SUPREME COURT OF INDIA

Managing Director, Orix Auto Finance (India) Limited

Vs

Jagmander Singh and Another

Appeal (Civil) 1070 of 2006, (Arising Out of S.L.P. (C) No.22535 of 2004)

(Arijit Pasayat and S. H. Kapadia, JJ)

10.02.2006

JUDGMENT

ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the order passed by a learned Single Judge of the Punjab and Haryana High Court dismissing the Civil Revision filed under Section 115 of the Code of Civil Procedure, 1908 (in short the 'Code').The background facts in a nutshell are as follows: Under a Hire Purchase Agreement executed between the appellant (hereinafter referred to as the 'Financier') and the respondent no.1 (hereinafter referred to as 'Hirer') possession of truck No.HR-46-C-3689 was handed over to the hirer subject to compliance of the terms and conditions of the agreement. As per the terms and conditions stipulated in the agreement, the hirer was to repay the total financed amount of Rs.9, 24, 000/- in 33 monthly installments of Rs.28, 000/- each. As per the agreement the first instalment was payable on 25.10.2000 and the last instalment was payable on 25.6.2003. In case of default in making payment of the monthly instalment the hirer was liable to pay delay charges. Clause 10 of the agreement which is relevant for this purpose of this appeal reads as follows:

"10. In case the Hirer shall during the continuance of this Agreement do or suffer any of the following acts or things, viz. either:

a. fail to pay any of the hiring (rent) instalments or any such monies which has fallen due within the provisions of this agreement, within or at the stipulated time, whether demanded or not;

b. die, become insolvent, or compound with its creditors;

c. the Hirer, being a Limited Company, shall pass a resolution for voluntary winding up or shall have a petition for winding up presented against it or if a Receiver shall be appointed of its undertaking;

d. pledge or sell or hypothecate or charge or mortgage or let or assign or attempt to pledge or sell or assign or part with possession of or otherwise alienate or transfer the vehicle;

e. do or suffer any act or thing whereby or in consequence of which the said vehicle may be distrained or taken in execution under legal process or by legal process or by any public authority;

f. fail to keep or cause the vehicle comprehensively insured during the period of the Agreement

g.fail to indemnify the Owner, the Insurance premium paid by the Owner, resulting from the Hirer's failure to keep the insurance effective at any point of time during the currency of this Hire Agreement

h. fail to pay to the Government or any public authority any tax or surcharge or other levies due in respect of the vehicle;

i. remove the vehicle to another State and get it re-registered there;

j.break or fail to perform or observe any of the conditions on its part herein contained. Then, on the occurrence of any such event, the right of the Hirer under this Agreement shall forthwith stand determined ipso facto without any notice to the Hirer and all the instalments previously paid by the Hirer shall be absolutely forfeited by the Owner who shall thereupon be entitled to enter into any house or place where the said vehicle may then be, remove and retake possession of the same and to

sue for all the instalments due and for damage for breach of the Agreement and for all the costs of retaking possession of the said vehicle and all costs occasioned by the Hirer's default." $
(Underlined for emphasis)

According to the financier there was default in making payment of the monthly instalments and the hirer was requested to clear the amounts due by several letters. In spite of several requests/demands the hirer did not pay the amount due and as on 27.8.2002 he was in arrears of Rs.1, 34, 000/- on account of monthly instalments due excluding other charges payable on account of delay in making payment. Accordingly, the appellant repossessed the vehicle on 27.8.2002. According to the financier in view of the violation of the terms by the hirer the agreement stood terminated.

Therefore, by registered letter dated 27.8.2002 the financier called upon the hirer to pay a sum of Rs.4, 27, 485/- which was the amount due. The notice stipulated that the amount was to be paid within 10 days from the date of the receipt of the letter. The hirer did not make any payment and on the other hand made a false complaint to the Reserve Bank of India (in short 'RBI'), and filed a civil suit in the Court of Civil Judge, Senior Division, Sonepat for declaration with consequential reliefs and permanent injunction along with mandatory injunction. In the said civil suit the hirer also filed application under Order XXXIX Rules 1 & 2 read with Section 151 of the Code praying for interim relief. On receipt of the summons, written statement was filed by the appellant. The matter was taken up 13.9.2002. A prayer was made for an adjournment of the date as learned counsel for the appellant had met with an accident. The matter was adjourned for arguments on the said application on 27.9.2002. But at the same time learned Civil Judge directed the appellant to release the vehicle subject to deposit of the balance of instalments along with interest amounting to Rs.1, 61, 504/-. The said order was the subject- matter of challenge in Civil Revision No.4680/2002. Initially the High Court had granted stay of the operation of the order.

The hirer filed an application for vacation of the order of stay. By the impugned order the High Court dismissed the Civil Revision upholding the order passed by the Trial Court. According to learned counsel for the appellant the order passed is clearly unsustainable. The suit filed was not maintainable. While passing order for release, the trial Court did not take note of the fact that according to the appellant the arrears were much higher than the defaulted instalments. It was not considered by the Trial Court as to how the appellant would recover its dues if the suit was ultimately dismissed.

Learned counsel for the respondent on the other hand submitted that the re-possession as taken by the appellant was clearly contrary to law. Merely because the hirer had signed the agreement which permitted re-possession that would not give arbitrary power to the financier to take possession of the vehicle. It was pointed out that in several cases different High Courts have deprecated the practices of the financers taking possession of the financed vehicles.

By order dated 16.11.2004 while issuing notice interim stay was granted subject to the opposite party-respondent depositing Rs.2, 50, 000/- with the Registry of this Court within four weeks without prejudice to the claims involved. Admittedly the amount has been deposited.

So far as the question of re-possession is concerned, it is clearly permissible in terms of Clause 10 of the Hire purchase agreement referred to above. What ultimately is to be decided by the Trial Court in the suit is the amount to which the appellant is entitled to. Learned counsel for the appellant has submitted that without taking note of the defaulted amount which according to him is in the neighbourhood of Rs.10 lakhs, the vehicle was directed to be released on payment of the defaulted instalments. The said amount has also been deposited. But at the same time it was imperative for the High Court to ensure that in the event the suit is dismissed, and the hirer is liable to pay the amount, how the same is secured.

It is not disputed that the vehicle if not used would lose its value. In the peculiar circumstances of the case we direct that in case the respondent no.1-hirer pays the appellant a sum of Rs.1, 50, 000/- in addition to the amount already deposited within 10 days from today, the vehicle shall be released. The respondents shall file an undertaking before the Trial Court that in the event of non-success the vehicle shall be returned to the financier, unless the Trial Court fixes some other terms.

It is made clear that we have not expressed any opinion on the merits of the case which shall be decided in accordance with law. Before we part with the case, it is relevant to take note of submission of learned counsel for the Hirer that in several cases different High Courts have passed orders regarding the right to re-possess where the High Courts have entertained writ petitions including writ petitions styled as PIL on the question of right of financiers to take possession of the vehicle in terms of the agreement. It is stated that directions have been given to the RBI for framing guidelines in this regard. If it is really so, the orders prima facie have no legal foundation, as virtually while dealing with writ petitions subsisting contracts are being re-written. It is still more surprising that petitions styled as PIL are being entertained in this regard. Essentially these are matters of contract and unless the party succeeds in showing that the contract is unconscionable or opposed to public policy the scope of interference in writ petitions in such contractual matters is practically non-existence. If agreements permit the financier to take possession of the financed vehicles, there is no legal impediment on such possession being taken. Of course, the hirer can avail such statutory remedy as may be available. But mere fact that possession has been taken cannot be a ground to contend that the hirer is prejudiced. Stand of learned counsel for the respondent that convenience of the hirer cannot be overlooked and improper seizure cannot be made. There cannot be any generalization in such matters. It would depend upon facts of each case.

It would not be therefore proper for the High Courts to lay down any guideline which would in essence amount to variation of the agreed terms of the agreement. If any such order has been passed effect of the same shall be considered by the concerned High Court in the light of this judgment and appropriate orders shall be passed.

The appeal is allowed to the aforesaid extent. No orders as to costs.