BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2023

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) No. 16654 of 2019
and
W.M.P. (MD)No. 13283 and 13284 of 2019

R.Rengasamy ... Petitioner

Vs.

1.The Regional Transport Officer,
Regional Transport Office,
Marthandam,
Kozhiporvilai,
Mulagumoodu Post,
Kanyakumari District.

2.The Inspector of Police,
Marthandam Police Station,
Kanyakumari District.

3.The Authorised Officer,
Equitas Small Finance Bank Limited,
NO. 10 – 16 M, Valiyakatuvilai,
Opp to Hotel Dawaat,
Pammam,
Marthandam,
Kanyakumari District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Mandamus, forbearing the 1st respondent from transferring the petitioner's Taurus Lorry bearing TN 54 A 7733 to any other name and consequently direct the 1st and 2nd respondent to take action against the 3rd respondent and to recover the petitioner's vehicle by considering the representation of the petitioner dated 20.07.2019 and 22.07.2019 within a stipulated time that may be fixed by this Court.

For Petitioner	:	Mr. S.C.Herold Singh
For Respondents	:	Mr. K.S.Selvaganesan (R1) Additional Government Pleader Ms. M.Aasha (R2) Government Advocate Mr. B.Janarth Kumar

ORDER

Heard Mr. S.C.Herold Singh, Learned Counsel appearing for the Petitioner, Mr. K.S.Selvaganesan, Learned Additional Government Pleader appearing for the First Respondent, Ms. M.Aasha, Learned Government Advocate appearing for the Second Respondent and Mr. B.Janarth Kumar, Learned Counsel appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner had availed a vehicle loan for a sum of Rs. 6,50,000/- from the Third Respondent on 15.07.2017 for purchase of Ashok Leyland Taurus Lorry bearing Registration No. TN 54 A 7733, which has been hypothecated as security for it. The said loan is repayable in 48 equated monthly installments, but according to the Third Respondent, the Petitioner committed default in the repayment from June 2019 onwards and a sum of Rs.4,96,062/- was then remaining to be recovered from him. After intimation sent on 04.07.2019 to the Petitioner and on 19.07.2019 to the Inspector of Police, Puthukadai Post, Kanyakumari District, the Third Respondent claims to have re-possessed the said vehicle on 20.07.2019 and a pre-sale notice dated 20.07.2019 had been sent to the Petitioner by registered post, which was returned with endorsement of 'refused' made on 22.07.2019 by the postal authorities. In that backdrop, the Petitioner has on 24.07.2019 filed this Writ Petition for restraining the First Respondent from transferring the said hypothecated vehicle to any other name and to consequently direct the First and Second Respondents to take action against the Third Respondent and return the said vehicle by considering his representation dated 22.07.2019 in that regard.

3. Before proceeding further, it would be necessary to extract Article 11 of the loan agreement entered between the Petitioner and the Third Respondent, which reads as follows:-

> ***"11. REPOSSESSION, TERMINATION AND BANK'S OTHER RIGHT:***
>
> *a) On the occurrences of any of the aforesaid Events of Defaults contained in Article 10, the rights of the Borrowers over the Asset shall stand determined void ipso facto without any notice and the Borrowers shall be bound to deliver forthwith the Asset to the Bank in the same condition in which it was originally received by him with all accessories/modifications done by Borrowers whatsoever (in the case of Vehicle), ordinary wear and tear excepted. Failure or refusal of the Borrowers to surrender the Asset shall constitute unlawful retention for which the Bank shall be entitled to initiate criminal action, without prejudice to other rights/ legal remedies available to the Bank.*

I. Notice: In case of any default in repayment including an occurrence of any of the aforesaid Event of Default and/or failure to surrender the asset as mentioned herein above, the Bank shall cause a 7 day notice to be issued to the Borrowers at his address as registered with the Bank. The notice shall be deemed to be served on the Borrowers within 24 hours of posting the notice by the Bank even if the notice so served returns back unserved for whatever reason and the confirmation from any authorization officer of the Bank for having posted the notice to the Borrowers shall be final and binding in this regard.

II. Repossession: In case the Borrowers fails to make payment of the dues or surrender the asset to the Bank and /or rectify the breach of the terms of the contract in compliance with the notice mentioned above, to the satisfaction of the Bank, without prejudice to its other rights available under the Agreement, the Bank may be entitled to take possession of the Asset (referred to as "repossession") and for the said purpose, enter any place *or places where the Asset may then be or is likely to be, remove or take possession of the same. The Borrowers agrees and undertakes not to prevent or obstruct the Bank from exercising its right of possession of the Asset in the event of default by the Borrowers.*

It shall be the sole responsibility of the Borrowers to remove any goods (perishable, non-perishable) available in the Asset at the time of its repossession by the Bank and the Borrowers shall make his/her own arrangements to transfer such goods from the said Asset to and transport it back at his own cost and expenses and the bank shall not be liable to the Borrowers for any damage, depreciation value, loss in transit etc., or for any damages arising on account of non-delivery of the same to anyone during or after such repossession.

The Bank shall not be responsible for any loss or destruction and damage to the hypothecated asset; whether by theft, fire, rain, flood, earthquake, lightening, accident other case whatsoever to the repossesion Asset.

Notwithstanding anything to the contrary contained in S 151 of the Indian Contract Act.

III. Post Repossession: Upon taking possession of the vehicle, as a final chance to rectify the default a 7 days notice shall be caused upon by the Bank to the Borrowers to repay the termination price (which includes the charges and expenses incurred for taking possession of the vehicle including the legal expenses). The notice shall be deemed to be served on the Borrowers within 24 hours of posting the notice by the Bank even if the notice so served returns back unserved reasons and the conformation from any authorization officer of the Bank for having posted the notice to the Borrower shall be final and binding in this regard.

IV. Waiver Notice: The said notice (before and after taking possession of the Asset) mentioned hereinabove can be waived at the discretion of the Bank, in case the Bank is of opinion that such an action is likely to jeopardize the Asset or the interest of the Bank.

V. On payment of the termination price within the time and manner stipulated in the notice mentioned above, the Bank shall return the repossesses asset to the Borrower or his authorized representative to be specified in writing by the Borrower. In case of failure on the part of the Borrower to make payment of the termination price within the time and manner stipulated in the notice mentioned above, the Bank shall sell dispose of the asset in the manner it may deem fit without any further notice to the Borrowers notwithstanding exercising any other legal remedy or right against the Borrowers available to it.

VI. The Borrowers hereby irrevocably authorizes the Bank to sell/transfer/assign the Asset without the intervention of court either by private treaty or public auction or in such other manner as the Bank may deem fit. The Borrowers shall not be entitled to raise any objection regarding the regularity of the sale and/or action taken by the Bank nor shall be liable/responsible for any loss that may occasion by the exercise of such power and/or may arise from any *act or default on the part of any broker or auctioneer or other person or body engaged by the Bank for the said purpose.*

VII. The Borrowers shall forthwith deliver the Bank all original certificate and policies of insurance including Certificate of Registration (where the Asset is a vehicle) keys and all other documents relating to the Asset. In the event of the failure of the Borrowers to do so, the Bank shall be entitled to immediately apply to the concerned authorities and obtain the documents afresh, expenses for which shall be charged to the account of the Borrowers and shall form part of the amount payable on the determination of this agreement. The Borrowers agrees and undertakes that he shall not araise any objection for such application by the Bank.

VIII. Upon sale of the Asset and adjustment of the sale proceeds towards the loan Dues (which includes the expenses/ charges incurred for parking, sale of vehicle, in addition to the termination price) there is any shortfall *amount due and payable, the same shall be made good by the Borrowers and/or the Guarantor."*

That apart, in clause (xiii) of the Circular dated 24.04.2008 issued by the Reserve Bank of India on Mid-Term Review of the Annual Policy for the year 2007-2008 of Recovery Agents engaged by banks, it has been mentioned as follows:-

> *"(xiii) Where banks have incorporated a re-possession clause in the contract with the borrower and rely on such re-possession clause for enforcing their rights, they should ensure that the re-possession clause is legally valid, complies with the provisions of the Indian Contract Act in letter and spirit, and ensure that such repossession clause is clearly brought to the notice of the borrower at the time of execution of the contract. The terms and conditions of the contract should be strictly in terms of the Recovery Policy and should contain provisions regarding (a) notice period before taking possession (b) circumstances under which the notice period can be waived (c) the procedure for taking possession of the security (d) a provision regarding final chance to be given to the*

borrower for repayment of loan before the sale/auction of the property (e) the procedure for giving repossession to the borrower and (f) the procedure for sale/auction of the property."

The Hon'ble Supreme Court of India in ***Charanjit Singh Chada -vs- Sudhir Mehra*** [(2001) 7 SCC 417] and ***Managing Director, Orix Auto Finance (India) Ltd. -vs- Jagmander Singh*** [(2006) 1 CTC 670], has in no uncertain terms recognized the right of a creditor to seize the security for the debt from the custody of the borrower in terms of the written contract between them.

4. Moreover, Section 51(5) of the Motor Vehicles Act, 1988, enables the creditor of the hypothecated vehicle to get his name transferred in the certificate of Registration after seizure of the motor vehicle, which reads as follows:-

" 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 [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."*

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."

5. It must also be pointed out here that during the pendency of this Writ Petition, the parties had been referred to mediation by the Court, but the Petitioner has not been able to amicably resolve the dispute for release of the seized vehicle to him by the Third Respondent.

6. The law relating to scope of interference of the Writ Court in contractual matters has been explicated in the ruling of the Hon'ble Supreme

Court of India in ***GRIDCO Limited -vs- Sadananda Doloi*** [(2011) 15 SCC 16] in the following words:-

> *"39. A writ court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the armchair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ court would do well to respect the decision under challenge."*

Viewed from that perspective, no exception could be taken to the impugned action of the Respondent in seizing the hypothecated vehicles from the custody of the Petitioner exercising such rights in terms of the written contract between them.

7. Having due regard to the aforesaid legal position *viz-a-viz* the agreed terms of the contract between the parties, it is beyond cavil that there is no infirmity in the action taken by the Third Respondent to seize the hypothecated vehicle from the Petitioner for the default committed in re-payment of the dues under the vehicle loan from June 2019 onwards. The subsequent events after the filing of the Writ Petition, also reflect that the Petitioner does not deserve any more indulgence from this Court, much less the relief sought by him. The Third Respondent is legally entitled for transfer of the Certificate of Registration of the seized vehicle in its name following the prescribed procedure as per Section 51(5) of the Motor Vehicle Act, 1988. After due intimation to the Petitioner, it would be open to the Third Respondent to proceed for sale of the hypothecated vehicle in public auction in accordance with law to realize the amount due from him.

In the upshot, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petitions are closed. No costs.

01.02.2023

Index : Yes/No
Internet : Yes/No
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Note : Issue order copy by 18.08.2023.

To

1.The Regional Transport Officer,
Regional Transport Office,
Marthandam,
Kozhiporvilai,
Mulagumoodu Post,
Kanyakumari District.

2.The Inspector of Police,
Marthandam Police Station,
Kanyakumari District.

P.D.AUDIKESAVALU,J.

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