

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 17/2022 and CM APPL. 4682/2022**

Date of Decision : 09.11.2022

IN THE MATTER OF:

SH. SUBHASH CHANDER CHHABRA Appellant
Through: Mr. Kapil Madan, Advocate.

Versus

M/S TOYOTA FINANCIAL SERVICES INDIA
LTD & ANR. Respondents
Through: Ms. Abha Vijayan, Advocate for
respondent No.1.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of the present appeal filed under Order XLIII Rule 1 CPC, the appellant/plaintiff seeks to challenge the order dated 16.10.2021 passed by the learned ADJ-02 (North-West District), Rohini Courts, Delhi in CS No. 530/2020 whereby the application filed under Order XXXIX Rules 1 and 2 CPC by him, was dismissed.

2. It is worthwhile to note that respondent No. 2/Sh. *Santosh Harnam Dass* has not only failed to appear before the Trial Court but also before this Court. Accordingly, he is proceeded *ex-parte*.

3. The appellant had filed the captioned civil suit for declaration, recovery and injunction wherein it was claimed that the appellant had purchased a *Toyota INNOVA EURO IV* car bearing registration No.

FAO 17/2022

Page 1 of 4

DL-1CX-7866 from respondent No. 2. It was averred that the appellant was shown a diligence message received from the 'Vaahan' portal maintained by Govt. of NCT of Delhi where no indication of any hypothecation was shown against the car. The appellant had also visited the Office of RTO at *Mall Road* and on further confirmation, purchased the said car from respondent No. 2 for a sum of Rs.15,00,000/-.

It was further stated that respondent No. 2 duly executed Form(s) 29 and 30, as provided under the Motor Vehicle Act. The application for transfer of the car in the name of appellant was allowed by the authorities and the ownership of the car was transferred in his name. In this regard, a copy of the RC (Registration Certificate) has been placed on record. It was contended that on 24.10.2020, respondent No. 1 illegally and forcefully seized the car from the possession of the appellant ostensibly on the basis of an Arbitral Award dated 17.06.2019 and the order dated 10.07.2019 passed in OMP (I) (COMM.) 3286/2019 titled as Toyota Financial Services India Ltd. v. Santosh Harnam Dass. Along with the suit, the appellant has also preferred an application under Order XXXIX Rules 1 and 2 CPC which came to be dismissed vide the impugned order.

4. Learned counsel for the appellant has assailed the impugned order on the ground that the Trial Court failed to appreciate that the appellant is the rightful owner of the car having its RC in his name.

5. On the other hand, learned counsel for respondent No.1 has contested the appeal by contending that respondent No. 1 has no privity of contract with the appellant. The car was initially purchased by respondent No. 2 and the same was hypothecated with respondent No. 1. It is submitted that respondent No. 2 was required to pay 60 instalments out of which he paid only 10 instalments and as on 29.10.2020, an

amount of Rs.21,15,393/- was payable and outstanding. The answering respondent had taken possession of the car in pursuance of the Arbitral Award dated 17.06.2019, which has attained finality. It is contended that even otherwise, in terms of the hire-purchase agreement, the lender i.e., respondent No 1 is the master of the asset and the borrower (respondent No. 2) is only a bailee/trustee of the asset. Learned counsel submitted that till the time, respondent No. 2 does not perform his part of the contract, he has no absolute title over the asset. It is submitted that respondent No. 2 got the RC transferred in his name by using forged documents and without obtaining any No Objection Certificate from respondent No. 1.

6. A perusal of the record would show that although the appellant feigned that it had no knowledge of the subject car being hypothecated with respondent No. 1, the Arbitral Award in favour of respondent No. 1 clearly mentions that respondent No. 2 had purchased the car after entering into a hire-purchase agreement with respondent No. 1. Though the appellant has sought to place reliance on a text message statedly received from the 'Vaahan' portal, the same is of no consequence in view of the categorical observation in the impugned order that the respondent No. 1 had placed on record a copy of the print-out taken from the 'Vaahan' portal which mentioned the name of financier i.e., respondent No. 1 with respect to the car in question.

Rule 55 of the Central Motor Vehicles Rules, 1989 provides for 'transfer of ownership'. An application for the transfer of ownership of a motor vehicle is to be accompanied by documents including Form(s) 29 and 30 alongwith certificate of registration, certificate of insurance etc. A perusal of Form(s) 29 and 30 would show that both the forms require

signature of the financier to give his consent. From above, *prima facie*, it appears that the transfer of ownership effected in favour of the appellant was in contravention of the said Rules. As apparent from the Arbitral Award, respondent No. 1 has taken possession of the car in question as respondent No. 2 had failed to pay the EMIs amounting to Rs.21,15,393/-.

7. Based on the foregoing discussion, this Court is of the opinion that the appellant has failed to establish a *prima facie* case and balance of convenience in his favour. Accordingly, I find no ground to interfere with the order passed by the Trial Court and the same is upheld.

8. Consequently, the present appeal is dismissed. Pending application, if any, is disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 09, 2022
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