

CIVIL REVISION

Present :The Hon'ble Mr. Justice Prasenjit Mandal

Judgment on 25.08.2010

C.O. No. 3676 of 2009

Sambhu Dhara

Versus

City Corp. Finance (India) Ltd.

Points:

Financer's right-Financer transferred the vehicle to third party immediately taking possession of the same for default in payment of installments whether court can direct for recovery of vehicle- Arbitration and Conciliation Act, 1996 S.9

Facts:

Plaintiff took loan from the defendant for purchasing of the vehicle. Plaintiff paid some installments but failed to pay two installments. Defendant took possession of the vehicle without the order of the Court. Plaintiff filed a suit. He also filed an application for injunction. The application for injunction converted into a Misc. case under section 9 of the Arbitration and Reconciliation Act. On the said application on consent of the parties an order of injunction in the form of statusquo was passed and the same was extended from time to time. Plaintiff filed an application for release of vehicle when the defendant disclosed about the sale of the said vehicle to a third party immediately after taking possession of the same. Defendant also alleged that as there is arbitration clause the suit is not maintainable.

Held:

The prayer of the plaintiff for recovery of the vehicle cannot be granted, but the learned Trial Judge could have directed the defendant to deposit the amount after deducting the amount due at the time of seizure. As per materials on record, there were two instalments due to the defendant at the time of seizure of the vehicle. Therefore, the conduct of the defendant does not appear to be fair at all. The learned Trial Judge did not take notice of such fact. However, in order to solve the dispute between the parties, I am of the view that the defendant should be directed to deposit within two weeks from date an amount of Rs.3,00,000/- with the learned Registrar, City Civil Court, Calcutta.

Para 4

The application filed by the plaintiff for temporary injunction has been converted into a misc. case by the impugned order under Section 9 of the Arbitration and Conciliation Act, 1996. The order that the application for injunction has been converted into a misc. case is supported.

Para 5

The title suit has been stayed permanently, though the passing of the order of stay of the suit permanently cannot be supported because it will remain the suit as stayed for ever. Accordingly, the portion of the order that the title suit has been stayed permanently is hereby set aside. It may be disposed of at the appropriate time. It may be treated as stayed for the time being upon deposit of Rs.3,00,000/- by the defendant in the suit with the learned Registrar, City Civil Court, Calcutta.

Para 5

For the petitioner: Mr. Shyamal Chakraborty, Mr. Swarup Kr. Ghosh.

For the opposite party: Mr. P. Srivastava, Mr. S. Banerjee, Mr. P. Goswami.

Prasenjit Mandal, J.: This application is at the instance of the plaintiff and is directed against the order 15 dated November 13, 2009 passed by the learned Judge, City Civil Court, Sixth Bench at Calcutta in Title Suit No.446 of

2009. Being aggrieved by the said order, the plaintiff has filed this application.

2. The short fact is that the plaintiff filed the Title Suit No.446 of 2009 before the City Civil Court, Calcutta for declaration that the plaintiff has got every right of ownership and to ply the vehicle No. WB-23A 3916, decree of permanent mandatory injunction directing the defendant to immediately release the said vehicle and for other reliefs. At the time of filing the suit, the plaintiff filed a petition for temporary injunction and the Court passed the order of injunction restraining the defendant from selling or transferring the vehicle in question and in fact, the order of injunction was granted on consent thereby restraining the defendant from transferring or encumbering the vehicle in question. It may be noted here that the plaintiff took a loan of Rs.4 Lakh from the defendant for purchase of the said vehicle and at the time of grant of such a loan, the defendant obtained several signatures of the plaintiff on some blank papers and printed papers. At that time, the plaintiff was told to sign for processing the said loan transaction. The plaintiff signed on such papers on good faith. Thereafter, he was making repayment of the said loan by monthly instalments and thus he repaid the loan to the extent of Rs.1,44,009/- by nine instalments at the rate of rs.16,001/-. Such a loan was obtained in July, 2007. Thereafter, the defendant issued a demand notice and the plaintiff made payment of 4 instalments totalling Rs.64,004/-. But the vehicle was seized on November 19, 2008 without any court's order and the defendant lodged a caveat with the City Civil Court at Calcutta on December 1, 2008. The plaintiff filed the suit on January 19, 2009.

3. Upon perusal of the application supported by an affidavit and annexures and on consideration of the submission of the learned Advocate of both the sides, I find that though the suit was filed by the plaintiff on January

19, 2009 along with an application for injunction, that application was moved in presence of defendant and on consent, an order of status quo was passed. Such an order of status quo was extended from time to time. Thereafter, the plaintiff filed an application for release of the vehicle on August 31, 2009 and in that application the defendant filed an objection dated September 9, 2009 disclosing that the vehicle had already been sold on December 24, 2008. From the above facts, it appears that the defendant adopted tricks in dealing with the plaintiff with regard to the vehicle in question. As stated earlier, the vehicle was seized on November 19, 2008 and the defendant lodged a caveat on December 1, 2008. Immediately thereafter, he had sold the said vehicle to a third party, namely, Anil Kumar Keshrwani on December 24, 2008 at a consideration of Rs.4,85,500/- though the order of injunction was passed on consent at the time of granting the injunction for the first time or at the subsequent stage when the order of injunction was extended from time to time. The defendant did not inform the Court that he had already sold the vehicle before the plaintiff filed the suit.

4. This being the position, the prayer of the plaintiff for recovery of the vehicle cannot be granted, but the learned Trial Judge could have directed the defendant to deposit the amount after deducting the amount due at the time of seizure. As per materials on record, there were two instalments due to the defendant at the time of seizure of the vehicle. Therefore, the conduct of the defendant does not appear to be fair at all. The learned Trial Judge did not take notice of such fact. However, in order to solve the dispute between the parties, I am of the view that the defendant should be directed to deposit within two weeks from date an amount of Rs.3,00,000/- with the learned Registrar, City Civil Court, Calcutta.

5. As regards, the other particulars of the order, it is submitted on behalf of the defendant that since there is an arbitration clause, the suit is not maintainable. In this regard, from the materials on record, I find that the application filed by the plaintiff for temporary injunction has been converted into a misc. case by the impugned order under Section 9 of the Arbitration and Conciliation Act, 1996. The title suit has been stayed permanently, though the passing of the order of stay of the suit permanently cannot be supported because it will remain the suit as stayed for ever. The other part of the order that the application for injunction has been converted into a misc. case is supported. Accordingly, the portion of the order that the title suit has been stayed permanently is hereby set aside. It may be disposed of at the appropriate time. It may be treated as stayed for the time being upon deposit of Rs.3,00,000/- by the defendant in the suit with the learned Registrar, City Civil Court, Calcutta.

6. The learned Registrar, City Civil Court, Calcutta shall make the said sum fixed deposit for a short term in any nationalized bank with the condition to renew the same from time to time so that appropriate interest may be earned by such deposit.

7. The application is disposed of in the manner indicated above.

8. Considering the circumstances, there will be no order as to costs.

9. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

(Prasenjit Mandal, J.)

