

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.305 OF 2023

M/S. CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LTD.
AURANGABAD THROUGH YOGESH KRUSHNARAO NAIK
VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioners : Mr. A. G. Vasmatkar
APP for Respondents: Mrs. G. L. Deshpande

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CORAM : R.M. JOSHI, J

DATE : OCTOBER 16, 2023

PER COURT :

1. This Petition takes exception to the order dated 13.01.2021 passed by learned Additional Sessions Judge, Newasa in Criminal Revision Application No. 01/2020 upholding order below Exh. 1 dated 12.11.2019 passed by learned CJM in Criminal M.A. No. 318/2019 whereby the custody of the tractor in question was given to the registered owner.

2. Petitioner is a finance company and the Respondent No. 2 has obtained loan for purchase of the tractor bearing no. MH-17-BX-1668. Loan agreement is executed between the parties and a sum of Rs. 5,08,287/- was advanced as loan to the Respondent No. 2. Respondent No. 2 filed report with concerned police station about the theft of said tractor. In connection

with the said crime, tractor was seized by police. An application was moved by Respondent No. 2 before the concerned Court for seeking possession of the tractor. By order dated 12.11.2019, the custody of the tractor was directed to be handed over to the Respondent No. 2. Present Petitioner being aggrieved by the said order moved an application before the learned Additional Sessions Judge, which came to be turned down.

3. Learned Counsel for the Petitioner submits that admittedly there is loan agreement and the tractor in question is hypothicated with the Petitioner company. It is his submission that under the said agreement Petitioner is entitled to seek repossession of the tractor in the event borrower fails to repay the loan. In this regard, he has drawn attention of the Court to clause nos. 11 and 12 of the agreement. It is his submission that in spite of order of the Court borrower is not taking possession of the tractor and the same is lying in the premises of concerned police station and is likely to become worthless.

4. There is no dispute about the fact that this is not the case wherein the tractor is repossessed by

the Petitioner – finance company in accordance with agreement for the reason that the Respondent No. 2 has failed to repay loan. It is the owner of tractor who has sought custody of the tractor on the basis of complaint of theft lodged by him. It being so, there is no question of handing over of possession of the tractor by the concerned Court to any other person than the registered owner of the vehicle.

5. This Petition is filed taking exception to the order of JMFC and its confirmation in Revision by learned Additional Sessions Judge. Thus, it becomes immaterial as to whether Petitioner herein would have right of repossession of vehicle or not. The issue before this Court is as to whether impugned judgments are legal and proper. Suffice it to say that the direction issued by the concerned Magistrate of allowing registered owner to take possession of the vehicle and confirmation of said order by Revisional Court is perfectly legal. No interference, therefore, is called for therein. Consequently, Petition stands dismissed.

(R.M. JOSHI, J.)