



W.P.No.31284 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2023

CORAM:

The HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.31824 of 2022

M/s.IndusInd Bank Ltd.,
Rep. By its Manager – Legal, N.Veeraragavan,
having its registered office at
No.115 & 116,
G.N.Chetty Road, T.Nagar,
Chennai – 600 017.

State Office at
Sai Empire, 3rd Floor, No.25,
United India Colony, 1st Main Road,
Above Hotel Saravanabhavan,
Kodambakkam, Chennai – 600 024.

.. Petitioner

vs

1.The Joint Transport Commissioner (Rules),
Office of the Transport Commissioner,
Ezhilagam, Chepauk,
Chennai – 05.

2.The Regional Transport Officer Grade – 1,
Regional Transport Office,
Oddanchatram.

3.V.Senthilkumar

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying to issue a writ of mandamus directing the second respondent
to issue Financier Registration Certificate in the name of the petitioner,



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M/s.IndusInd Bank Ltd., for the vehicle Ashok Leyland make – Goods Carry – 3118 8X2 6100MM 240 BS IV, Vehicle bearing Registration No. TN 94 Z 6201 within a time frame that may be fixed by this Court.

For Petitioner : Ms.Meera Gnanasekar
For Respondents : Mr.K.M.D.Muhilan
Additional Government Pleader
for R1 & R2
Mr.K.Gokulram
for R3

ORDER

This writ petition has been filed to direct the second respondent to issue Financier Registration Certificate, in the name of the petitioner - M/s.IndusInd Bank Ltd., for the vehicle - Ashok Leyland make – Goods Carry – 3118 8X2 6100MM 240 BS IV, Vehicle bearing Registration No. TN 94 Z 6201.

2. The petitioner is a Company registered under the Companies Act, 1956. In November, 2018, the third respondent approached the petitioner with a request for loan to purchase a commercial vehicle viz., Ashok Leyland makes Goods Carry – 3118 8X2 6100MM 240 BS IV 2018 and thereby entered into a hire purchase agreement. As the monthly instalment has not been paid regularly by the third respondent, the petitioner being the purchaser, re-possessed



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the vehicle on 05.09.2020 and initiated sale process for the said vehicle. The petitioner / Bank approached the second respondent on 17.09.2020 for financier registration of the vehicle but the same has not been effected. Hence the present writ petition.

3. Heard the learned counsel for the respective parties.

4. It is the contention of the petitioner that being the financier, has exercised the right under the hire purchase agreement and re-possessed the vehicle, there is entitlement to get certificate under Section 51(5) of the Motor Vehicles Act. However, the second respondent has not issued any such certificate to the petitioner.

5. Learned counsel for the third respondent would submit that on the basis of the representation of the petitioner, notice has been issued to the petitioner and the third respondent and the third respondent has objected for issuing such certificate in the name of the financier. Till a decision is made in the proceedings, no transfer should be effected. Accordingly, accepting his version, the request of the petitioner has been rejected.



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6. Learned Additional Government Pleader submits that a counter affidavit has been filed by the second respondent and relevant portion of which reads as under:-

"8. It is humbly submitted that the third respondent owner has filed CrI.M.P.No.3938 of 2022 on the file of the learned Judicial Magistrate, Oddanchatram alleging forceful and illegal takeover of possession of the vehicle and the same is still pending. Hence the second respondent is presently not in a position to grant relief under Section 51 of the Motor Vehicles Act."

7. Thus, the counter affidavit of the second respondent clearly indicates that the third respondent has filed miscellaneous petition alleging that the re-possession of the vehicle is done by use of force and illegal means. The allegations indicate that the vehicle has been re-possessioned in the year 2020 itself in view of hire purchase agreement between the petitioner and the third respondent. It is relevant to note section 51(5) of the Act, which reads as follows:-

"51. Special provisions regarding motor vehicle subject to hire-purchase agreement, etc.—



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(5) Where the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement, satisfies the registering authority that he has taken possession of the vehicle from the registered owner owing to the default of the registered owner under the provisions of the said agreement and that the registered owner refuses to deliver the certificate of registration or has absconded, such authority may, after giving the registered owner an opportunity to make such representation as he may wish to make (by sending to him a notice by registered post acknowledgment due at his address entered in the certificate of registration) and notwithstanding that the certificate of registration is not produced before it, cancel the certificate and issue a fresh certificate of registration in the name of the person with whom the registered owner has entered into the said agreement:1[from the registered owner] owing to the default of the registered owner under the provisions of the said agreement and that the registered owner refuses to deliver the certificate of registration or has absconded, such authority may, after giving the registered owner an opportunity to make such representation as he may wish to make (by sending to him a notice by registered post acknowledgment due at his address entered in the certificate of registration) and notwithstanding that the certificate of



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registration is not produced before it, cancel the certificate and issue a fresh certificate of registration in the name of the person with whom the registered owner has entered into the said agreement\:" Provided that a fresh certificate of registration shall not be issued in respect of a motor vehicle, unless such person pays the prescribed fee: Provided further that a fresh certificate of registration issued in respect of a motor vehicle, other than a transport vehicle, shall be valid only for the remaining period for which the certificate cancelled under this sub-section would have been in force."

8. As per Section 51(5) of the Motor Vehicles Act, 1988, when the financier satisfies the authority that he has taken over the possession of the vehicle from the registered owners as per the said agreement, the registered owner refuses to deliver certificate of registration, the authority after giving opportunity to the registered owner cancel the certificate and issue a fresh certificate of registration in the name of the person with whom the registered owner has entered into the said agreement. Therefore, once the hire purchase agreement is not in dispute and possession of the vehicle was also taken in the year 2020 and the allegation that such a possession has been taken due to force or illegal means cannot be a ground to refuse



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exercise of powers by the authorities under Section 51(5) of the Act.

Therefore, mere pending of Crl.M.P. cannot be the ground to refuse issuing of certificate of registration. Accordingly, the second respondent is directed to issue certificate in favour of the petitioner within a period of one month from the date of receipt of a copy of this order.

9. In view of the above, this writ petition is disposed of. No costs.

12.01.2023

Index:Yes/No
Neutral Citation:Yes
ssm

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N.SATHISH KUMAR., J.

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