

SUPREME COURT OF INDIA

Citicorp.Maruti Finance Ltd.

Vs.

S.Vijayalaxmi

C.A.No.9711of 2011

(Altamas Kabir,J.,Cyriac Joseph and Surinder Singh Nijjar,JJ.,)

14.11.2011

JUDGMENT

Altamas Kabir,J.,

SLP(Civil)No.19314 of 2007

1. Leave granted.

2. SLP(C)No.19314 of 2007, which is being heard along with SLP(C)No.3119 of 2008, SLP(C)Nos.9550, 10544, 11696 and 10547 of 2009, is directed against the judgment and order dated 27th July, 2007, passed by the National Consumer Disputes Redressal Commission, hereinafter referred to as the "National Commission". By the said order, the National Commission dismissed Revision Petition No.737 of 2005, filed by the appellant herein against the judgment and order dated 10th March, 2005, passed by the State Commission, Delhi. By its order dated 27th July, 2007, the National Commission modified the order of the State Commission and set aside the part of the order directing the Appellant to pay Rs.50,000/- on account of punitive damages and further directed the appellant to pay Rs.10,000/- as cost to the complainant Respondent.

3. From the materials on record, it appears that on 4th April, 2000, at the initiative of the Respondent, a Hire-Purchase Agreement was entered into between the Appellant and the Respondent herein, to enable the Respondent to avail the benefit of hire-purchase in respect of a Maruti Omni Car. In accordance with the terms and conditions of the Agreement, the Appellant granted a hire-purchase facility to the Respondent for a sum of Rs.1,82,396/-, which was repayable, along with interest, in 60 equal monthly hire charges of Rs.4,604/- each. Clause 2.1 of the Hire-Purchase Agreement provides for payment of the hire charges in the manner stipulated in the Schedule to the Agreement and it also indicates that timely payment of the hire charges was the essence of the Agreement.

4. On the failure of the Respondent to pay the hire charges in terms of the repayment schedule, the Appellant sent a legal notice to the Respondent on 10th October, 2002,

recalling the entire hire-purchase facility. It further appears that as many as 26 cheques issued by the Respondent towards payment of the hire-charges were dishonoured on presentation. By the said legal notice, the Respondent was informed that she had failed to repay the hire charges according to the payment schedule and had defaulted in honouring her commitments towards repayment. She was requested to make payment of the total amount of Rs.1,31,299.44p. within 3 days from the date of receipt of the notice.

5. It appears that subsequently, pursuant to a request made by the Respondent, the Appellant, by its letter dated 10th May, 2003, made a one-time offer of settlement for liquidating the outstanding dues of Rs.1,26,564.84p. for Rs.60,000/-, subject to the payment being made by the Respondent by 16th May, 2003, in cash. It was also specifically mentioned in the offer that in the event the Respondent delayed in making payment of the said sum of Rs.60,000/- for whatever reason, the offer would stand voided and the Appellant would be entitled to claim from the Respondent the total dues as on date.

6. Thereafter, in keeping with the terms and conditions of the Hire-Purchase Agreement, the Appellant took possession of the financed vehicle and informed the concerned Police Station before and after taking possession thereof from the residence of the Respondent. According to the Appellant, an inventory sheet was also prepared, which was duly countersigned by the husband of the Respondent. It is the Appellant's case that at the time of taking possession of the vehicle, six monthly instalments were overdue. On the same day, the Respondent's husband wrote to the Appellant to extend the time for paying the amount which had been settled at Rs.60,000/- by way of a One-Time Settlement. It is also the Appellant's case that subsequent thereto, the date of the settlement offer was extended as a special case, but despite the same, the Respondent failed to pay the amount even within the extended period. It is on account of such default that the Appellant was constrained to sell the vehicle after having the same valued by approved valuers and inviting bids from interested parties.

7. On 31st May, 2003, the Appellant entered into an Agreement for sale of the vehicle with M/s Chin Chin Motors which was the highest bidder, for a sum of Rs.70,000/-.

8. Appearing for the Appellant Citicorp. Maruti Finance Ltd., Mr. Ashok Desai, learned Senior Advocate, submitted that the sale process followed by the Appellant after taking possession of the vehicle was not in violation of the Regulations issued by the Reserve Bank of India. After the vehicle was sold, the Appellant sent a post-sale letter to the Respondent on 9th June, 2003, informing her that the vehicle had been sold for Rs.70,000/- and that the said amount had been adjusted towards the total outstanding dues amounting to Rs.1,21,920.48p. The Respondent was also asked to pay the balance amount of Rs.51,920.48p. which still remained due after adjustment of the sale price of the vehicle.

9. In June, 2003, the Respondent filed Consumer Complaint No.280 of 2003 before the Consumer Disputes Redressal Forum, Sheikh Sarai, against the Appellant alleging deficiency in service on their part. The Appellant filed its reply to the said complaint before the aforesaid Forum in August, 2003. Thereafter, the Respondent filed an application to amend

Consumer Complaint No.283 of 2003. The same was allowed and the amended complaint was taken up for consideration. By its order dated 22nd December, 2003, the District Forum-VII, Sheikh Sarai, directed the Appellant to pay a sum of Rs.1,50,000/-, along with interest at the rate of 9% per annum, from the date of filing of the complaint (16.6.2003) till the date of payment, together with a further sum of Rs.5,000/- towards harassment and cost of litigation.

10. Aggrieved by the said order, the Appellant preferred Appeal No.65 of 2004 before the State Commission, Delhi, on 30th January, 2004. By its order dated 10th March, 2005, the State Commission, Delhi, affirmed the order of the District Forum and directed payment of a further sum of Rs.50,000/- on account of punitive damages.

11. Aggrieved by the said order of the State Commission, Delhi, the Appellant filed Revision Petition No.737 of 2005 before the National Commission in March, 2005, in which the stand taken before the lower Fora was reiterated. It was also indicated that the Appellants had followed the letter and spirit of the Hire-Purchase Agreement and had re-possessed the vehicle in terms of the default clause in the Agreement. On 27th July, 2007, the National Commission, while dismissing the Revision Petition modified the order of the State Commission by setting aside that part of the judgment directing the Appellant to pay Rs.50,000/- on account of punitive damages. Instead, the Commission directed the Appellant to pay a sum of Rs.10,000/- to the Complainant/Respondent by way of cost.

12. Appearing in support of the Appeal, Mr. Ashok Desai, learned Senior Advocate, began his submissions by posing a question as to whether the High Court was justified in coming to a finding in observing that the hire-purchase system or leasing system was contrary to the interest of the society. Referring to Clause 25 of the Hire-Purchase Agreement dealing with events of default, Mr. Desai submitted that Sub-Clause 25.1.1 provides that non-payment of any monthly hire charges on the due date as per terms of the Agreement, would amount to an event of default and the consequences thereof were set out in Clause 26 dealing with the Owner's Rights On Default By Hirer. Since the said clause is relevant to a decision in this case, the same in its entirety is extracted hereinbelow :-

"26. OWNER'S RIGHTS ON DEFAULT OF HIRER 26.1 The occurrence of any/all of the aforesaid events shall entitle the Owner to terminate this Agreement. On such termination, the entire sum of money (inclusive of hire charges and all other sums and charges of whatsoever nature, including but not limited to, interests on account of default of insurance premia and on account of other taxes) which would have been payable by the Hirer if the agreement had run to its full terms, shall become due and payable forthwith. 26.2 The owner, through its authorized representatives, servants, agents, shall have unrestricted right of entry in the aforesaid events and shall not be entitled to retake possession of the vehicle(s). The Hirer shall be bound to return the vehicle(s) to the owner at such location, as the Owner may designate, in the same condition in which it was originally delivered to the Hirer (ordinary wear and tear excepted). For the said purpose it shall be lawful for the Owner forthwith or at any time and without notice to the Hirer to enter upon the premises, or garage, or godown, where the vehicle(s) shall be lying or kept and to take possession or recover and

receive the same and if necessary to break open any such place. The Owner will be well within his rights to use tow-van to carry away the vehicle(s). The Hirer shall not prevent or obstruct the Owner from taking the possession of the vehicle and shall be liable to pay any towing charges or other expenses incurred in this regard.

26.3 The Owner shall be in the aforesaid events be entitled to sell/transfer/assign the vehicle(s) either by public action or by private treaty or otherwise. However, the Owner shall however, be liable to pay for any deficiencies after the said appropriation. In case there is any surplus after adjusting the dues of the Owner, the same shall be paid to the Hirer.

26.4 The Hirer shall not be entitled to raise any objections regarding the regularity of the sale and/or actions taken by the Owner nor shall the Owner be liable/responsible for any loss that may be occasioned from 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 employed by the Owner for the said purpose.

26.5 The Owner shall be entitled to recover from the Hirer all expenses (including legal costs on full indemnity basis) incurred by or on behalf of the Owner in ascertaining the whereabouts, of taking possession, insuring, transporting and selling the vehicle and of any legal proceedings that may be filed by or on behalf of the Owner to enforce the provisions of this agreement. It is expressly clarified that the remedies

referred to hereinabove shall be in addition to and without prejudice to any other remedy available to the Owner either under this agreement or under any other Agreement or in law.

26.6 Without prejudice to the generality of the foregoing words, the Hirer hereby consents to the Owner disseminating to and sharing with third parties (including banks, financing entities, credit bureaus of which the Owner is a member or any statutory body or regulatory authority) all information within the knowledge of the Owner and pertaining to Hirer (including credit history and credit status of the Hirer) at any time as the Owner may consider necessary or be requested or directed to do."

13. Mr. Desai contended that in order to act in accordance with the aforesaid clause, the Appellant had framed its own Code of Conduct, wherein, the guidelines as to how recovery of dues is to be effected, has been laid down in great detail, with the emphasis on politeness and treating the customer with dignity. Mr. Desai submitted that it had also been provided in the guidelines that any breach of the conditions by the collecting agency would attract punitive action.

14. Mr. Desai contended that the concept of hire-purchase is just another form of bailment, where the goods are held by the hirer in bailment till such time as the ownership thereof is made over to him. Mr. Desai also urged that the jurisdiction of the Consumer Forum was to

ensure that the Agreement between the parties was duly executed, but it had no jurisdiction to rewrite the terms of the Agreement. In this regard, Mr. Desai submitted that the Consumer Forum had gone beyond its jurisdiction in settling and deciding the question regarding the validity of the Hire-Purchase Agreement itself. Learned counsel submitted that the Reserve Bank of India had issued guidelines on 24th April, 2008 to all Scheduled Commercial Banks, regarding the policy to be adopted by Banks in engaging Recovery Agents for recovering their dues. On the issue relating to the engagement of Recovery Agents, the Banks were directed to take note of the specific conditions set out in the guidelines in that behalf. Clause 2(ii) makes it very clear that Banks should have a due diligence process in place for engagement of Recovery Agents, which should be so structured to cover, among others, individuals involved in the recovery process. Clause 2(ix) relates to the method to be followed by Recovery Agents and the Banks were advised to strictly adhere to the guidelines/Code during the loan recovery process. The said guidelines also provided for the manner in which the possession of mortgaged/hypothecated property is to be taken and it was clearly indicated that the recovery of loans or seizure of vehicles should be done through legal process.

15. Mr. Desai also referred to a RBI Circular dated 24th April, 2009, on re-possession, clarifying the manner in which vehicles financed by Non-Banking Finance Companies (NBFCs) were to be recovered. Mr. Desai pointed out that in the said guidelines, it was indicated that NBFCs must have a built-in re-possession clause in the contract/loan Agreement with the borrower, which must be legally enforceable. In order to ensure transparency, the terms and conditions of the contract/loan Agreement should also contain provisions regarding notice period before taking possession; circumstances under which the notice could be waived; the procedure for taking possession of the security and provision providing for a final chance to be given to the borrower for repayment of the loan, before proceeding with the sale or auction of the property. Mr. Desai submitted that the said guidelines had been duly embodied in the Hire- Purchase Agreement and that the Appellant was, in fact, taking steps, in accordance with such provisions, to recover the hypothecated properties in case of default.

16. Mr. Desai lastly contended that the Tribunal was not entitled to modify the terms of the Agreement which had been arrived at between the parties and that when there was an acute dispute relating to facts, the Tribunal, in this case the National Commission, ought not to have gone behind the terms of the Contract and should have instead referred the parties to the Civil Court. It was also observed that only in an appropriate case was the Tribunal entitled to enter into the validity of the terms of the contract. In support of his submissions, Mr. Desai referred to the decision of this Court in *Bharathi Knitting Company Vs. DHL Worldwide Express Courier*¹ where the aforesaid principal has been considered and explained. Mr. Desai submitted that the order of the National Commission was erroneous and is liable to be set aside.

17. Appearing for the Finance Industry Development Council (FIDC), Ms. Haripriya Padmanabhan, learned Advocate, submitted that the Council is a self- regulatory organization registered with the Reserve Bank of India and is governed by the guidelines

issued by the Reserve Bank of India from time to time. Ms. Padmanabhan submitted that on 26th October, 2007, this Court had in the present proceedings expressed concern over the manner in which loans by financial institutions were being recovered. Learned counsel submitted that this Court was particularly concerned with the procedure adopted for recovery of such loan amounts by financial institutions by alleged use of force, despite the directions given by this Court in *ICICI Bank Ltd. Vs. Prakash Kaur*² It was submitted that the Reserve Bank of India had formulated operational guidelines for adoption by all commercial banks. Pursuant to the guidelines of July, 2009, relating to Debt Collections Standards in India, the Citibank had updated its Code for collection of dues and re-possession of security. It was submitted that the said guidelines were detailed and expansive and attempted to cover all the shortcomings in the earlier guidelines in order to ensure that no force was used for the purpose of effecting recovery of the dues.

18. Mr. Prashant Kumar, learned Advocate, appearing for the Appellants in the four Special Leave Petitions filed by Mahindra & Mahindra Financial Services Ltd., adopted the submissions of Mr. Ashok Desai and Ms. Padmanabhan. He added that from the month of September, 2009, the financial institutions were following the process of arbitration in order to recover its dues. Mr. Prashant Kumar submitted that the matters in which he was appearing do not contemplate the financial institutions as the owner of the goods and the transaction was a loan simplicitor. Consequently, the said matters could not be treated on the same footing as those which involved Hire-Purchase Agreements. It was urged that although the provisions of the SARFAESI Act, 2002, could be applied in similar cases, the same would not apply as far as the present cases were concerned, since they constituted loan agreements in respect of which either the normal civil or the arbitration law would have application. It was further submitted that if a loan had been taken against a mortgage, the remedy on account of recovery would be with the Civil Court in regard to the mortgaged properties. In this regard, reliance was placed on the decision of this Court in *Sundram Finance Ltd. Vs. State of Kerala*³ Reliance was also placed on a decision of this Court in Civil Appeal No.5993 of 2007 (Commissioner of Central Excise Vs. Bajaj Auto Finance Ltd.), where similar views have been expressed.

19. Reference was also made to Section 51 of the Motor Vehicles Act, 1988, which makes special provision in regard to motor vehicle which was subject to a Hire-Purchase Agreement in cases covered under a Hire-Purchase Agreement. In cases covered under Hire-Purchase Agreements, provision has been made for the Registering Authority to make an entry in the Certificate of Registration regarding the existence of such agreement. Clause (b) of Section 51 provides for cancellation of such an endorsement on proof of termination of the agreement by the parties.

20. The last person to address us was Shri Dharampal Yadav, Respondent No.1 in Special Leave Petition (Civil) No.9550 of 2009 and Special Leave Petition (Civil) No.10544 of 2009, who appeared in person. He submitted that in most cases, the various guidelines framed by the Reserve Bank of India and the Bank themselves, were not followed and more often than not the hypothecated goods, mostly vehicles were forcibly taken possession of by Recovery Agents hired by the financiers. Mr. Dharampal Yadav submitted that the methodologies

adopted by the Recovery Agents were contrary to the guidelines laid down by the Banks themselves and in the decisions of this Court in several other matters, where it has been uniformly indicated that recovery would have to be effected in due process of law and not by the use of muscle power.

21. Since during the pendency of the Special Leave Petitions before this Court, the Appellant had complied with the orders of the District Forum and the National Commission had already set aside the punitive damages imposed by the State Commission, the reliefs prayed for on behalf of the Appellant had been rendered ineffective and the submissions were, therefore, channeled towards the question of whether the fora below were right in holding that the vehicles had been illegally and/or wrongfully recovered by use of force from the loanees. The aforesaid question has since been settled by several decisions of this Court and in particular in the decision rendered in *ICICI Bank Ltd. Vs. Prakash Kaur (supra)*. It is, not, therefore, necessary for us to go into the said question all over again and we reiterate the earlier view taken that even in case of mortgaged goods subject to Hire-Purchase Agreements, the recovery process has to be in accordance with law and the recovery process referred to in the Agreements also contemplates such recovery to be effected in due process of law and not by use of force. Till such time as the ownership is not transferred to the purchaser, the hirer normally continues to be the owner of the goods, but that does not entitle him on the strength of the agreement to take back possession of the vehicle by use of force. The guidelines which had been laid down by the Reserve Bank of India as well as the Appellant Bank itself, in fact, support and make a virtue of such conduct. If any action is taken for recovery in violation of such guidelines or the principles as laid down by this Court, such an action cannot but be struck down.

22. In the instant case, the situation is a little different, since after the vehicle had been seized, the same was also sold and third party rights have accrued over the vehicle. It is possibly on such account that the Appellant Bank chose to comply with the directions of the District Forum notwithstanding the pendency of this case.

23. Since the Appellant Bank has already accepted the decision of the District Forum and has paid the amounts as directed, no relief can be granted to the Appellant and the Appeals are disposed of in the light of the observations made hereinabove.

24. The application filed in Special Leave Petition (Civil) No.10547 of 2009 on 26th August, 2011, for bringing on record the legal heirs of the sole respondent Shiv Nath Sareen is no longer relevant on account of the aforesaid decision and the same is, therefore, dismissed. The Appeals are also disposed of in terms of the observations made hereinabove.

25. There shall, however, be no order as to costs.

Judgment Referred.

¹(1996) 4 SCC 0704

²(2007) 2 SCC 0711

³AIR 1966 SC 1178