BOMBAY HIGH COURT

Telco Ltd.

Vs.

Bharat Mining Corpn

Suit No. 472 of 1974

(R.L. Aggarwal, J.)

20.11.1979

JUDGEMENT

R.L. Aggarwal, J.

1.The plaintiffs - Tata Engineering and Locomotive Company Limited, the manufacturers of Tata diesel vehicles, have filed the present suit for the recovery of a sum of Rs. 1,67,835/- being the arrears of monthly hire installments in respect of three vehicles given under hire purchase agreements to the 1st defendants-Bharat Mining Corporation Limited with interest on the arrears of monthly hire charges at the rate of 1 per cent per mensem from 1st May 1974, till payment. The 2nd defendant was a guarantor. The 2nd defendant has, according to the plaintiffs, guaranteed the payment of the amounts due under the hire purchase agreements. The 3rd defendant is the Manager appointed under the Coal Mines (Nationalization) Act, 1973. The 4th defendants the Coal India Limited is incorporated under the Coal Mines (Nationalization) Act, 1973, and its previous name was the Coal Mines Authority Limited.

2. According to the plaintiffs, by three separate and identical hire purchase agreements in writing all dated 30th March 1972, executed at Bombay and made between the plaintiffs on the one part and defendant No. 1 on the second part and defendant No. 2 as the guarantor on the third part, the plaintiffs as owners of three vehicles, more particularly described in the Schedules to the said agreements, agreed to let and defendant No. 1 agreed to hire the said three vehicles from the date of the said agreements subject to the terms and conditions mentioned therein. Each of the said agreements also recited that defendant No. 1 had signed a proposal form which was to be regarded as the basis of each of the said agreements. Under each of the said agreements, defendant No. 1 agreed to pay to the plaintiffs in Bombay w1 the execution of each of the said agreements a sum of Rs. 19,685/- as an initial payment by way of hire and to punctually pay to the plaintiffs at its address in Bombay and without previous demand the sums mentioned in the margin under each of the said three agreements by way of rent for the hire of each of the said

three vehicles, namely, one installment of Rs. 3451/- and 22 monthly installments of Rs. 3457/- each. The first installment was to be paid on 30th May 1972 and the subsequent installments on or before the 30th day of every succeeding calendar month unless defendant No. 1 had terminated each of the said agreements as therein provided. The plaintiffs have referred to several clauses and conditions of the said agreements in paragraph 3 of the Plaint in order to show the nature of the agreements between the plaintiffs and defendant No. 1 and also defendant No. 2.

3. According to the plaintiffs, pursuant to the said agreements, the plaintiffs delivered to defendant No. 1 the said vehicles and defendant No. 1 paid under each of the said three agreements eight monthly installments aggregating to Rs. 27,650/- and failed and neglected to pay the remaining hire dues on and from 30th January 1973, under each of the said agreements. The plaintiffs, therefore, by a telegram dated 20th Mar. 1973, called upon defendant No. 1 to pay the overdue hires as of that data. Defendant No. 1 by its letter in reply dated 27th March 1973, stated that under the Coal Mines (Taking over of Management) Ordinance, 1973, the machinery belonging to defendant No. 1, though not belonging to the coal mine, had also been illegally taken over by the Government and that the Supreme Court had been moved in the matter and that the case being sub judice, it would attend to the "dues" as soon as the decision of the Court was available. Defendant No. 1 also pointed out that the delay in payment was due to circumstances beyond its control.

4. It appears that the plaintiffs addressed a letter dated 26th July 1973, to Mr. D.K. Dutta, Chief of Sales, Central Division, Coal Mines Authority, Calcutta, and referred to the public notice dated 3rd July 1973 and pointed out that the said three vehicles were the plaintiffs' absolute property and did not form part of the assets of defendant No. 1, Along with the said letter, the plaintiffs forwarded copies of the said agreements. It further appears that the plaintiff' representative also appeared before the Coal Mines Authority. The said Coal Mines Authority by a letter dated 27th August 1973, stated that it had been found that the said agreements were unduly onerous to the coal mines belonging to defendant No. 1. The plaintiffs *inter alia* refuted this by their letter dated 26th September 1973 and requested the Coal Mines Authority to return the said vehicles. Thereafter, the plaintiffs by their Attorneys' letter dated 24th March 1974, called upon defendants Nos. 1 and 2 to pay arrears of installments together with overdue interest. The plaintiffs' Attorneys by their letter dated 11th April 1974, addressed to defendant No. 1 terminated the said three agreements of hiring and demanded the return of the vehicles. According to the plaintiffs, defendant No. 1 and/or defendant No. 3 wrongfully refused to return the vehicles and wrongfully detained the same. It is the say of the plaintiffs that the defendants are bound and liable to forthwith return the vehicles to the plaintiffs or to pay to the plaintiffs the value thereof and that the defendants are also bound and liable to pay to the plaintiffs damages for wrongful detention of each of the said vehicles at the rate of Rs. 100/- per day from 12th April 1974 till the filing of the suit and thereafter till the release of the vehicles. The plaintiffs also say that a total sum of Rs. 1,67,835/- being the arrears of installments together with overdue interest accrued and payable under the said three agreements as per particulars, Ex. F to the

Plaint, is due and payable by the defendants to the plaintiffs, and defendant No. 1 as hirer is bound and liable to pay the said amount under and by virtue of the said agreements executed by defendant No. 1 in favor of the plaintiffs and defendant No. 2 as a guarantor is also bound and liable to pay to the plaintiffs the said sum of Rupees 1,67,835/-. The plaintiffs further say that defendant No. 3 is also under the circumstances bound and liable to pay to the plaintiffs the said sum of Rupees 1,67,835/-. The plaintiffs also sought an interim relief in the nature of appointment of a receiver of the said three vehicles with all necessary powers under Order 40, Rule 1 of Civil Procedure Code and injunction.

5. On behalf of defendants Nos. 1, 2, and 3, Messrs. Gagrat and Co. had entered their appearance on 30th July 1974 in Notice of Motion No. 469 of 1974 in the present suit. It appears that their appearance was limited to the Notice of Motion and they were not to appear in the suit. Defendants Nos. 1, 2, and 3 have failed to file their respective written-statements and also failed to appear at the hearing of the suit.

6. Defendant No. 4 is the contesting defendant. The suit was filed against defendant No. 4 in the name of Coal Mines Authority Limited, but during the pendency of the suit, defendant No. 4 has been given the new name of Coal India Limited, and accordingly the Plaint had been amended. Defendant No. 4 contends that the Union of India is a necessary party to the suit and it does not admit the said agreements and states that it will refer to and rely upon the said agreements when produced and proved for the ascertainment of their contents, meaning and legal effect. The defendant also does not admit that defendant No. 1 had paid eight installments or failed and neglected to pay the remaining installments as alleged by the plaintiffs or at all. It also does not admit any of the allegations contained in the correspondence referred to in the Plaint and it will refer to the same when produced for the ascertainment of its contents, meaning and legal effect. According to this defendant, the management of the Mines was taken over by the Government and, therefore, there was no question of defendant No. 1 or defendant No. 3 returning any of the vehicles. This defendant denies that defendant No. 1 or defendant No. 3 wrongfully refused to return the vehicles or wrongfully detained the same or that this defendant is bound or liable to return any of the said vehicles to the plaintiffs or to pay to the plaintiffs the value thereof or to pay any damages at the rate alleged or otherwise. This defendant denies that there is any wrongful detention of any of the suit vehicles by it. According to this defendant, by the Coal Mines (Taking Over of Management) Ordinance, 1973 (No. 1 of 1973), promulgated by the President of India, the management of all the Coal Mines was taken over by the Central Government with effect from 31st January 1973, pending nationalization of such mines. One of such mines was the mine of the 1st defendant known as Dakra Buka-Buka Colliery. Thereafter, by the Coal Mines (Taking Over of Management) Act, 1973 (No. 15 of 1973), the management of the coal mines was taken over and vested in the Central Government with effect from 31st January 1973. Again, by the Coal Mines (Nationalization) Act, 1973 (No. 26 of 1973), the coal mines including the coal mines of defendant No. 1 were nationalized from 1st May 1973. This defendant refers to several provisions of the Coal Mines (Nationalization) Act, 1973, (hereinafter

referred to as "the said Act").

7. According to this defendant, at all material times, the suit vehicles were in the said mines and used for the purpose of the said mines, and pursuant to the provisions of the said Act, the suit vehicles vested in the Central Government free from all liabilities and obligations including the liability to pay any hire charges. This defendant also states In paragraph 8(c) of the written-statement that by an order dated 9th July 1973, passed under the provisions of Section 5 of the said Act, several mines including the said Dakra Buk Buka Mines (along with the said trucks) vested in this defendant. This defendant contends that the suit vehicles have vested in this defendant and the said agreements are not binding and/or of no effect. According to this defendant, the plaintiffs are not entitled to recover the suit vehicles from this defendant and to recover from them any amount under the said agreements. The only right of the plaintiffs is to recover the said amount from the other defendants and from the Commissioner under the provisions of the said Act. This defendant is also not bound to carry out any part of the said contract or to pay any amount there under. This defendant denies that it owes to the plaintiffs a sum of Rupees 1,67,835/- or any part thereof as arrears of installments or otherwise or at all or that it is liable for interest as alleged or at all. This defendant also does not admit the correctness of the particulars, Ex. E to the Plaint.

8. Without prejudice to the aforesaid contentions and in the alternative, this defendant contends that the said agreements were in the nature of the finances agreements looking to the nature of the transactions, the surrounding circumstances and the terms and conditions thereof. Therefore in the facts and circumstances of the case, the only right of the plaintiffs could be to recover from this defendant the actual price of the vehicles at the date of the agreements less the amount already received under the agreements and no other amount and the plaintiffs would not be entitled to take possession of the suit vehicles. Without prejudice to the aforesaid and in the further alternative, this defendant contends that the terms of the agreements which provide for retention of the amounts already received by the plaintiffs, the right to recover the balance amount and to take possession of the vehicles, are in the nature of penalty and are inequitable and contrary to public policy and the plaintiffs are not entitled to enforce the same, since according to the belief of this defendant, the amounts of installments are made up of (i) the payment of hire in the nature of rental, (ii) the payment towards purchase price and (iii) interest. According to this defendant, in the event of it being held that this defendant is liable under the said agreements to pay the amounts due, the actual amount due to the plaintiffs be ascertained and a decree only for such amount should be passed and not for any other amount or interest or for possession.

9. Without prejudice to the aforesaid and in the further alternative, if it is held that the plaintiffs are entitled to take back the suit vehicles, this defendant will submit that the plaintiffs should be ordered and decreed to return to this defendant the advantage received by the plaintiffs over and above the reasonable hire charges in the nature of rental of the suit vehicles.

10. Without prejudice to the aforesaid contention and in the further alternative, this defendant says that in the event of this Court negativing all the aforesaid contentions, this defendant will submit that even then the plaintiffs are entitled only to receive the balance of the installments and/or hire purchase amount as per the agreements and are not entitled to the return of the suit vehicles. Thus, according to the 4th defendant, the plaintiffs are not entitled to any relief and the suit is liable to be dismissed with costs.

11. On these pleadings, the following issues are framed :-

(1) Whether three agreements in writing dated 30th March 1972, were executed between the plaintiffs and defendants Nos. 1 and 2 as stated in paragraph 3 of the Plaint ?

(2) Whether the plaintiffs handed over the vehicles specified in paragraph 3 of the Plaint to defendant No. 1 as alleged in the said para ?

(3) Whether defendant No. 1 paid only eight installments or failed and neglected to pay the remaining installments as alleged in paragraph 4 of the Plaint ?

(4) Whether defendant No. 3 wrongfully refused to return the vehicles or wrongfully detained the same ?

(5) Whether the trucks in suit were in the said Mines and used for the purpose of the said Mines as alleged in paragraph 7(d) of the Written- Statement of Defendant No. 4 ?

(6) Whether the vehicles in suit have vested in defendant No. 4 as alleged in paragraph 7(f) of the Written-Statement ?

(7) Whether the plaintiffs are entitled to recover the said vehicles from defendant No. 4 ?

(8) Whether the plaintiffs are entitled to recover from defendant No. 4 a sum of Rs. 1,67,835/- or any other sum as arrears of installments with interest as alleged in paragraph 7 of the Plaint ?

(9) Whether the said agreements of hire purchase were in the nature of finance agreements as alleged in paragraph 7(h) of the written-statement ?

(10) Whether the provisions in the agreements set out in paragraph 7(h) of the written-statement of defendant No. 4 are in the nature of penalty as alleged in para 7(h) of the written-statement ?

(11) Whether the plaintiffs are entitled to any relief and, if so, what ?

12. In support of their case the plaintiffs have examined Suri Vyenkat Narshinh Shastri who is in employment of the plaintiffs in its Hire Purchase Department. The 4th defendants have examined Debi Prasad Choudhary, the General Manager of Western Coal Field Limited, a subsidiary of the 4th defendants. Both sides have canvassed propositions which require the interpretation of some of the provisions of the said Act. The appreciation of the evidence of the plaintiffs' own witness is principally from two angles, firstly about the admissibility of documents, viz. the three proposal forms all dated 28-2-1972, Ex. A (collectively) and the three agreements all dated 30th March 1992, Ex. A (collectively) and secondly, for probing into the real and true nature of the transactions between the plaintiffs and defendants No. 1 from Ex. A (collectively) and Ex. B

(collectively). I would, therefore, first apply my mind to the submissions made by Mr. Cooper, learned Counsel appearing for defendants No. 4, about striking off from the record Ex. A (collectively) and Ex. B (collectively).

13. The plaintiffs witness Shastri in his examination-in-chief says that he is an Assistant Manager in the Hire Purchase Department of the plaintiffs and is conversant with the facts of the case. He knows that defendant No. 1 is a Mining Company. The three proposals from defendant No. 1 were in respect of hire of three new Tata Disel vehicles. These proposals were signed by one of the Directors of defendant No. 1 in Calcutta and brought to Bombay by him personally. These proposals were also signed by defendant No. 2 as a guarantor. These three proposals were brought to the witness and they were checked by him. Thereafter, the witness submitted them to his erstwhile Manager Vasant Narayan Bodas. Although, according to him, he was not familiar with the signature of the Director of defendant No. 1, since the Director had brought the proposals signed by him, the witness accepted the same. The proposal forms were already signed by the guarantor before they were brought to him. The witness then says that these three proposals were brought to him in the regular course of business by the Director of defendant No. 1. At this stage, Mr. Joshi; learned Counsel appearing for the plaintiffs, tendered the three proposal forms and they were put in and marked Ex. A (collectively). On this aspect of the matter, the witness was cross-examined and he stated that in 1972, he was Assistant to the Manager in the Hire Purchase Department. His duty consisted of scrutinising the proposals and finalising the same. The witness stated that he did not know the name of the Director of defendant No. 1 who had brought the three proposal forms, Ex. A (collectively), to him. The Director of defendant No. 1 had not personally brought the three proposals to him and these proposals were sent to him by the Manager, Hire Purchase Department. In the light of this cross-examination, it was pointed out to the witness that his statement that "these three proposal were brought to me in the regular course of business by the 1st defendants' Director is not true. The witness stated that his said statement was correct and the proposals came to the Manager who in turn passed on to him. He did not remember if ha was personally introduced to the Director of defendant No. 1. He denied that he had stated that the three proposals were signed by a Director of defendant No. 1 because the proposals were so signed. His further cross-examination reveals that in the cabin of the Manager Bodas, three persons were sitting and the witness was told by Bodas that they were the Directors of defendant No. 1. The witness knew personally at that time that there were four Directors of defendant No. 1. The witness admitted that he did not know which Director of defendant No. 1, had signed the three proposals as they were not signed in his presence, but these proposals were signed in the presence of Bodas in Bombay did not in Calcutta. The witness also admitted that his statement in the examination-in-chief that the three proposals were signed in Calcutta is not correct. When further pressed ia cross-examination, the witness stated that when he made the above statement to the effect that the proposals were signed in Calcutta, he was under the impression that he was stating about their preparation. The witness stated that he knew defendant No. 2 Shashi Prasad Jain. By checking all the proposals, he meant whether the proposal forms were correctly filled in, whether all queries were answered and

whether the forms were signed.

14. In view of this evidence of the witness, Mr. Cooper contended that the documents, Ex. A (collectively), were tendered on the basis of the statements of the witness that the Director of defendant No. 1 who had signed the proposals had himself brought the same to the witness for acceptance and that these statements are now found to be untrue in view of his cross-examination and, therefore, the documents, Ex. A (collectively), are not proved and the same should be struck off from the record as an exhibit. Mr. Joshi in reply to this contention submitted that the application was unusual and the objection was too technical and that defendants No. 4 have disclosed in their affidavit of documents dated 4th October 1979, the copies of the three proposals. However, I did not there and then decide the point raised by Mr. Cooper and felt that it would be more reasonable to decide the same at the stage of the arguments. This course is found to be a proper one as during the course of the arguments, both Counsel threw further light on this question in support of their respective view points.

15. Mr. Cooper took me through the relevant evidence on this question which has been substantially reproduced above. According to Mr. Cooper, the witness has not seen who has signed the three proposal forms on behalf of defendant No. 1 and he does not know even the name of its Director who has put in his signature. Thus, according to Counsel, there is not an iota of evidence proving the signature. Mr. Joshi submitted that at the stage when the three proposal forms were tendered by him, no objection was raised that the signature of defendant No. 1 is not proved. The witness has not testified that the three proposal forms were signed in his presence or that he was familiar with the signature of the concerned Director who had signed the proposal forms. Mr. Joshi further referred to the written-statement of defendant No. 4, where in the list of documents on which reliance was to be placed, it referred to the proposals in question, Reliance was also placed on the affidavit of the documents of defendant No. 4. For all these reasons, Mr. Joshi submitted that the documents have gone in without objection.

16. Now the objection of Mr. Cooper is based on the incorrect or untrue or false statement made by witness Shastri and, according to Mr. Cooper, that untrue statement was that the Director who had signed the proposals had himself brought the same to the witness for acceptance. I do not think that that would be a fair interpretation of the evidence of the witness because his evidence is to be appreciated wholly and not by reading a part of it. It seems that in cross-examination the witness has given more details of the circumstances in which the proposal forms came to him and the place at which the Directors were sitting. But from the reading of his entire evidence, I do not think that I would he justified in coming to a conclusion that the witness has been untruthful so as to disbelieve him about this part of his evidence. It is rather heartening to say that Mr. Cooper was frank in reminding me that he had first objected to the admitting of these three proposals in evidence but had later on not pressed his objection after the evidence of the witness on the point had been recorded. In fact, when Mr. Joshi tendered these documents, I had a long pause in order to find out if Mr. Cooper was still pursuing his objection, but finding that his eyes

were not meeting my eyes, I proceeded to declare the marking of these proposals as Ex. A (collectively). Mr. Joshi rightly points out that the witness has not stated that the proposal forms were signed in his presence or that he was familiar with the signature of the concerned Director. The witness has in fact frankly stated that the proposal forms which were brought to him were already signed. The discrepancy which appears in his evidence is about the place where they were signed. In his examination-in-chief, he stated that they were signed in Calcutta and brought to Bombay, but in cross-examination he stated that these proposal forms were signed in the presence of Bodas and they were signed in Bombay. It is true that the plaintiffs have not examined Bodas in order to corroborate the witness, but I do not think that this discrepancy or non-examination of Bodas affects the evidence of the witness Shastri or that a case is made out to strike off Ex. A (collectively) from the record, as urged by Mr. Cooper.

17. Regarding the objection to the three agreements, Ex. B (collectively), witness Shastri stated that after the decision of acceptance of the proposals was conveyed to defendant No. 1, three agreements all dated 30th March 1972 were prepared and sent by the plaintiffs to defendant No. 1 at Calcutta and the same were received duly signed on behalf of defendant No. 1 and by defendant No. 2 as a guarantor. They were then signed by the officers of the plaintiffs-company. At this stage, the three agreements were tendered by Mr. Joshi and the same were marked Ex. B (collectively).

18. Mr. Cooper, during the course of the cross-examination of the witness Shastri, asked questions about the signatures on these agreements after the acceptance of the proposals. The witness stated that it was correct that the signature of the hirer and the signature of the guarantor in the proposal forms and the agreements are of the same persons. Mr. Cooper contended that since the witness stated that the signature on the proposal forms and the agreements are of the same person and the witness does not know who has signed the same, the signatures on Ex. B (collectively) are not proved and the same should be struck off from the record as an exhibit, To this, Mr. Joshi submitted that the agreements, Ex. B (collectively), are admitted in defendant No. 4's letter dated 27th August, 1973, part of Ex. D (collectively), and, therefore, the objection was not relevant. I do not think that it is open to Mr. Cooper to apply for the striking off Ex. B (collectively) on the facts of the present case The witness in his examination-in-chief, as pointed out above, merely stated the circumstances in which these agreements were prepared and sent to defendant No. 1 at Calcutta and received by the plaintiffs. The objection as to the admissibility of a document is to be taken at the time when it is tendered and if it is not taken in time, it is to be considered as waived. Therefore, in my opinion, no case is made out for striking off Ex. B (collectively) also both on the footing that the facts do not warrant the same and that the objection was not taken at the time when it ought to have been taken and, therefore, it should be considered to have been waived.

19. Mr. Cooper made reference to the decision in *S.T. Khimchand v. Y. Satyam*[1], on the question of admissibility of a document. Counsel, however, did not point out the applicability of that

decision to the facts of the present case. I find that in that case, two documents were relied upon by the plaintiffs, but the same were not admitted in evidence and hence there was no reference to them in the judgement under appeal. In our case, the documents have been tendered in evidence and put in evidence and accordingly exhibited.

20. Mr. Cooper had mounted a two pronged attack on the agreements, Ex. B (collectively), that they are in reality a loan transaction and not what they are styled to be as hire purchase agreements. The first attack is based on the evidence of the plaintiffs' witness Shastri and the second on the interpretation of the terms of the agreements. I will, therefore, proceed to discuss the oral evidence of witness Shastri in the first place. In his cross-examination, witness Shastri tells us that the Hire Purchase Department was known as the Bureau of Hire Purchase Credits, and the accounts of the Hire Purchase Department were maintained separately and a separate balance-sheet was prepared in respect of the hire purchase business. The witness's attention was drawn to Ex. A (collectively) and the witness agreed that the proposal conveys the meaning that the Bureau of Hire Purchase Credits is to buy from Tata Engineering and Locomotive Co. Ltd. and to hire to the applicants the vehicles in question. The witness also stated that in the accounts of the Bureau of Hire Purchase Credit, a debit is raised against the Bureau of Hire Purchase Credit for the value of the vehicles since the same department cannot purchase the vehicles. The witness admitted that loans are to be raised in order to finance hire purchase business and interest is to be paid on such loans. The witness, however, denied the suggestion that the difference between the debit raised in the books of the Bureau of Hire Purchase Credits and the hire amount worked out represents the profit and interest. The witness had to agree that the role played by the Bureau of Hire Purchase Credits in such hire purchase transactions is the same as played by Jai Bharat Credit and Investment Co. Ltd. The witness was also cross-examined at length about the break-up of the various amounts mentioned in the agreements, Ex. B (collectively).

21. Mr. Cooper submitted that Shastri's evidence shows that the Bureau of Hire Purchase Credits is a separate entity, though it belongs to the plaintiffs. The Bureau has to borrow moneys on interest. The "debit raised" indicates the same price at which an outsider could

[1] AIR 1971 SC 1865, at p. 1868

buy motor vehicles from the plaintiffs. The plaintiffs act as financiers or convert them into financiers as to what Jai Bharat Credit and Investment Co. Ltd. does. The same is done by the Bureau of Hire Purchase Credits. According to Mr. Cooper, these circumstances indicate that the real transaction is not one of hire purchase but a finance transaction against the security of vehicles.

22. My assessment of Shastri's evidence is that it indicates that the plaintiffs seem to have bifurcated their functioning about letting their vehicles on hire to a department known as the Bureau of Hire Purchase Credits. It being a separate department or having separate books of account or raising a debit in the name of the plaintiffs or having its own balance-sheet are circumstances which are neither here not there to prove the real nature of the transaction. So also the proposal form or the manner in which the proposal is addressed to the plaintiffs or the

opening words of the proposal. The witness has been candid and straight-forward in admitting that the application is to, buy from Tata Engineering and Locomotive Co. Ltd. - the plaintiffs and to hire to the applicants the 1st defendants, the suit vehicles. It is true that the agreements refer to the proposal form and consider it as the basis of the contract, but ultimately the proposal has fructified into the agreement and, therefore, the intention of the parties is to be found and gathered from the terms of the agreement. When I say this, I do not mean that the proposal form is of no relevance. The ultimate agreement of hiring is with the plaintiffs and not with the Bureau of Hire Purchase Credits. It seems to me that the Bureau of Hire Purchase Credits is not a separate entity. No suggestion was made to the witness on this aspect of the matter. The line of the cross- examination of Mr. Cooper suggested that he wanted to establish that the Bureau of Hire Purchase Credits is a separate entity and it was this Bureau which was to buy and then hire out, but it was not pursued. The witness was not asked as to why the agreement was not with the Bureau, I think that in the circumstances, the opening words in the proposal forms, on which considerable weight was placed by Mr. Cooper to show the transaction is a loan transaction, loses its significance. Further, nothing was suggested to the witness as to why the parties had to conceal the purpose, if any, of camouflaging the same. In my opinion, the oral evidence on record does not establish that the real transaction between the plaintiffs and the 1st defendants was one of loan or financing.

23. The second ground of attack is based on the terms of the agreement. Mr. Cooper also referred to clause II of the agreements, Ex. B (collectively), and submitted that the option to purchase is superfluous as the option money of rupee one is already paid, and the question of right to seize the vehicles does not arise when the ownership had passed. Regarding condition No. 1 on the back of the agreements, Mr. Cooper contended that condition No. 1 is illusory because nobody is going to terminate the agreement when a large amount has been paid by way of initial payment. It is only a person who knows that he is not going to return the vehicle, who agrees to such a condition. Condition No. 2(a) is also consistent with the ownership and condition No. 2(b) shows that the owner is defendant No. 1 and not the plaintiffs. Condition No. 6 is a telling and clinching factor showing that it the property is destroyed, defendant No. 1 bears the loss. The plaintiffs are interested only in the money, i.e. Rupees 99,190/- (under each agreement) and not the property. The property is of defendant No. 1. Condition No. 8(a) which relates to the giving of a demand pronote as and by way of collateral security with liberty to the owner to negotiate the demand pro-note and also to sue upon the same, is also destructive of the hire purchase agreement. In the light of all these contentions, submissions and interpretation of the clauses and conditions of the agreements, Mr. Cooper submitted that the transaction is not a transaction of hire purchase on payment by instalments, but the real transaction is a financing one against the security of vehicles. The plaintiffs have started a credit bureau to do exactly what Jai Bharat Credit and Investment Co. Ltd. is doing. Mr. Cooper read out *Sundaram Finance Ltd. v. State of Kerala*[2], to support his submissions.

24. On the other hand, Mr. Joshi submitted that the vehicles remained the property of the plaintiffs till the option was exercised by defendants No. 1 who Were a mere bailee and had no

right, title and interest of any nature in the vehicles. He emphasized that the true construction of the agreements, Ex. B (collectively), would be that the property remains in the owner unless option is exercised by the hirer. He referred to clauses II and IV and conditions Nos. 1, 4, 5 and 6 of the agreements, Ex. B (collectively), and asked that clause IV be read with condition No. 4. Mr. Joshi referred to paragraph 5 of the judgement in the case of *Installment Supply (Private) Ltd. v. Union of India*[3]. and cited *Alexander Knox McEntire v. Crossly Brothers Ltd*[4]., and *Polsky v. S. and A. Services*[5], for the purposes of showing how hire purchase agreements have been construed.

25. Thus the controversy is as to what the transaction between the parties is in reality - whether a loan transaction as contended by Mr. Cooper or a hire purchase transaction as urged by Mr. Joshi. As to what is a hire purchase agreement and its true nature, considerable light is thrown on the cases cited at the Bar One can read the pronouncement of their Lordships of the Supreme Court - Subba Rao, J. or Shah, J. (as he then was) in Sundaram Finance Ltd. or Sinha, C.J. who in the case of Installment Supply (Private) Ltd. speaks about the term "hire purchase" with reference to its ordinary meaning and its incidence as derived from certain judgments and the nature of the hire purchase transaction from the statement made in Halsbury's Laws of England.

26. The sum and substance is twofold. One, the owner under the hire purchase agreement enters into a transaction of hiring out the goods on the terms and conditions mentioned in the agreement and the option to purchase exercisable by the hirer on payment of all the installments of hire arises when the installments are paid and not until then. In such a hire purchase agreement, there is no agreement to buy goods, the hirer being under no obligation to buy but has an option to return the goods or to become its owner by payment in full of the agreed hire installments and the price for exercising the option. (See Sundaram Finance Ltd., AIR 1966 Supreme Court 1178).

27. Secondly, ".....a hire-purchase agreement, as its very nature implies, has two aspects. There is first an aspect of bailment of the goods subjected to the hire-purchase agreement, and there is next an element of sale which fructifies when the option to purchase, which is usually a term of hire- purchase agreements, is exercised by the intending purchaser. Thus the intending purchaser is known as the hirer so long as the option to purchase is not exercised and the essence of a hire-purchase agreement properly so-called is that the property in the goods does not pass at the time of the agreement but remains in the intending seller, and only passes later when the option is exercised by the intending purchaser. The distinguishing feature of a typical hire-purchase agreement therefore is

[2] AIR 1966 SC 1178
[3] AIR 1962 SC 53 at p. 56
[4] 1895 AC 457 at p. 461
[5] (1951) 1 All England Reporter 185

that the property does not pass when the agreement is made but only passes when the option is finally exercised after complying with all the terms of the agreement." (See *K.L. Johar and Co. v. Dy. Commercial Tax Officer*[6], 28. From the authorities cited at the Bar, the following tests are gathered for examining an agreement –

(i) The agreement must be regarded as a whole. Its substance must be looked at. The parties cannot by insertion of any more words, defeat the effect of the transaction as appearing from the whole of the agreement into which they have entered. It is only by a study of the whole language that the substance can be ascertained. If the parties have in terms expressed their intention, there is no rule which prevents its being given effect to, unless there is any provision in the deed inconsistent with the intention. (See *McEntire v. Crossly Brothers Ltd*[7]*.,* - Judgement of Lord Herschell Lord Chancellor).

(ii) "The Court is not merely to look at the documents. It must discover what the real intention was." (Lord Goddard, C.J. in (1951) 1 All England Reporter 185 at p. 188F).

(iii) "...the Court is to look through or behind the documents, and to get at the reality,....." (Lord Esher, M.R. in *Madell v. Thomas and Co*[8]*.,*

(iv) The true effect of a transaction may be determined from the terms of the agreement considered in the light of the surrounding circumstances. In each case, the Court has, unless prohibited by statute, power to determine the nature of the transaction, whatever may be the form of the documents. (See Sundaram Finance Ltd., AIR 1966 Supreme Court 1178 at p. 1185 paragraph 24).

29. In all the cases both in England and in India cited at the Bar, the Courts had to find out the true intention of a document when it was executed to evade certain statutory provisions. The minds of the parties at the time they entered into those agreements were working to camouflage the real nature of the transactions. It is obvious that the parties do not want to conceal the real nature of a transaction just for the fun of it. They are actuated and motivated by some gain when they hide the true character of a transaction and act against their moral or business conscience.

30. In this case, the agreements were entered into in the course of business. The parties with eyes open entered into the transactions. Therefore, they knew the nature of their transactions and accepted the terms embodied therein. There is no suggestion, much less any material shown to me, that the plaintiffs and defendants No. 1 were to use these agreements to smoke-screen any provisions of law or to throw any tax collecting authorities off the scent under disguise of these agreements.

31. Coming to the terms of the agreements and bearing in view the above tests and the sum and substance of a hire-purchase deal, I have given my careful consideration to the criticism leveled by Mr. Cooper on the clauses and conditions of the agreement. But I am unable to accept the same because if I were to read the agreement in the manner suggested by him, I would have to rewrite it or read something into the agreement or give a meaning which is not warranted by the plain language. Regarding clause II, what is the superficiality I fail to judge. Payment in advance of the option money did not absolve the

[6] AIR 1965 SC 1082 at p. 1088 paragraph 11)

[8](1891) 1 QB 230, 234)

[7]1895 AC 457

hirer from his other obligation under the agreement. Again, clause II is not to be read in isolation, It is expressly wedded to clause IV. The payment of the option money by itself does not confer

ownership as seems to be suggested, but due performance and observance of all the terms and conditions of the agreement including payment of the agreed amounts would lead to the hirer becoming the owner. Until then the vehicle remains the absolute property of the owner. As regards condition No. 1, I am not impressed by the comments that the condition is illusory for the reasons suggested by Mr. Cooper. I do not think that it is a fair interpretation either. It would be a normal condition in any real agreement of hiring. If I were to accept Mr. Cooper's line of thinking, I would be entering into the arena of conjectures. Regarding condition Nos. 2(a) and 2 (b) I am unable to agree with Mr. Cooper's reading of them that they are consistent with the hirer's ownership. On the other hand, these conditions are consistent with the clauses and other conditions which make it abundantly clear that the vehicle remains the property of the owner and they have to make over all the rights, title and interest to the hirer when he fulfils his obligations. Coming to condition No. 6, I find it difficult to give the meaning and construction suggested by Mr. Cooper. This condition is consistent with the rest of the conditions governing the parties. It does not infringe the ownership of the owners nor does it make the property in the vehicles pass to the hirer. Of course, the owner is interested in the money after his property is destroyed. His property is converted into money and therefore he must look to the money part. Condition No. 8(a) reflects an owner's anxiety to secure himself in every reasonable manner. The fact remains that in the present case, no promissory note is obtained and hence this part of the agreement is not acted upon. The point has, therefore, no merit.

32. Mr. Joshi placed reliance on clauses II and IV and various conditions, Clause II merely states that the hirer shall pay to the owners in cash a sum of rupee one in consideration of option to purchase given under clause IV. Clause IV is material for our purpose and is in these terms :-

> "Clause IV :- If the Hirer shall duly perform and observe all the terms and conditions in this agreement contained and on his part to be performed and observed and shall in manner aforesaid pay to the owners monthly sums by way of rent amounting together with the said sum of Rs. 19,685.00 so paid on the execution of this agreement as aforesaid, to the sum of Rs. 99,190.00 and shall also pay to the owner all other sums of money which may become payable to them by the hirer under this agreement, the hiring shall come to an end and the vehicle shall at the option of the hirer become his property and the owners will make over all their right, title and interest in the same to the hirer, but until such payments as aforesaid have been made and until the owners make over all their right, title and interest to the hirer, the vehicle shall remain the absolute property of the owners."

33. Turning to condition No. 4 which runs as follows :-

> "The hirer acknowledges that he holds the vehicle as a bailee of the owners and shall not have any proprietary right or interest as purchaser therein until he having exercised his option of purchase as hereinbefore provided by payment of the whole amount due under

this agreement or under any term thereof, the owners make over to him all their right, title and interest in the vehicle."

and pausing here and now reading cl.IV with condition No. 4, I do not think that there is any room for doubt about the intention and understanding between the parties. If a hirer acknowledges and declares as to what his position is, I feel that in the absence of any circumstances demolishing that position, I must uphold the agreement. The right retained by the hirer to terminate the agreement under condition No. 1 signifies that he is not the owner. This is consistent with his status of a bailee, Under this condition, the hirer agrees to return the vehicle to the owners. Again, the arrangement under condition No. 5 whereby the owner can terminate the contract of hiring in the event of the lour circumstances set out therein with the right to retake possession of the vehicle, is also sufficient to show that the ownership had remained in the owners and the property in the vehicle had not passed to the hirer. If the hirer was the owner or the property had passed to him as argued on behalf of defendant No. 4, one would not have found such clauses or conditions to which Mr. Joshi has made reference.

34. Therefore, on reading the agreements, Ex. B (collectively) as a whole and looking at its substance and in the absence of any circumstances mutilating the same, in my opinion, these agreements are in essence hire-purchase agreements. Therefore, the property in the, suit vehicles did not pass at the time when the agreements were made but remained with the plaintiffs and property could pass on the option being exercised after compliance with all the obligations under the agreement. It is not in dispute that defendant No. 1 has not complied with all the terms and that it had not exercised the option. It is clear from the uncontroverted evidence before me that defendant No. 1 had committed default in payment of the agreed installments. Under the circumstances, the property had remained in the plaintiffs and they continue to be the owners. I, therefore, reject Mr. Cooper's contention that the agreements, Ex. B (collectively), are in reality loan or financing transactions against the security of the suit vehicles.

35. This takes me to the consideration of the question as to whether the vehicles in suit were in or adjacent to the mine of defendant No. 1 and used for the purpose of the mine. In this connection, defendant No. 4 has led the evidence of witness Choudhary. This witness, as noticed above, is at present the General Manager of Western Coal Field Limited, a subsidiary of defendant No. 4. Prior to 30th January, 1973, he was the Deputy Superintendent of Collieries of the National Coal Development Corporation, Ranchi. He says that the name of the 1st defendants' colliery is "Dakra Buka Colliery" and with effect from 30th January, 1973 he was appointed as the custodian thereof and he continued to be its Custodian till about the third week of August, 1973. The three vehicles in suit were at this Dakra Buk-Buka Colliery when he took charge as the Custodian. The witness testifies that these vehicles were used for transporting coal to the railway siding within the leasehold area of the Colliery and between 30-4-1973 and 1-5-1973 these trucks were at the Dakra Buka-Buka Colliery and were supplied diesel on the strength of requisitions, Ex. 1 (collectively). His cross-examination shows that Dakra Buka-Buka Colliery is shown in the Schedule to the said Act as owned by United Karanpura Colliery Company (Private) Limited,

and the witness is not in a position to say as to what was the position of defendant No. 1 *qua* Dakra Buka-Buka Mine. He states that his duties as a Custodian consisted of taking possession of the mine and to be incharge of its management. When he took possession of all the assets, he made an inventory of the articles within a day or two after 31st January, 1973. His evidence indicates that there is an inventory record, but it is not brought by him. He had personally seen the suit vehicles in use for transporting coal from the Colliery to the railway side. He was the Custodian of about 12 Mines located in two districts. Some of them were adjacent to each other and others at a distance of 20 kilometres and some at a distance of 80 kilometres. The Dakra Buka-Buka Mine had about 20 trucks, although the 12 mines in all had 30 trucks. He testified that he took possession of the 20 trucks of Dakra Buka-Buka Mine on 31-1-1973. He also testified that the suit vehicles were coal-tippers meant for carrying coal. He had the occasion to see these three vehicles during his routine inspection. The witness did not remember if he had routine inspection of other Mines between 30-4-1973 and 1-5-1973 as in the case of Dakra Buka-Buka Mine. When questioned closely as to how he remembered the police registration number of these three vehicles out of 20 vehicles, his answer was that he remembered that there were 20 vehicles in all and that he did not remember the registration numbers of the suit vehicles. These 20 vehicles were at the point of operation and in the process of operation spread out within a distance of 2 kilometres. His subordinate officers had made reports about these 20 trucks and such reports were received by the witness in the field itself when he had gone for routine inspection. These reports which were made on small slips of paper are not with him. Three subordinate officers were making these reports at different times of the day. He was emphatic that diesel was in fact supplied to the vehicles referred to in Ex. 1 (collectively) and that the Colliery had maintained a record about that supply of diesel to the suit vehicles. Though this record is available, he had not brought the same to Bombay. He had not seen that record after he ceased to work at Dakra Buk-Buka Mine in August, 1973. This is in substance the evidence of the witness.

36. Now the witness refers to the presence of the three suit vehicles at Dakra Buk-Buka Colliery when he took charge and also speaks of their being used in the lease-hold area of Dakra Buk-Buka Colliery on and around the appointed date i.e. 1-5-1973. The slips, Ex. 1 (collectively), also show that diesel was issued on the dates mentioned therein which are about the end of April 1973 and the middle of May 1973. Clause 6(d) of the proposals, Ex. A (collectively), shows that the suit vehicles were to be normally garaged at Babisole Colliery. The 1st defendants' Mine is shown in the Schedule to the said Act at Serial No. 407 under the name of Babisole and the name and address of the owner shown therein is that of the 1st defendants. Obviously, Dakra Buk-Buka Mine is not owned by the 1st defendants. There is no evidence to show that the 1st defendants are also the owners or otherwise in occupation or exploitation of Dakra Buk-Buka Mine. The ownership of Dakra Buk-Buka Mine is shown to be that of another company. In these circumstances, there is no clear, cogent and positive evidence about the suit vehicles being used in the mine of the 1st defendants, much less being in or adjacent to the mine of the 1st defendants on the appointed day i.e. 1st May, 1973. Even otherwise, the oral testimony of witness

Choudhary does not impress me very much. He is sure about 20 trucks being at Dakra Buk-Buka Mine, but it is difficult to accept his version that he in particular had seen these three suit trucks in operation and thereby in use as stated by him. The witness had ceased to be in-charge of the concerned Mine in the third week of August, 1973. The 4th defendants, it appears, had documentary evidence in support of their case, but they have chosen not to produce the same. In this connection, it is to be borne in mind that witness Choudhary has been giving instructions for the defence of the suit and even at the stage of the Notice of Motion, it was this witness who had filed affidavits opposing the application. That portion of his evidence shows that from the very beginning he has been more or less giving instructions or otherwise responsible for the defence of the suit. The non- production of the relevant documentary evidence which could have corroborated the oral testimony of the witness, therefore, leaves a lacuna and makes my task difficult in accepting the oral testimony of the witness. As indicated above, his oral testimony is vague and ambiguous and, therefore, reliance cannot be placed on this type of evidence. Another reason for not accepting the bare word of the witness is that he tends to forget certain relevant facts which transpired in 1974 and, therefore, it is difficult to depend upon his memory for the events of 1973. The witness could not remember if an application was made to this Court for appointment of a Receiver. He could also not remember if the affidavits made by him were for opposing the application for appointment of a Receiver. Ordinarily, I would treat this discrepancy as insignificant, but having regard to the facts of the case and especially when the witness had given instructions to the Solicitors and continued to do so, this lapse in his memory cannot be overlooked. The other possibility can be that the witness wanted to avoid answering questions which could go against the interest of defendants No. 4. In that case, the witness being an interested witness, his bare assertion about the use of the suit vehicles cannot be depended upon in the absence of other corroborative piece of evidence. I am, therefore, unable to accept the testimony of this witness to the extent indicated above.

37. In this connection, the letter dated 27th August, 1973, part of Ex. E (collectively), is of some significance. In this letter, reference is made on behalf of the Central Government to the Coal Mine belonging previously to United Karanpura Collieries Private Limited while considering the three agreements, Ex. B (collectively). This shows that the suit trucks under the said three agreements were considered by the Central Government to be belonging to United Karanpura Collieries Private Ltd. and not to defendant No. 1. The agreements, Ex. B (collectively), are between the plaintiffs and defendant No. 1 and not United Karanpura Collieries Private Ltd. For all these reasons, I hold that defendants No. 4 has failed to establish that the suit vehicles were in or adjacent to the mine of defendant No. 1 and that they were being used for the purpose of the mine of defendants No. 4.

38. Having dealt with the points connected with the appreciation of the evidence and other allied matters, the path is now clear to deal with the submissions of Mr. Cooper based on the provisions of the said Act. Mr. Cooper pointed out that having regard to the definition of the word "coal mine" in Section 2(b) and the definition of the word "mine" in Section 2(h)(vi) and the provisions

of Section 3(1), the suit vehicles vest in the Central Government. According to him, the suit vehicles fall within the definition of the word "mine" and having regard to the artificial concept of the word "mine", anybody's interest in the same gets vested in the Central Government, and if this meaning is not given, the provisions of Section 2(h)(vi) would be superfluous and then there would be no purpose of nationalizing the mines if the property is to be taken away by the owners. The purpose is that whoever may be the owner, if his property falls within the definition of the word "mine", that property is to vest in the Central Government, so that the purpose of nationalizing the mine is carried out. The argument was that third parties are affected and whatever constituted the mine, the same vested in the Central Government. The vehicles are a part of the mine and, therefore, the same vest in the Central Government. Mr. Cooper placed reliance upon a decision of the Calcutta High Court in *Valley Refractories Pvt. Ltd. v. K.S. Garewal*[9], and also an unreported judgement of the Calcutta High Court

9 AIR 1978 Cal 574

in *in T. M. S. Engineering and Construction Co. v. Union of India*[10], which follows the judgment in the case of Valley Refectories. Counsel also urged that the said Act being an All India Statute, the Court should follow the decisions of the Calcutta High Court. In support of this proposition, some cases have been cited.

39. On the other hand, Mr. Joshi contended that having regard to the preamble of the said Act and the heading of Chapter II and the provisions of Section 3(1), what can be acquired is the right, title and interest of the owners in relation to the coal mines specified in the Schedule and not right, title and interest of every one, According to him, the property in the suit vehicles is that of the plaintiffs, and defendant No. 1 has no right, title and interest in the suit vehicles and, therefore, the suit vehicles cannot vest in the Central Government and defendant No. 4 has wrongfully detained the suit vehicles, Mr. Joshi's submission was that on the appointed day, i.e. 1st May, 1973, defendant No. 1 was a mere bailee and it had no right, title and interest in the suit vehicles and, therefore, the suit vehicles did not vest in the Central Government. The suit vehicles continue to remain the absolute property of the plaintiffs, At the highest, what vested in the Central Government was the proprietary interest, if any, arising out of the right to exercise the option to purchase or the contractual rights and obligations under the Hire Purchase Agreements. Mr. Joshi also referred to the definition of the word "owner" as defined in Section 2(1)(1) of the Mines Act, 1952, and submitted that the word "owner" is not used as owner of the articles under the definition of the word "mine" in Section 2(h) of the said Act but as defined under Section 2(1)(1) of the Mines Act, 1952. Owner must be an owner of the coal mine.

40. I shall first refer to and, wherever necessary, set out some of the relevant provisions of the said Act. The preamble of the said Act makes it known that it is an Act to provide for the acquisition and transfer of the right, title and interest of the owners in respect of the coal mines specified in the Schedule, The object is to reorganize and reconstruct coal mines in order to ensure the rational, co-ordinated and scientific development and utilization of coal resources consistent with the growing requirements of the country. This is intended to be achieved by

seeing that the ownership and control of such coal resources are vested in the State. The main purpose of the said Act is ultimately to see that such coal resources are distributed in a manner as best to subserve the common good and for matters connected therewith or incidental thereto. The preamble thus indicates the nationalization of coal mines by providing for the acquisition and transfer of the right, title and interest of the owners of the coal mines as specified in the Schedule to the said Act.

41. It may be noted that the said Act completes the process of nationalization of the coal mines. This course of action was started with the promulgation of the Coal Mines (Taking Over of Management) Ordinance, 1973, whereby the management of all coat mines was taken over by the Central Government with effect from 31st January, 1973 pending nationalization of coal mines, followed by the Coal mines was taken over of Management) Act, 1973. Except Sections re- lasting to offences and penalties, the remaining provisions are deemed to ham come into force on 1-5-1973 The "appointed day" means the 1st day of May, 1973 under the definition under Section 2(a). The other definition relevant for our purpose is under Section 2(b), under which "coal mine" means

[10] Civil Rule No. 5495 W of 1974 decided on 24th November, 1978

a which there exists one or more seams of coal, "Mine" is defined in Section 2(h) For our requirements the following terms be noted :-

> "2. (h) "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or ia being carried on, and includes -
> (i) to (v) ....
> (vi) all lands, buildings, works, adits, levels, planes, machinery and equipments, instruments, stores, vehicles, railways, tramways and sidings in, or adjacent to, a mine and used for the purposes of the mine".

42. Words and expressions used in the said Act and not defined but defined in the Coal Mines (Conservation, Safety and Development) Act, 1952, have the same meanings as assigned to them in that act.

43. Now, the word owner" is not defined in the said Act. The word "owner" is employed in various Sections, namely, Sections 3, 4, 9, 8, 10, 11, 26 and so on. In these Sections, the word "owner" is applied in relation to the acquisition of the rights of owners of cost mines, payment of amount to owners of coal mines, management etc. of their coal mines, disbursement of amounts to the owners of coal mines.

44. "Owner" is defined under Section 2(1)(i) of the Mines Act, 1952, in these terms :-

> "2(1)(1) "owner", when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and in the

case of a mine the business whereof is being carried on by a liquidator or receiver, such liquidator or receiver, and in the case of a mine owned by a company, the business whereof is being carried on by a managing agent, such managing agent; but does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine, subject to any lease, grant or license for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner but not so as to exempt the owner from any liability."

45. The material Section under the said Act is Section 3(1) in Chapter II under the banner 'Acquisition of the Rights of Owners of Coal Mines" and it reads :-

"3. (1) On the appointed day. the right, title and interest of the owners in relation to the coal mines specified in the Schedule shall stand transferred to, and shall vest absolutely in, the Central Government free from all encumbrances". The Schedule referred to above is this :-

Explanation :- In this Schedule, wherever any amount specified in the fifth column against a coal mine has been declared in the foot notes to include also the amount payable in relation to one or more other coal mines, all the coal mines in relation to which each amount has been specified in the said column as payable, shall be deemed, for the purpose of this Act, to constitute a group of coal mines."

46. Now, the language of Section 3(1) is clear and unambiguous and giving the words and expressions their meaning under the above-referred definitions, this Section indicates the acquisition of the right, title and interest of the owners in relation to the coal mines specified in the Schedule and speaks of transfer to the Central Government of the right, title and interest of such owners of the coal mines whose names are specified in the Schedule, it further speaks of vesting absolutely in the Central Government free from all encumbrances the same right, title and interest of the owners specified in the Schedule. It is also clear that the other rights, title and interests of the owner concerned are not being affected but only those which are connected with the coal mines. It is not the right, title and interest of any or every owner of an article or thing lying in or adjacent to a mine or used for the purposes of the mine that is intended to be acquired and transferred to the Central Government but of those owners who are named expressly in the Schedule. The Schedule in unmistakable terms identifies the owners with reference to their names and location of their mines.

47. The definition of the word "owner" taken from the Coal Mines (Conservation, Safety and Development) Act, 1952, is to be read in relation to a coal mine and not mine. "Owner" is any person who is the immediate proprietor or lessee or occupier (excluding liquidator, receiver or managing agent) of the coal mine and not mine for the purposes of the said Act. The reason is that we are concerned with the nationalization of coal mines and not mines. We have also in the field the Coking Coal Mines (Nationalization) Act, 1972, which also looks to the Coal Mines

(Conservation, Safety and Development) Act, 1952, for the definition of the word "owner".

48. Section 8 of the said Act makes provisions for payment of amount to owner of every coal mine or group of coal mines specified in the second column of the Schedule whose right, title and interest in relation to such coal mine or group of coal mines has vested in the Central Government, Section 9 provides for payment of further amount to such owners and under Section 10 such owners of coal mines are required to render account of income derived after the appointed day (i.e. 31-1-1973) and to refund the amount to the Central Government.

THE SCHEDULE

Serial No.	Name of the mine	Location of the mine	Name and address of the mine	Amount (in rupees)
1	2	3	4	5
294	Dakra Buk Buka	Post Office Khalari	United Karanpura Colliery Company (Private) Limited, 91, Stephen House, Calcutta.	25,84,000
407	Babisole	Post Office Ondal	Bharat Mining Corporation Limited, 91, Stephen House. 5th floor, Dalhousie Square, Calcutta.	85,100
711	.....			

49. Without further examining other provisions of the said Act in this context, to me it appears that it is the right, title and interest of those owners whose names appear in the Schedule against their respective coal mines named in the Schedule in column two with particular reference to their location in column three that is intended to be acquired and transferred to the Central Government. I cannot agree with the interpretation suggested by Mr. Cooper.

50. I do see the force in Mr. Cooper's argument that if the meaning suggested by him is not given, then Section 2(h)(vi) would be made superfluous, and if the property lying on the mines or used for the mines is to be taken away by the owners, this would hinder the functioning of the nationalised mines. I do not think that a stimulus or fillip can be given to achieve the object of the said Act by construing the provisions in the manner in which Mr. Cooper wants the Court to construe. The said Act is not aimed at acquiring the right, title and interest of those owners whose articles happen to be in the mine or being used for the purposes of the mine, for example, in trust or on commission or on hire on the appointed day. i.e. 1st May, 1973, with the owner of the coal-

mine.

51. As regards the decision of the Calcutta High Court, Mr. Cooper contended that the said Act being an All India statute, the judgement of the learned single Judge of the Calcutta High Court (AIR 1978 Calcutta 574) should be followed by me in order to maintain uniformity of decisions in respect of Central statutes. Mr. Cooper placed reliance on three cases : (1) *Maneklal Chunilal and Sons v. Commr. of Income-tax (Central), Bombay*[11], wherein in conformity with the uniform policy laid down in Income-tax matters, the Division Bench of this Court. whatever its own view was, was pleased to accept the view taken by another High Court on the interpretation of a Section of the Income-tax Act. (2) *Commr. of Income-Tax v. Chimanlal J. Dalal and Co*[12]*.,* In that case also, it is observed that barring certain exceptions, it has been the general policy laid down by this Court in Income- tax matters that whatever its view may be, we should follow the view taken by another High Court on the interpretation of a Section. The exceptions indicated in that judgement are where inadvertently the decision was not brought to its notice or where in the decision of other Courts some relevant provision of law had been omitted to lie considered. (3) *Tata Iron and Steel Co. Ltd. v. D.V. Bapat, I.T.O*[13]. Here also, this Court again sounded the principle of uniformity of construction.

52. Mr. Joshi referred to an unreported decision of this Court in *A.R. Vajifdar v. Union of India*[14]*,* (Coram : Deshpande and Mridul JJ.). In that case, it was contended that when a sister High Court takes some view about the provisions of a Central Act, this Court is bound to follow the same, even if its view happens to be different. In support of that contention, reliance was placed on certain Income-tax cases. This Court expressed the view that the cases cited before that Court only indicate that such policy is followed with regard to Income-tax matters.

[11](1953) 55 Bom LR 619

[12](1966) 68 Bom LR 345

[13](Bom), (1975) 101 ITR 292 at p. 324 (Bom)

[14] Special Civil Appln. No. 2139 of 1974, decided on 23rd March, 1976

53. From the above authorities, it appears that the policy which is laid down by this Court is applicable to income-tax decisions and not to other Central statutes. Therefore, if I am not taking the same view as expressed by the learned Single Judge of the Calcutta High Court in AIR 1978 Calcutta 574, I am not making any departure from the policy laid down by this Court.

54. Coming to the decision of the Calcutta High Court in AIR 1978 Calcutta 574, in that case a large number of contentions of the petitioner has been set out in the right column at Page 575 and in the left column at page 576. Some of the submissions have been narrated and some of them are dealt with by the learned Judge forthwith before stating the next submission. If my reading of the judgment is correct, the view expressed is that what is required is that if the items mentioned in sub-clauses (vi) and (vii) are in or adjacent to a mine and are used for the purposes of the mine, they would come within the ambit of the definition of "coal mines" as defined under the said Act. In the opinion of the learned Judge, if the property in question comes within the definition of a coal mine, then the right, title and interest of the owner in relation to that object would be the right, title and interest of the owner in Section to a coal mine and the same will by virtue of Sub-Section (1) of Section 3 vest in the Central Government. I respectfully differ with.

this interpretation in the light of my earlier discussion.

55. I may mention that Mr. Cooper did not wholeheartedly agree with the interpretation of the words "in or adjacent to a mine" in the Calcutta judgments. On the facts of the present case, there is no positive evidence to show that the suit vehicles were in or adjacent to a mine and used for the purposes of the mine. In the case before me, I have held that defendant No. 1 was not the owner of the suit vehicles and that the property in the suit vehicles had not passed to defendant No. 1 and, therefore, the same could not vest in the Central Government under Section 3 (1) of the said Act.

56. Coming to the other point argued by Mr. Joshi that at the highest what vested in the Central Government on the appointed day, i.e. 1st May, 1973, was the proprietary interest, if any, arising out of the right to exercise the option to purchase, or what could vest was the contractual rights and obligations under the hire purchase agreements.

57. About the "proprietary" interest, the legal position is that the hirer has two interests :
first the benefit of the hiring constituted by the bailment and, secondly, his rights under the hire purchase agreement, including the "proprietary" interest which he enjoys by virtue of his option to purchase. Mr. Joshi referred to paragraph 694 under the heading "What may be assignment" at page 691 of the Law of Hire-Purchase by A.G. Guest, 1966, edition, Sweet and Maxwell, wherein it is pointed out that a contract of hire-purchase is not merely a contract of bailment and nothing else, but contains an element of sale. This element of sale exists by reason of the hirer's option to purchase the goods, which has been legitimately described as being of a "proprietary" nature.

58. Mr. Joshi relied on the circumstance that the Central Government has failed to ratify the contract under Section 29 of the said Act, whereunder it was open to defendant No. 4 to take the benefit of proprietary interest or other rights and obligations under the contract. in this connection, Mr. Joshi referred to Ex. D (collectively) and Ex. E (collectively). The plaintiffs, by their letter dated 26th July, 1973, addressed to D.R. Dutta of the then Coal Mines Authority, referred to the public notice and asked without prejudice to their right and contentions, if he was agreeable to continue the hire purchase agreements and if he would make payment to the plaintiffs of the unpaid hire amounts and would also observe and perform the terms and conditions of the hire purchase agreements. Along with the said letter, the plaintiffs also submitted copies of the proposals and the three agreements along with a separate statement of the balance of 15 hire installments of Rupees 3457/- each outstanding and also the amount of overdue installments aggregating to Rupees 51,855/- and Rupees 20,742/- respectively. The plaintiffs also intimated by the same letter to the said D.K. Dutta that their representative would also appear before him. The said D.K. Dutta, by his letter dated 27th August, 1973, in reply to the said letter, placed on record the examination of the said agreements *inter alia* bearing Numbers 9595, 9596 and 9597 (Agreements Ex. B (collectively)). It was further stated by D.K.

Dutta that having heard the plaintiffs' representative and after examination of the material, it had been found that the above-referred agreements are unduly onerous to the coal mine belonging previously to M/s. United Karanpura Collieries (Pvt.) Ltd. The plaintiffs in their rejoinder dated 26th September 1973, challenged the correctness of the stand taken by the said D.K. Dutta and requested him to return the vehicles forming the subject matter of the hire purchase agreements forthwith, failing which they would take appropriate action for recovery thereof. This evidence shows that defendants No. 4 had taken steps as contemplated by Section 29, of the said Act which provides that certain contracts are to cease to have effect unless ratified by Government. I do not think that it is necessary for me to express any opinion as to the effect of the letter dated 27-8-1973, in the light of the provisions of Section 29 of the said Act, as this point is not germane to the issue arising on the pleadings.

59. Another submission made by Mr. Joshi in substance was that the Central Government could not have been absolved from the liability of payment of the monthly installments or dues under the agreements, Ex. B (collectively), and that the same did not amount to en encumbrance falling within the expression

> "encumbrance" in Section 3(1) of the said Act. This submission is based on the opinion of the Division Bench of this Court in *National Textile Corporation v. State of Maharashtra*[15], In that case, the provisions of the Sick Textile Undertakings (Nationalization) Act, 1974, which use the phrase "any other encumbrance" were considered. It reiterated the proposition that the question whether particular burden or a liability which attaches to the property will amount to an encumbrance thereon or not will depend upon the facts and circumstances of each case. Therefore, it does not mean that every burden or liability which runs with the property must be an encumbrance. I do not think that it is necessary to express any opinion whether the liability of payments under the hire-purchase agreements is an encumbrance or not, as I am of the view that the suit vehicles did not vest in the Central Government and, therefore, there is no point in going to the aspect of vesting of right, title and interest free from all encumbrances.

60. To conclude this part of the discussion, I hold that the suit trucks had not vested in the Central Government on the appointed day, i.e. 1st May, 1973, and that the same belonged to the plaintiffs and continued to be their property The 4th defendants had wrongfully

[15](1975) 77 Bom LR 352

detained the suit vehicles from 1st May, 1973, or in any event from and after 27th August, 1973 when they conveyed their decision that the agreements Ex. B (collectively), could not be ratified by Government under Section 29 of the said Act.

61. This takes me to the question of damages claimed by the plaintiffs. In this connection, the plaintiffs are claiming damages at the rate of Rs. 100/- per day from 12th April 1974, till the filing of the suit. The date of 12th April, 1974. is fixed on the basis that the plaintiffs had

terminated the agreements of hire purchase by their letter dated 12th April 1974, part of Ex. F (collectively). Regarding the quantum, the plaintiffs' witness Shastri merely states that the plaintiffs are claiming damages for wrongful detention at the rate of Rupees 100/- per day per vehicle. His cross-examination shows that he had made enquiries in the market on the basis of which the plaintiffs claimed Rs. 100/- per day, but he was unable to give any instance of such hire charges, though the enquiries related to the period in the end of 1973. These enquiries were oral. He denied the suggestion that he had not made enquiries and that he was saying so falsely in order to bolster up an unsustainable claim.

62. Mr. Cooper submitted that there is not an iota of evidence for fixing the quantum of damages and that the plaintiffs have failed to prove the same. Mr. Joshi urged that damages, in such a case as the present one, could be from the commercial man's point of view and that the best measure of damages could be on the basis of the monthly installments fixed by the parties under the agreements. Mr. Joshi also relies on a passage from Street on Torts, Butterworths 5th edition, page 60, which incorporates the observation from *Strand Electric and Engineering Co. Ltd. v. Brisford Entertainments Ltd*[16]*.,*

63. The claim for a hiring charge is based on the fact that defendant No. 4 has used the suit vehicles for its own purpose. Defendant No. 4 had, therefore, the benefit of them. It is true that the evidence of witness Shastri is not at all of any assistance in fixing the quantum of damages. Though he speaks of certain enquiries made by him on telephone, he has no concrete evidence about such enquiries. I think that on the facts of the present case, the plaintiffs would have had insurmountable difficulties if they had attempted to inspect the vehicles in suit or taken any party for inspection. Even the order of this Court appointing the Receiver to take possession of the suit vehicles was rendered futile, as it seems that the whereabouts of the suit vehicles could not be known by the Court Receiver. Thus the plaintiffs could not have recourse to their vehicles in order to determine their condition or to assess what hire the suit vehicles would fetch, if given on hire. In fixing the quantum of damages, a certain amount of guess-work in a matter like this is unavoidable. Even in the absence of any cogent evidence about damages in the nature of same person coming forth to hire a vehicle of the type in suit, I think I can fix some reasonable amount having regard to the life and utility of these vehicles. It is to be noted that the 4th defendants have not chosen to lead any evidence to show the condition of the vehicles or about their utility and all these facts would be to their knowledge, but they have chosen not to place them before me. I am therefore, kept in the dark about the condition of the vehicles and the use to which they are being put till the date of the judgments.

[16](1952) 1 All England Reporter 796 (CA)

64. The judgments of the Court of Appeal (1952) 1 All England Reporter 796, cited by Mr. Joshi, throws good light on some aspect of the matter for awarding damages for wrongful detention. The three Lord Justice's have delivered separate concurring judgments and I think that Denning L.J., as he then was, has, in his usual simple and direct language, brought home the point. He posed to himself the question : What is the proper measurement of damages for the wrongful

detention of goods ? and then proceeds to observe as follows :-

> ".....It is strange that there is no authority on the point in English law,... If a wrongdoer has made use of goods for his own purposes, then he must pay a reasonable hire for them even though the owner has, in fact, suffered no loss. It may be that the owner would not have used the goods himself, or that he had a substitute readily available which he used without extra cost to himself Nevertheless, the owner is entitled to a reasonable hire. If the wrongdoer had asked the owner for permission to use the goods, the owner would be entitled to ask for a reasonable remuneration as the price of this permission. The wrongdoer cannot be better off because he did not ask permission. He cannot be better off by doing wrong than he would be by doing right. He must, therefore pay a reasonable hire".

65. I feel that damages at the rate of Rs. 25/- per day would be a fair and adequate amount having retard to the fact that the life of a vehicle is likely to be affected by passage of time. In fixing the amount of Rs. 25/- per day, I have taken into consideration that the 3rd and 4th defendants, while making use of the vehicles in suit, would be incurring the cost of maintenance and usual repairs of normal wear and tear. I have also borne be Issue No. 9 in the negative, in mind that the damages have not to in the nature of a penalty. I therefore, here that I was not addressed on this feel that a sum of Rs. 25/- per day though on somewhat lower side, yet be adequate.

66. This takes me to the question of answering the issue. In view of the above discussion, I answer issue No. 1 in the affirmative.

67. I also answer issue No. 2 in the direct affirmative, although there is no evidence of the plaintiffs handing over the vehicles to defendant No. 1. But the fact that there is no denial on the part of defendant No. 1 that they have not received the suit vehicles along with the fact that defendant No. 4 claims to have taken possession of the suit vehicles belonging to defendant No. 1, leaves no room for doubt that the vehicles were duly delivered by the plaintiffs to defendant No. 1. Furthermore, the fact that defendant No. 1 paid the initial amount under the agreements, Ex. B (collectively), and further paid the amounts of 8 installments, also indicate: that defendant No. 1 had received the delivery of the three vehicles in suit and, therefore, they performed a part of the hire purchase agreements by paying the initial amount and the subsequent 8 installments.

68. Issue No. 3 in the affirmative.

69. Issue No. 4 in the affirmative. I may add, even it may amount to repetition, that after the 4th defendants' officer D.K. Dutta intimated to the plaintiffs that he found that the conditions in the agreements were unduly onerous by his letter dated 27th August, 1973, and the subsequent request of the plaintiffs contained in their letter dated 26th September, 1973 calling upon the 4th defendants to return the vehicles, these defendants were guilty of wrongfully detaining the suit

vehicles, over which they had no right. It was a sheer act of highhandedness on the part of the 4th defendants thereafter to detain the property of the plaintiffs, namely, the suit vehicle's. The 4th defendants had adopted certain course of action under Section 29 of the said Act and having found that the terms of the hire purchase agreements before them were onerous, they ought to have forthwith returned the suit vehicles to the plaintiffs.
Issue No. 5 in the negative.
Issue No. 6 in the negative.
Issue No. 7 in the affirmative.
Issue No. 8 in the negative.
Issue No. 10 in the negative. I may add hear that I was not addressed on this issue by Mr. Cooper. Even today, I asked Mr. Mody, the learned Counsel appearing with Mr. Cooper and he also agrees with this.

70. As regards defendants Nos. 1 and 2, they have failed to file their written statement nor they have appeared at the hearing of the suit. On account of their failure to file their pleadings, it was open to the plaintiffs to apply for a decree under Order 8, Rule 5, sub-rule (2) of Civil Procedure Code as against defendants Nos. 1 and 2 on the basis of the facts stated in the Plaint, and I think that having regard to the facts of the present case, there would have been no impediment in my way in passing a decree on the basis of the facts contained in the Plaint. However, the plaintiffs have led evidence which I have accepted with regard to the execution of the agreements. Ex. B (collectively), between the plaintiffs and defendants Nos. 1 and 2 and the correctness of the particulars of claim, Ex. E to the Plaint. Defendant No. 2 is a guarantor under the agreements. Ex. B (collectively), and hence he is liable to the plaintiffs for the amounts due thereunder. However, in view of my having awarded damages at the rate of Rs. 25/- per day to the plaintiffs as against defendants Nos. 3 and 4, the plaintiffs would not be entitled to any damages as against defendant No. 1.

71. At this stage, Mr. Dalal and Mr. Mody draw my attention to the consent terms arrived at between the plaintiffs and defendant No. 4 in A. O. No. 172 of 1974. Under these consent terms, these parties have agreed to the manner in which they have to fix the market value of the vehicle in case the defendants No. 4 do not deliver the possession of the suit vehicles when called upon by the plaintiffs. Both Counsel state that it is agreed that the value of each vehicle is to be fixed at Rs. 52,000/- as of today.

72. The plaintiffs have failed to make out any case against defendant No. 3. Mr. Dalal pointed out that defendant No. 3 was the Manager appointed under the said Act. I do not think that the plaintiffs have any cause of action as against defendant No. 3, nor they have led any evidence in this behalf.

73. In the result, there shall be a decree in favor of the Plaintiffs and against Defendants Nos. 1 and 2 in terms of prayer (a).

74. There shall also be a decree in favor of the plaintiffs and against defendants No. 4 in terms of prayer (b) Defendants No. 4 are ordered to return to the plaintiffs the suit vehicles bearing Chassis Nos. 342 038 27 02950, 342 038 27 05673 and 342 038 27 05711, together with the body fitted thereon within twelve weeks from today, and in default, defendants No. 4 would pay to the plaintiffs the agreed value of each vehicle fixed at Rs. 52,000/-.

75. There shall be a decree in favor of the plaintiffs and against defendants No. 4 in the sum of Rs. 1,53,525/- being the aggregate amount of damages worked out at the rate of Rs. 25/- per day per vehicle from 12th April 1974, till judgments.

76. The suit as against defendant No. 3 is dismissed with no order as to costs.

77. The Advocate's fee on the basis of two Counsel is quantified at Rs. 15,000/- as worked out by both sides excluding the Court-fee. These costs are decreed as against defendants No. 4.

78. As regards the Advocate's fee in so far as defendants Nos. 1 and 2 are concerned, it is quantified at Rs. 1740/- on the basis of uncontested.
Order accordingly.