

March 12, 2024
ARDR (783)

WPA 24313 of 2023

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CAN 1 of 2023

Mst. Yeasmin Bibi @ Yasmin
Vs.
The State of West Bengal & ors.

Adv. Sankar Nath Mukherjee,
Adv. Niraj Gupta,
Adv. Afroja Nusrat,
...petitioner.

Adv. Varun Kothari,
Adv. Anikta Singh
...for the respondent no.5/applicant.

Adv. Pantu Deb Roy,
Adv. Manas Sadhu,
...for the State.

Inadvertent error has crept into the order passed on
February 9, 2024.

In the first line of the order “Affidavit in opposition
submitted on behalf of the respondent no.5” be read as
“Affidavit in opposition submitted on behalf of the
petitioner”.

The department is directed to incorporate necessary
correction accordingly.

This order be treated as part of the order passed on
February 9, 2024.

Heard learned counsels for the parties.

The writ petition seeks a writ in the nature of
mandamus commanding the respondents to show cause as
to why the impugned transfer of ownership of the vehicle
bearing no. WB-45 – 5212 should not be quashed, recalled,
cancelled.

The vehicle in question was registered in the name of the petitioner's husband on the basis of hire purchase agreement. The owner of the vehicle failed to pay the installments to the financier, being the 5th respondent herein, for which the vehicle was repossessed by the 5th respondent on 9th December, 2020. The owner expired on 25th May, 2020. The petitioner received information that the 5th respondent sold the vehicle in favour of a third person following which the petitioner made a complaint before the registering authority on 22nd September, 2023 alleging that the provision laid down under Section 51(5) of the Motor Vehicles Act, 1988 was not complied with.

By an order passed on 16th October, 2023, this Court admitted the writ petition for hearing subject to the petitioner paying the admitted arrears to which the financier was entitled, within 21 days from the date of order. The financier was directed to inform the petitioner about the current arrears on her application made in this regard. On payment of such arrear EMI by the petitioner, she was granted liberty to file appropriate application for return of the vehicle from the financier and to take steps for registering the vehicle in her name as the wife of the registered owner, since deceased. In the meantime, the financier was directed not to transfer the vehicle in favour of any third party for a period of one month.

The financier, being the 5th respondent herein, has filed an application being CAN 1 of 2023 wherein he has

primarily alleged suppression of material facts by the petitioner.

Learned counsel for the 5th respondent has submitted that the financier took possession of the vehicle on 9th December, 2020 in terms of the loan-cum-hypothecation agreement dated 25th July, 2018. The petitioner approached the Court of the learned District Judge, Birbhum at Suri under Section 9 of the Arbitration and Conciliation Act, 1996 which was registered as Reference case no.07 of 2021, praying for interim measures of protection in respect of the vehicle in question by way of detention, preservation or inspection and injunction restraining the respondents from transferring the vehicle till disbursement of insurance claim. Learned counsel submits that the said application was dismissed by an order passed on 29th September, 2021. The vehicle was sold out by the financier on 31st August, 2022. Learned counsel further submits that being unsuccessful in the application under Section 9 of the Act of 1996, the petitioner has come up before this Court with a similar prayer upon suppressing the earlier application filed under Section 9 of the Act of 1996, which amounts to suppression of material facts, sufficient to dismiss the writ petition.

It appears from the record that filing of the application under Section 9 of the Act of 1996 and dismissal of the same were suppressed by the petitioner before this Court in filing the writ application. It is trite

law that a petitioner should come before a Writ Court with clean hands and put forward all facts before the Court without concealing or suppressing anything. In the event there is suppression of material facts on the part of the petitioner, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

The application under Section 9 of the 1996 Act filed on the similar issue as in the present writ petition and such fact being suppressed by the petitioner herein, this Court is inclined to hold that the writ petition ought to be dismissed on the said ground alone without entering into the merits thereof.

In view of the above, the writ petition, being WPA 24313 of 2023, is dismissed.

The connected application, being CAN 1 of 2023, is disposed of.

There shall however, be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to have been admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)