

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5464 OF 2019

Anita Rajkamal Bankar __ Vs. __ Branch Manager, Jaika Motors Ltd

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P.R.Agrawal, Advocate for petitioner
Mr. M.R.Joharapurkar, Advocate for Respondent

CORAM : AVINASH G. GHAROTE, J.
DATE : 13/03/2023

1] Civil Application (W) No.1414/2022 is by the respondent seeking to place additional affidavit on record. Mr. Agrawal, learned counsel for the petitioner has no objection, considering which the application is allowed. The additional affidavit of the respondent be taken on record.

2] Heard the learned counsel for the parties.

3] The order of the District Forum dated 6.5.2010 directs the delivery of the vehicle within 30 days of the receipt of the order. It further directs payment of damages at the rate of Rs.1500/- per day from 4.8.2009 till the delivery of the vehicle to the petitioner (pg.41).

4] On account of dismissal of the application for condonation of delay filed by the respondent, by the State Commission by the order dated 8.8.2012 (pg.52), the order of the District Forum attained finality. Before the State Commission, a pursis was filed indicating deposit of Rs.6,32,000/- as the amount of damages plus compensation for mental agony and costs till that date. (pg.51). Consequent to the dismissal of the appeal on account of rejection of the application for condonation of delay, which was not challenged any further, the order of the District Forum attained finality. The execution proceedings being Misc. Application No.1/2013 was filed by the petitioner, seeking to execute the order dated 6.5.2010 of the District Forum, which was allowed by the order dated 14.7.2015 (pg.64), whereby the respondent was directed to comply with the order dated 6.5.2010 and the movable as well as the immovable properties of the respondent were directed to be attached by the Collector, Chandrapur.

5] In appeal before the State Commission against this order dated 14.7.2015, by the impugned judgment dated 20.2.2017, the appeal has been allowed by setting aside the order dated 14.7.2015, further holding that the petitioner/complainant was

not entitled to claim anything more than Rs.6,32,000/- which was received by him, in view of the interim order dated 5.5.2011 in F.A No. A/10/680 (pg.51) and further holding that the petitioner/complainant can get back his vehicle in question from the appellant.

6] The possession of the vehicle has been delivered to the petitioner/complainant on 2.12.2021 in pursuance to the order of this Court. It would therefore be axiomatic that the learned State Commission could not have allowed the appeal by holding that the claim of the petitioner/complainant was satisfied. The finding rendered that the respondent was willing to hand over the vehicle to the petitioner in view of the letter dated 12.10.2012 (pg.91), which called upon the petitioner/complainant to take possession is clearly in ignorance of the reply dated 8.12.2012 by the petitioner (pg.92) in which it has been categorically stated that the respondent had not given the custody of the vehicle in repaired and working condition. There is nothing on record to indicate that the offer of delivery of the vehicle to the petitioner by the respondent at any time indicated that the vehicle was in working condition, as no material to that effect has been placed on record. The photographs

placed on record on the other hand indicate that the vehicle was not in a condition to be driven, as it did not even have the driver's seat. The State Commission therefore was not justified in rendering a finding in para 21 of the impugned order that the appellate was willing to comply with the order dated 6.5.2010 in returning the vehicle. The return of the vehicle as directed by the order dated 6.5.2010 would obviously indicate that it has to be in a working condition.

7] As indicated above, in absence of any material on record to demonstrate that the offer of return of the vehicle was of the vehicle in a working condition, the finding rendered in para 21 is clearly not justified.

8] That apart, the finding that the petitioner was not entitled to claim anything more than the amount besides Rs. 6,32,000/- in view of the interim order dated 5.5.2011 (pg.51) is also not justified, as admittedly even presuming that there was an offer to return the vehicle, that offer itself is dated 12.10.2012, in respect of which the position has already been stated earlier, and the vehicle was in fact returned on 2.12.2021, thereby depriving the

petitioner of its use since its detention by the respondent from 4.8.2009.

9] In that view of the matter, the judgment dated 20.2.2017 cannot be sustained and the same is hereby quashed and set aside. The matter is remanded back to the appellate Court to rehear the parties and decide the appeal.

10] Since the vehicle has been delivered in running condition to the petitioner on 2.12.2021 under the orders of this Court, the respondent shall deposit with the Appellate Court the amount of damages from 6.5.2011 till 1.12.2021 at the rate directed by the District Forum by the order dated 6.5.2010, within a period of four weeks.

11] Since the appeal is against the order in execution, the appellate Court is directed to decide the appeal within the period of three months from the date of presentation of the copy of this order, which shall be done on or before 31 March, 2023.

12] Though a stay is being sought to the direction to deposit the amount, I am not inclined to grant the stay, considering the huge time consumed by the respondent in delivering the vehicle in a running condition to the petitioner in spite of the

order dated 6.5.2010 passed by the learned District Forum. The request is therefore, rejected.

13] The petition is allowed in above terms.
No costs.

JUDGE

Rvjalit