as per the loan agreement amongst the petitioner and respondent No.3 - M/s HDB Financial Services Limited, arbitration proceedings had been initiated by respondent No.3 - M/s HDB Financial Services Limited, wherein the petitioner was proceeded against *ex parte*.

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During the pendency of the said proceedings before the Arbitrator, an order dated 01.02.2022 was passed in favour of the claimant for taking custody of the vehicle subject to outcome of the arbitration proceedings. The relevant extract from para.5 of the award dated 31.03.2022 (Annexure P-2) reads as follows:

> "5. ………..After carefully checking the said application, its supporting documents and averments, I passed an ex parte order dated 01.02.2022 in favour of claimant, vide that an order receiver was appointed, to take the custody of the subject vehicle which is the subject matter of the present case. That claimant/Receiver was also directed to file its receiver report on / after taking custody of the vehicle. And it was decided to hold next meeting on 21.02.2022 at the same time and same venue by issuing of a formal notice dated 01.02.2022 to the parties under Speed Post / Regd. Ad Post / Regd. Post."

7. The aforesaid arbitration proceedings were ultimately concluded on 31.03.2022. The operative portion of the said Award reads as follows:

> "IN THE RESULT, I HEREBY AWARD AS UNDER:
>
> i. That the respondents shall pay jointly and severally to the Claimant a sum of Rs.991936/- with further interest @ 18% p.a. from 06.01.2022 on the said amount of Rs.991936/- till the payment is received or recovered.
>
> ii. That respondents is also directed to hand over the vehicle to the claimant in case the same is still in possession of respondents in the alternative if, the claimant has already repossessed the vehicle and the claimant is at liberty to dispose off the same after giving due notice to the respondents and the sale processed be there after adjusted in the Awarded amount. However, if the claimant has not repossessed the vehicle till date, then any authorized representative of the claimant would be at liberty to repossess the Vehicle Make i20 ASTA, bearing Registration No.PB25G0025, Engine No.G3LCMM204077 & Chassis No.MALBK511VMM051522 from any person, who may be in possession of the aforesaid vehicle / equipment with necessary

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2022.04.26 19:14
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> police aid from the officer in charge of the police station, in whose jurisdiction, the said vehicle/equipment is situated. Thus claimant would be entitled to sell/transfer the said Vehicle Make i20 Asta, bearing Registration No.PB25G0025, Engine No.G3LCMM204077 & Chassis No.MALBK511VMM051522 in accordance with law for the recovery of the amount as awarded in the present award. In such an eventuality the sale proceeds would be adjusted towards the satisfaction of the amount due and payable by the respondents under the award and the balance amount left from the sale proceeds, if any, would be returned to the respondents………..”

8. This Court, thus, finds that it was pursuant to an order passed by the Arbitrator that the vehicle in question was taken into possession by respondent No.3 with the help of police. Respondent No.3 has resorted to legal means for the purpose of repossessing the vehicle upon finding that the petitioner had defaulted in paying the installments. In case there is any irregularity in the procedure adopted by the Arbitrator and/or in case the petitioner has incorrectly been proceeded against *ex parte*, the petitioner would have his remedies by way of challenging the arbitral award. There would not be any case for initiating criminal proceedings against respondent No.3.

9. As far as judgment relied upon by the petitioner i.e. *Shanti Devi Sharma’s case (supra)* is concerned, in the said case the musclemen of the bank had straightway proceeded to forcibly repossess the vehicle without having resort to any legal proceedings, unlike the present case where the vehicle has been repossessed pursuant to an order passed by the Arbitrator. In view of sharp distinction in factual position, the cited judgment would not have any application in the present case.

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10. During the course of arguments, learned counsel for the petitioner pressed into service another judgment reported as Sundaram Finance Limited Vs. Abdul Samad & another, 2018 (3) SCC 622. However, a perusal of the said judgment would show that the same was delivered on a different legal issue pertaining to the execution of the arbitration award, wherein it was held that execution application for enforcement of award can be filed anywhere in the country and that there is no requirement for obtaining a transfer of decree from Court.

11. In view of the discussion made above, this Court finds that no case is made out for initiating any criminal proceedings against respondent No.3 - M/s HDB Financial Services Limited. The petition is sans merit and is hereby dismissed.

25.04.2022 **(GURVINDER SINGH GILL)**
Vimal **JUDGE**

Whether speaking/reasoned: **Yes/No**
Whether reportable: **Yes/No**

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