IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.784 of 2022

Arising Out of PS. Case No.-151 Year-2022 Thana- PATNA COMPLAINT CASE District- Patna

==

Pradeep Chauhan S/O Mishri Chauhan, Resident of village- Kaushalaya Bigha P.S.- Tharthari District- Nalanda at present address- Gate No. 92 Bajitpur P.S.- Digha District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar Through The Home Commissioner Old Secretrait Patna Bihar
2. The Director General of Police Sadar Patel Bhawan Baily Raod Patna Bihar
3. The Senior Superintendent of Police Patna. Bihar
4. The S.H.O Rupaspur P.S Bihar
5. The Branch Manager Mahindra and Mahindra Finance Ltd. 2nd Floor Milan Road, Kankarbagh Above U.B.I Bihar
6. The Manager Alankar Piaggio Auto Agency, Aparna Complex In Front Of St. Michle School Digha Patna Bihar

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Pandey, Adv
For the State	:	Mr. Iqbal Asif Niazi, AC to GP 5
For the Respondent No.5:		Mr. Shivendra Kr. Roy, Adv

==

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL ORDER

7 19-03-2024 1. The petitioner purchased an auto rickshaw/ three wheeler, bearing Registration No. BR-0K PK-7166, under Hire Purchase Agreement on 18th of November, 2019, on the basis of Hire Purchase Agreement/ Loan Agreement executed on 18th of November, 2019 by and between the petitioner and Mahindra & Mahindra Financial Services Ltd. It was agreed that the company would finance Rs. 2.32 lakhs towards the purchase value of the aforesaid auto-rickshaw and the said amount was to

be deposited by the petitioner by equal monthly installment at the rate of Rs. 8300/- per month. The petitioner did not follow the loan agreement as per the stipulation and during 2020 and 2021, he only pay two installments at the rate of Rs. 8300/-. Thereafter, on 10th of January, 2024, repossession of the said vehicle was taken by the finance company. After repossession having been taken by the finance company, the petitioner filed a Complaint Case bearing No. 151 (C) of 2022 in the Court of learned A.C.J.M., Danapur. The said complaint case was sent to the jurisdictional police station under Section 156(3) of the Cr.P.C. for treating the same as an FIR and to register a case against the finance company and its officers, men and agents.

2. It is pertinent to mention that the petitioner did not make any application for return of the vehicle before the learned Magistrate. After filing the above mentioned criminal case, the petitioner approached this Court alleging, inter alia, that entire action on the part of the respondents, specially Respondent No. 5 is illegal and violative of Articles 14, 19 (1) (G) and Article 21 of the Constitution of India.

3. Therefore, the petitioner has prayed for directing the Respondent No. 5 to return the seized auto-rickshaw in his favour.

4. I have heard the learned Advocate for the petitioner and the learned Advocate for the Respondent No. 5 at length.

5. The Respondent No. 5 has filed a counter affidavit and a supplementary counter affidavit annexing the loan agreement with the same.

6. Clause 14 and 15 of the loan agreement are relevant for the purpose of this case and are reproduced hereinbelow:-

> *14. Cross liability*
>
> *Borrower expressly accepts that if the Borrower fails to pay any monies when due or which may be declared due prior to the date when it would otherwise have become due or commits any other default under any agreement (including this agreement or any other agreement with any of the Group Company, as defined by the Companies Act) with the Lender under which the Borrower is enjoying any financial creditor other facility; then in such event the Lender shall, without prejudice to any of its specific rights under each of the agreements, be absolutely entitled to exercise all or any of its rights” Including taking Possession, Disposal and Holding NOC of the product there of" under any of the Borrower agreement (including this agreement) with the Lender at the sole discretion of the Lender.*
>
> *15. Arbitration*
>
> *All disputes, differences and/or claim arising out of these presents or in any way touching or concerning the same or as to constructions, meaning or effect hereof or as to the right and liabilities of the parties hereunder shall be settled by arbitration to be held in accordance with the provision of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to the sole arbitrator to be nominated by the Lender. In the event of death, refusal, neglect, inability or incapability of a person so appointed to act as an arbitrator, the Lender may appoint a new arbitrator. The*

arbitrator shall not be required to give any reasons for the award and the award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceeding shall be held in Delhi.

7. On perusal of the loan agreement, it is found that in the event of non-payment of EMI, the lender shall have the right without prejudice to any of its specific rights under each agreement, to take possession, disposal and holding NOC of the product thereof under any of the borrower agreement with the lender at the sole discretion of the lender. Clause 15 of the agreement states about arbitration clause to the effect that in case of any dispute, the parties may settle the dispute by arbitration to be held in accordance with the provision of the Arbitration and Conciliation Act, 1996.

8. Learned Advocate for the petitioner, placing reliance on an order passed by a Co-ordinate Bench, in batch of writ petitions, leading case being C.W.J.C No. 3456 of 2022, ***Dhananjay Seth vs. Union of India and Ors.***, reported in ***2023 4 BLJ 284***, submits that if the borrower failed to pay any EMI to the lender in terms of the loan agreement, the lender has remedy under the SARFAESI Act and the banking institutions cannot seize the vehicle from the road at their whims and caprices.

9. The learned Advocate for the Respondent No. 5, on

the other hand, refers to a decision of the Hon'ble Supreme Court in the case of ***Anup Sarmah vs. Bhola Nath Sharma & Ors.*** reported in ***(2013) 1 SCC 400*** wherein the Hon'ble Supreme Court considering its previous judgement in ***Sardar Trilok Singh and Ors. vs. Satya Deo Tripathi*** reported in ***(1979) 4 SCC 396***, ***K.A. Mathai & Anr. vs. Kora Bibbikutty & Anr,*** reported in ***(1996) 7 SCC 212*** and ***Charanjit Singh Chadha & Ors vs. Sudhir Mehra,*** reported in (***2001) 7 SCC 417*** held that recovery of possession of the vehicle by the financier owner as per terms of the hire-purchase agreement, does not amount to a criminal offence. Such an agreement is an executory contract of sale conferring no right in rem on the hirer until the transfer of the property to him has been fulfilled and in case the default is committed by the hirer and possession of the vehicle is resumed by the financier, it does not constitute any offence for the reason that such a case/dispute is required to be resolved on the basis of terms incorporated in the agreement. The Court elaborately dealt with the nature of the hire-purchase agreement observing that in a case of mere contract of hiring, it is a contract of bailment which does not create a title in the bailee. However, there may be variations in the terms and conditions of the agreement as created between the parties and the rights of the parties have to be determined on the basis of the said agreement. The Court further held that in such a contract, element of bailment and element of sale are involved in the sense that it contemplates an eventual sale.

10. In ***Magma Fincorp Limited vs. Rajesh Kumar Tiwari***, reported in ***2020 10 SCC 399***, the Hon'ble Supreme Court again reiterated that a hire-purchase agreement is an executory contract of sale, conferring no right in rem on the hirer, until the conditions for transfer of the property to him have been fulfilled and the financier continues to be the owner of the goods under a hire-purchase agreement while the hirer simply pays for use of the goods for the option to purchase them. Until the option to purchase is exercised by the hirer, upon payment of all amounts agreed upon between the hirer and the financier, the hirer remains the bailee of the goods covered by the Hire Purchase Agreement.

11. It is not in dispute that the petitioner took possession of the auto-rickshaw on the basis of a Hire Purchase Agreement. Therefore, the nature of possession of the petitioner is not that of owner's possession but of a bailee's possession.

12. Moreover, it would not be out of place to mention that Mahindra & Mahindra Financial Corporation is a non-

banking financial corporation and SARFASI Act does not apply on the non-banking financial corporation as per Government of India Extraordinary Gazette notification dated 12th of February, 2021.

13. Under such circumstances, the decision of this Court passed in C.W.J.C No. 3456 of 2022 and other analogous cases, does not apply on principle in the instant case.

14. Having heard the learned counsels of the parties and on careful consideration of the law on the subject, I do not find any merit in the instant writ petition and accordingly the writ petition is dismissed on contest.

15. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

uttam/-

U			