(2003) 04 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

ASHOK LEYLAND FINANCE CO. LTD. — APPELLANT

Vs

GOKRAN SINGH BADAURIYA — RESPONDENT

Date of Decision : 10-04-2003

Acts Referred:

Citation : 2003 4 CPJ 687

Hon'ble Judges : S.K.Dubey , B.L.Khare , Pramila S.Kumar J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal is directed against the order dated 19.3.2001 passed in Case No. 60/2000 by the District Consumer Disputes Redressal Forum, Gwalior (for short the ''District Forum'').

2. FACTS giving rise to this appeal are thus : The respondent No. 1 purchased a Mahindra Commander Jeep bearing Engine No. DT-10494, Chassis No. DT-10494 and registration No. MP-06 B-0392 on 10.11.1995 under Hire Purchase Agreement on advance of hire charges of Rs. 1,70,000/- amount of which was to be paid in monthly instalment of Rs. 7,395/- instalments spread over for three years. The respondent No. 1 defaulted in making payment of instalments hence vide letter dated 30.6.1998 (Ex. P-22) surrendered the possession of Jeep stating therein that the Jeep be sold and from the sale price the balance outstanding amount be adjusted. The appellant parked the Jeep at Gokul Apartments, City Centre, Gwalior. However, from the parking area, the Jeep was stolen between 30.6.1998 to 21.7.1998 of which FIR was lodged on 23.7.1998 at Police Station University on that a case under Section 379, IPC was registered. The appellant also lodged a claim with the Insurance Company on 27.7.1998. During investigation neither the Jeep was recovered nor the miscreants were arrested, hence a final report was filed. The Insurance Company appointed an Investigator Major K. Mallick (Retd.) who vide report dated 10.7.1999 concluded that the vehicle actually has not been stolen by any unknown suspect, but real facts were known to the employees of Ashok Leyland Finance Ltd. who has made a story. The Insurance Company therefore, vide letter dated 30.9.1999 after due

application of mind giving reasons repudiated the claim. The complainant/ respondent No. 1 alleged that he went to deposit the balance amount where he came to know that the vehicle has been stolen, hence, he served a notice dated 4.12.1999 and thereafter filed a complaint against the appellants only without impleading Insurance Company as a party. The complaint was resisted. During the pendency of the complaint, the Insurance Company was impleaded as party who denied the allegations. The District Forum after appreciation of evidence held that the vehicle was stolen when it was in the possession of the appellants. The respondent No. 1 was ready and willing to deposit the outstanding amount of instalments. The Insurance Company repudiated the claim as FIR was lodged after long delay and that the story of theft was found to be suspicious by the Investigator. The estimated insured value of the vehicle was of Rs. 2,40,000/-. The outstanding amount was due of Rs. 80,000/- hence, for deficiency in service ordered the appellants to pay the sum of Rs. 2,40,000/- after deducting Rs. 80,000/- that is Rs. 1,60,000/- within one month to respondent No. 1 failing which the amount to carry interest at the rate of 12 percent per annum and also to pay Rs. 600/- as costs of the proceedings.

After hearing learned Counsel for the parties and on reappraisal of evidence on record, the question for our consideration is : whether for theft of the vehicle, the complainant can claim the amount ? Before we deal the question, it may be stated here that the complainant has not placed any material that till the date of theft of vehicle or thereafter he went to make the payment of the outstanding balance amount by draft or by cash. The claim was made only with the complaint giving an application dated 7.7.1998 (Ex. P-25) showing his desire to take back the possession of the vehicle on payment of the balance amount, thereafter, the complainant served a notice dated 4.12.1999 (Ex. P-26).

3. IT is not in dispute that the vehicle was purchased under hire purchase agreement and that the complainant was not in position to pay the outstanding amount of instalments, hence, he himself delivered the possession of the vehicle to the appellants otherwise too, in the terms of agreement the vehicle, could have been repossessed by the financier owner in the event of default by the hirer till the amount of instalments due is not paid under hire purchase agreement. The complainant was granted a facility to use the vehicle under the contract which confers no right in rem until the conditions for transfer of the property to him have been fulfilled. In a recent decision Charanjit Singh Chadha v. Sudhir Mehra, 2002 (1) MPLJ 321, the Supreme Court has considered the question in a case of prosecution under Sections 379, 406 and 420, IPC and Section 484, Cr.P.C. against the financier and observed that hire purchase agreement in law is an executory contract of sale and confers no right in rem on the hirer until the conditions for transfer of the property to him have been fulfilled, therefore, the repossession of goods as per the term of the agreement may not amount to any criminal offence. It would be appropriate to quote Paras 7, 8, 9, 11 and 17 thus : "7. In Damodar Valley Corporation v. State of Bihar, AIR 1961 SC 440, this Court took the view that a mere contract of hiring, without more, is a species of the

contract of bailment, which does not create a title in the bailee, but the law of hire purchase has undergone considerable development during the last half a century or more and has introduced a number of variations, thus leading to categories and it becomes, a question of some nicety as to which category a particular confers no title on the hirer, but a mere option to purchase on fulfilment of certain conditions. But a contract of hire purchase may also provide for the agreement to purchase the thing hired by deferred payments subject to the condition that title to the thing shall not pass until all the instalments have been paid. There may be other variations of a contract of hire purchase depending upon the terms agreed between the parties. When rights in third parties have been created by acts of parties or by operation of law, the question may arise as to what exactly were the rights and obligations of the parties to the original contract.

8. In K.L. Johar & Co. v. CTO, AIR 1965 SC 1082, this Court took the view that a hire, purchase agreement has two elements : (1) element of bailment; and (2) element of sale, in the sense that it contemplates an eventual sale. The element of sale fructifies when the option is exercised by the intending purchaser after fulfilling the terms of the agreement. When all the terms of the agreement are satisfied and the option is exercised a sale takes place of the goods which till then had been hired.

9. Similar views were expressed earlier in Instalment Supply (P.) Ltd. v. Union of India, AIR 1962 SC 53 and reiterated in Sundaram Finance Ltd. v. State of Kerala, AIR 1966 SC 1178. 11. The whole case put forward by the respondent-complainant is to be appreciated in view of the stringent terms incorporated in the agreement. If the hirer himself has committed default by not paying the instalments and under agreement the appellants have taken repossession of the vehicle, the respondent cannot have any grievance. The respondent cannot be permitted to say that the owner of the vehicle has committed theft of the vehicle or criminal breach of trust or cheating or criminal conspiracy as alleged in the complaint. When the agreement specifically says that the owner has got a right to repossess the vehicle, there cannot be any basis for alleging that the appellants have committed criminal breach of trust or cheating.

17. The hire purchase agreement in law is an executory contract of sale and confers no right in rem on the hirer until the conditions for transfer of the property to him have been fulfilled. Therefore, the repossession of goods as per the term of the agreement may not amount to any criminal offence. The agreement (Annexure P-1) specifically gave authority to the appellants to repossess the vehicle and their agents have been given the right to enter any property or building wherein the motor vehicle was likely to be kept. Under the hire purchase agreement, the appellants have continued to be the owners of the vehicle and even if the entire allegations against them are taken as true, no offence was made out against them. The learned Single Judge seriously flawed in his decision and failed to exercise jurisdiction vested in him by not quashing the

proceedings initiated against the appellants. We, therefore, allow this appeal and set aside the impugned judgment. The complaint and any other proceedings initiated pursuant to such complaint are quashed."

4. IN view of the law declared by the Supreme Court, the complainant being the hirer who himself surrendered the possession of the vehicle vide letter dated 30.6.1998 stating therein that the balance amount be recovered from the sale proceeds of the vehicle and that the appellant being owner of the vehicle from whose possession the vehicle was stolen, in our opinion, the complainant cannot claim any right as till the theft of the vehicle, even if the appellants were negligent or deficient in not keeping a proper safety of the vehicle, as the conditions for transfer of the vehicle were not fulfilled. IN view of this, the order of the District Forum to return the estimated insured value after deducting Rs. 80,000/- as per allegation of the complainant cannot be sustained. In the circumstances, the ends of justice would meet if an order is made against the appellant not to recover the outstanding amount under hire purchase agreement which could have been recovered by sale of the vehicle from its sale proceeds and the balance if any from the complainant under hire purchase agreement as appellant failed to secure the safety of the vehicle which was stolen from the possession of the appellant and one does not know how much amount on sale of the vehicle the appellant would have been received. However, the respondent if so advised, shall be at liberty to institute the civil suit for redressal of his grievance and for seeking the relief. If the respondent chooses to file a suit for the relief claimed in these proceedings, he can do so according to law and in such a case he can claim the benefit of Section 14 of the Limitation Act to exclude the period spent in prosecuting the proceedings under the Consumer Protection Act, 1986, while computing the period of limitation prescribed for such a suit. If the amount of Rs. 1,00,000/- in compliance of the interim order has been deposited by the appellant before the District Forum, the same shall be returned by the District Forum to the appellant. We also make it clear that if the amount has been disbursed to the complainant by the District Forum, the appellant shall be entitled to recover the same by the respondent-complainant.

5. IN the result, the appeal is allowed. The order of the District Forum is set aside and the complaint is dismissed with no order at as costs. Appeal allowed.

