

(1989) 10 KAR CK 0022

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1086 of 1989

C.R. Narasimha Setty

APPELLANT

Vs

Canara Bank and another

RESPONDENT

Date of Decision : 24-10-1989

Acts Referred:

Contract Act, 1872 — Section 171

Citation : (1990) ILR (Kar) 674

Hon'ble Judges : D.P. Hiremath, J

Bench : Single Bench

Advocate : N. Kumar, for the Appellant; Kalasa Shamanna, for the Respondent

Judgement

Hiremath, J.—The undisputed facts are that a tempo vehicle bearing registration No. CAA 3842 was purchased by the plaintiff-appellant under a hire purchase agreement with respondent No. 1, Canara Bank, having taken a loan of Rs. 56,000. The said loan with interest thereon was discharged by the time the suit came to be filed and the plaintiff, according to the bank, still owed Rs. 3,694.90 towards seizure charges, ground rent charges and other expenses. The said vehicle was seized on November 26, 1988, by respondent No. 1-bank towards realisation of the amount due to it under the hire-purchase agreement. The plaintiff-appellant filed a suit for a declaration that the seizure of the vehicle was without jurisdiction, void and for consequential orders for redelivery of the vehicle and further consequential orders u/s 20 of the Hire Purchase Act, 1972, being enforced.

2. It is undisputed that, during the pendency of the suit, the entire loan as aforesaid due under the hire purchase agreement has been repaid. In the written statement, however, the first defendant-bank contended that after the partnership firm came into existence, the plaintiff as one of the partners and the other partners were liable for the open cash credit limit that the partnership had obtained from the bank. It stated that the plaintiff along with the other partners had written a letter to the bank acknowledging the liability of the vehicle loan as

well as the open cash credit limit and further gave an undertaking declaring that the vehicle, CAA 3842, could be held as collateral security to the open cash credit limit of Rs. 50,000 available to the firm. Having filed the suit, the plaintiff-appellant filed I.A. Nos. I and II for a mandatory injunction directing the defendants to deliver the vehicle aforesaid. It may be mentioned here that the second respondent-second defendant is only a clearing agent of the first respondent with whom the vehicle is said to have been left by the first respondent. The trial court rejected the applications holding that the partners of Swamy Perfumery Works of which the appellant is also a partner agreed to discharge the liability under the loan and that they further agreed that all security charges, obligations and the conditions in respect of the vehicle loan shall continue and bind them and because the plaintiff happens to be one of the partners of the firm, the vehicle cannot be released. It also found that the first defendant company (ought to be bank) which has advanced the huge amount would sustain loss. While dismissing the applications, the trial court has further observed that the partners of the said firm had not repaid the open cash credit limit amount referred to above and hence, the banker has every right to retain the vehicle in question under the Contract Act.

3. In challenging this order, it is urged on behalf of the appellant that the trial court, though did not refer expressly to the provisions of section 171 of the Contract Act, did bear in mind these provisions and thus impliedly held that the bankers lien is available to the first respondent-bank in keeping the seized goods with itself till the open cash credit limit amount was repaid. Section 171 referring to the general lien of bankers, factors, etc., reads thus :

"Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect."

4. Referring to this section, the appellant's counsel pointed out that the very case of the first respondent has been that the vehicle was made available as a collateral security for the open cash credit account. The respondents have produced at annexure 6 a letter from Swamy Perfumery Works to the bank which reads thus :

"With reference to the subject limit granted to us, we hereby declare that the vehicle No. CAA 3842 in the name of Mr. C. R. Narasimha Shetty, which has been purchased through your finance under LHV 8 of 1983 and which has been hypothecated to you under the said loan, shall be available as a collateral security to our above open cash credit limit of Rs. 50,000 now granted to us.

We further bind ourselves and declare that the said vehicle shall continue to be held as security for the subject open cash credit limit of Rs. 50,000 until such time that the said limit is cleared in full and in spite of the fact that the liability

under our LHV 8 of 1983 is cleared in full.

This mandate is irrevocable until revoked by us in writing with the prior approval and consent of the bank in writing."

5. It is thus clear from this letter which is based on the hypothecation agreement in respect of this open cash credit limit loan that the vehicle was made available only as a collateral security and not even as a primary security. That being so, according to him, this contract excludes the operation of section 171 of the Contract Act. In support of this argument, the appellant's counsel invited my reference to a decision of the Calcutta High Court in the case of Krishna Kishore Kar Vs. United Commercial Bank and Another, and the relevant observations of the court are at paragraphs 17 and 20 of the judgment. It was submitted before the court that an express contract between the parties creating a lien or security would exclude the operation of the statutory general lien u/s 171 of the Contract Act. In the case before the court, the plaintiff and the bank had an express contract by way of a counter-guarantee providing the method of reimbursement. Referring to the case of George Henry Chambers v. Patrick Davidson LR 1 PC 296, the observations therein were quoted with approval which read thus (at page 88) :

"Therefore, if a consignee takes an express security, such security, being the stipulation and agreement of the parties, it excludes his general lien."

6. At the same time, it was further observed that section 171 is self-contained and without invoking English cases, it could be said that the same principles are incorporated in the section itself. Section 171 of the Contract Act clearly lays down that the provisions of the section would apply only in the absence of an express contract to the contrary.

7. I am in respectful agreement with the decision rendered in the case aforesaid and it is patently clear that the vehicle was made available only as a collateral security for the said open cash credit loan and admittedly it was purchased by the appellant in his individual name under the hire purchase agreement. Whether the vehicle was also made the property of the firm is beside the point at this stage and whenever the liability of the firm is sought to be enforced, the same could be considered. Suffice it to note that the trial court committed an error in impliedly applying section 171 of the Contract Act and finding that the banker's general lien is available against the vehicle which was seized under the hire purchase agreement. At annexure 7, a copy of the hypothecation deed is also produced, which further makes the point clear and which does not give the bank a right to seize in the event of default of payment of this open cash credit loan. In that view of the matter, the trial court has committed an error in dismissing these applications and this is a fit case wherein the applications should be allowed and respondent No. 1-bank directed to return the vehicle seized by it, subject, however, to the condition that the appellant shall pay or deposit in the court below the remaining amount of Rs. 3,694.90 claimed by the bank towards

seizure charges, ground rent, etc., which, however, shall be subject to verification during trial.

8. With this observation, I allow this appeal, set aside the impugned order and direct the first respondent to deliver the vehicle seized on satisfying itself that the remaining amount aforesaid is paid or deposited in the court below.