

(1985) 11 KL CK 0004
In the High Court Of Kerala
Case No : C.R.P. No. 2277 of 1985-D

Hameed

APPELLANT

Vs

Jayabharat Credit and Investment Co. Ltd. and Others

RESPONDENT

Date of Decision : 21-11-1985

Acts Referred:

Contract Act, 1872 — Section 74
Transfer of Property Act, 1882 — Section 5, 54

Citation : AIR 1986 Ker 206

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : M.M. Abdul Aziz and M.M. Meeran, for the Appellant; V.N. Achutha Kurup and C.S. Rajan, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Pareed Pillay, J.—Revision petitioner is the petitioner-plaintiff in I.A. 4177/85 in O.S. 1017/85 of the H Additional Munsiff Court, Ernakulam. The suit has been filed for declaration that defendants 1 to 3 have no right, title or authority to take possession of the bus bearing Registration No. K.E.E. 4998 from the plaintiff and for permanent injunction restraining them from taking possession of the bus from him.

2. From the 4th defendant, plaintiff purchased the bus over which the former had entered into hire purchase agreement with the first defendant. According to the plaintiff, the principal amount due from the 4th defendant to the 1st defendant was Rs. 1,84,982.40. Plaintiff purchased the bus on 3-5-1983 undertaking to pay the amount due to the 1st defendant. It is the case of the plaintiff that Rs. 2,30,784/- has been paid towards the loan and the balance amount due from him to the 1st defendant is only Rs. 64,630/-.

Contention of the plaintiff is that the transaction between defendants 1 and 4 though described as hire purchase agreement is only a loan transaction, that defendants 1 to 3 have no right to seize the bus from his possession and that at

any rate they should not be allowed to take law into their own hands and forcibly take possession of the bus even if amount is due from him. The learned II Addl. Munsiff did not grant injunction. Plaintiff filed C.M.A. 99/1985 and the I Additional District Judge, Ernakulam after hearing both sides refused to interfere with the order of the learned Munsiff.

3. Main contention of the revision petitioner (plaintiff) is that even if the transaction between defendants 1 and 4 is construed as hire purchase agreement, 1st defendant cannot seize the vehicle as the forfeiture clause in Ext. B1 agreement is penal in nature and u/s 74 of the Contract Act reasonable compensation as determined by the Court alone can be allowed. Counsel for the 1st defendant contended that the agreement is between 1st defendant and 4th defendant and therefore plaintiff has no locus standi to challenge any terms in it. Another contention is that plaintiff alone is not competent to file the suit. It is pointed out that Ext. A2 agreement shows that plaintiff and another person have purchased the bus from the 4th defendant and as that person does not figure as a plaintiff the suit is not maintainable.

4. In Ext. A2 agreement executed between plaintiff and 4th defendant it is mentioned that the bus is subject to hire purchase agreement, that Rs. 2,07,416/- remains to be paid to the 1st defendant and that the plaintiff and the co-executant should pay the same to the 1st defendant in monthly instalments. It is further recited that when the hire purchase amount and other liabilities mentioned in Ext. A2 are fully discharged the registration certificate of the bus would be transferred by the 4th defendant to the plaintiff and the other contracting party. As plaintiff himself has admitted in Ext. A2 that the transaction entered into between the 1st defendant and the 4th defendant is hire purchase agreement, he cannot now contend that the document evidences only a loan transaction.

Counsel contended that assuming that Ext. B1 evidences hire purchase agreement even then 1st defendant cannot seize the vehicle as the plaintiff and 4th defendant have paid lion's share of the amount as per Ext. B1 and only a small portion of the amount remains due to the 1st defendant. Counsel contends that the recitals in Ext. B1 entitling the 1st defendant to seize the vehicle is totally opposed to the reasonable compensation that could be awarded by the court and as the above clause is highly penal it cannot be enforced and only reasonable compensation within the meaning of Section 74 of the Contract Act could be awarded.

5. There cannot be any doubt that Ext. B1 is a hire purchase agreement. Clause V of Ext. B1 provides that the hirer (4th defendant) shall duly perform and observe all the terms and conditions of the agreement and shall pay to the owner (1st defendant) monthly hire charges. It also mentions that when the contract of hiring shall come to an end, vehicle shall, at the option of the hirer become his absolute property and until such payment it shall remain the property of the owners. It also states that the hirer shall have the option to get the vehicle at

any time during the currency of the agreement by paying in lump sum the balance of the hire charges due under the agreement.

Clause XI(6) prohibits the hirer from selling, mortgaging, pledging or hypothecating the vehicle. As per the above clause, the hirer also agreed not to remove the vehicle out of State of Kerala without the written permission of the owner. Under Clause XI(8) the hirer has to declare to the Registering Authority that the vehicle in his possession is subject to the hire purchase agreement and this will not in any way affect or prejudice the owners.

6. The true effect of a transaction can be determined from the terms of the agreement considered in the light of the surrounding circumstances. Recitals in Ext. B1 would show that it is a hire purchase agreement. It is difficult to accept the contention of the revision petitioner that Ext. B1 evidences only a loan transaction. Such a contention revision petitioner cannot make especially in view of the averments in the plaint.

7. The crucial point to be decided is as to whether clause XV of Ext. B1 empowering the 1st defendant to seize the vehicle is a stipulation by way of penalty and whether only reasonable compensation as provided u/s 74 of the Contract Act could alone be granted by the Court. To decide the above point Ext. B1 agreement has to be considered as a whole. The intention of the parties as can be gathered from Ext. B1 is very relevant in that context. Ext. B1 begins with clause I whereby the 1st defendant agreed to give on hire and the 4th defendant agreed to take on hire the vehicle. Clause II provides that on execution of this agreement hirer shall pay to the owners at Bombay a sum of Re. 1/- in consideration of the option to purchase given to the hirer under Clause V.

Clause V provides that the hirer shall duly perform and observe all the terms and conditions of the agreement. It also states that when the entire amount due to the owners is paid the contract of hire shall come to an end and the vehicle shall at the option of the hirer become his absolute property. The above clause further provides that until the payments have been made the vehicle remains the property of the owners. In view of the various recitals in Ext. B1 it is not possible to hold that it evidences a loan transaction whereby the vehicle is given as a security for the loan. Ext. B1 in unmistakable terms shows that the 1st defendant continues to be the owner of the vehicle and the 4th defendant has to pay the monthly instalments and after the payment of the last instalment he has to make the option.

As 4th defendant has agreed to the conditions set out in Ext. B1 he is bound to perform it punctiliously. His rights are dependent upon the performance of the conditions in Ext. B1 and his responsibility cannot at all be minimised or negated by saying that he sold the vehicle to the plaintiff. As amount due to the 1st defendant has not been fully paid 4th defendant or the plaintiff claiming through him cannot claim a superior right. Clause XI(6) of Ext. B1 prohibits the 4th defendant from selling or mortgaging the vehicle to anyone. 4th defendant's

action in handing over the possession of the vehicle to the plaintiff cannot obviously bind the first defendant.

8. The decision referred to by the plaintiffs counsel, Fateh Chand Vs. Balkishan Das, has no application to the facts of the case in hand as that case relates to agreement of sale of immovable properties. Another decision relied on by the plaintiffs counsel, Sundaram Finance Ltd. Vs. State of Kerala and Another, is also not helpful to him. This is a case where a customer desirous of purchasing a motor vehicle, but unable to pay the price to the dealer, agrees to purchase the vehicle, and makes part payment of the price to the dealer and then approaches the financier for a loan to be advanced to him.

The facts of the above case would show that the customer had on the date of the application for loan sold to the financier the motor vehicle and entered into an agreement called hire purchase agreement under which the financier agreed to let out to the customer and the customer agreed to take on hire the motor vehicle for a specified term subject to the conditions mentioned in the agreement. Such is not the case as we find from various recitals in Ext. B1. In Sundaram Finance Ltd. Vs. State of Kerala and Another, it has been held as follows ;

"But a hire purchase agreement is a more Complex transaction. The owner under the hire purchase agreement enters into a transaction of hiring out goods on the terms and conditions set out in the agreement, and the option to purchase exercisable by the customer on payment of all the instalments of hire arises when the instalments are paid and not before. In such a hire purchase agreement there is no agreement to buy goods; the hirer being under no legal obligation to buy, has an option either to return the goods or to become its owner by payment in full of the stipulated hire and the price for exercising the option. This class of hire purchase agreement must be distinguished from transaction in which the customer is the owner of the goods and with a view to finance his purchase he enters into an arrangement which is in the form of a hire purchase agreement with the financier, but in substance evidences a loan transaction, subject to hiring agreement under which the lender is given the license to seize the goods."

From the recitals in Ext. B1 it can be seen that the first defendant is the owner of the vehicle and the 4th defendant only the hirer. Ext. B1 agreement cannot be classed in the category of agreements where the customer is the owner of the goods and he with a view to get financial assistance entered into an arrangement with a financier.

9. Regarding the question whether in a hire purchase agreement it would be open to the owner to seize the vehicle in case of default of payments by the hirer. Patna High Court in Enayatullah Khan Vs. Jalan Trading Co. and Another, held that there is no scope either of the operation of the principle enunciated in Section 74 of the Contract Act or any principle of equity in order to give any relief

to the hirer. Section 74 of the Contract Act stipulates for compensation when a contract has been broken by one of the contracting parties. As the recitals in Ext. B1 show that 1st defendant continues to be the owner of the vehicle it is difficult to apply Section 74 of the Contract Act and hold that the 1st defendant can only claim reasonable compensation,

10. In AIR 1955 Nag 269 (Nathulal v. Balakrishnan) it has been held in para 11 as follows:

"It is thus clear that the transaction between the parties was at the inception one of hire purchase with option to purchase at the end. The property in the truck "did not pass to the plaintiffs merely on the execution of the agreement. The provision enabling the owner to resume possession on default in payment is enforceable, if the agreement is a bona fide hire purchase agreement, and equity will not release the hirer from the effect of his default, even if nearly all the instalments have been paid and the arrears are tendered before action brought, the provision not being in nature of a penalty".

As the plaintiff has no case that he has paid up the entire amount due to the 1st defendant in order to entitle him to exercise the option of purchase he cannot thwart the rightful claim of the 1st defendant. The contention of the plaintiff that registration certificate stood in the name of the 4th defendant and that he purchased the vehicle from the 4th defendant cannot obviously come to his rescue as the 1st defendant is the owner of the vehicle as evidenced by Ext. B1 agreement. Whatever rights 4th defendant had obtained are only subject to the hire purchase agreement and till the last pie is paid to the 1st defendant and the option is exercised by the hirer to purchase the vehicle after having paid the entire amount due to the 1st defendant, 4th defendant cannot legally retain possession of the vehicle as against the claims of the 1st defendant and as plaintiff has purchased the vehicle knowing full well about the hire purchase agreement entered into between the 1st defendant and the 4th defendant he (plaintiff) is certainly bound by the terms and conditions in Ext. B1 and at any rate he cannot question it and contend that only reasonable compensation alone could be granted in favour, of the first defendant

11. The learned District Judge has rightly held that the plaintiff who is claiming rights under the 4th defendant has no right independent of Ext. B1 as against the 1st defendant. Plaintiff who claims to have purchased the bus from the 4th defendant who is a hirer under Ext B1 agreement cannot obtain better rights than the 4th defendant,

I do not find sufficient reasons to interfere with the order of the Court below. C.R.P. is dismissed. No order as to costs.