

(2022) 10 KL CK 0222
In the High Court Of Kerala
Case No : Writ Petition (C) NO. 7653 Of 2022

Indusind Bank Limited

APPELLANT

Vs

Registering Authority (Rto) Regional Transport Office,
Malappuram 676101.

RESPONDENT

Date of Decision : 27-10-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 51(5)
Central Motor Vehicles Rules, 1989 — Rule 61(2)

Citation : (2022) 10 KL CK 0222

Hon'ble Judges : P.V.Kunhikrishnan, J

Bench : Single Bench

Advocate : G.Hariharan, Praveen.H., K.S.Smitha, V.R.Sanjeev Kumar, Anjaly T.A,
Joseph Rony Jose

Final Decision : Disposed Of

Judgement

P.V.Kunhikrishnan, J

1. The above writ petition is filed with following prayers:

"(i) Issue a writ of mandamus or any other appropriate writ, order or commanding the 1st respondent or the 4th respondent to lift the blacklisting of the vehicle mentioned in Exhibit.P4 taking note of the issuance of Exhibit.P1 order issued by a competent court.

(ii) Issue a writ of mandamus or any other appropriate writ, order or commanding the 1st respondent to consider and take decision on Exhibit.P2 application for the issuance of fresh Registration Certificate relating to vehicle No. KL 13AD-9942 in the name of the petitioner Bank, without any further delay." (sic)

2. The main prayer in this writ petition is for a direction to the 1st respondent or the 4th respondent to lift the blacklisting of the vehicle mentioned in Ext.P4 taking note of the issuance of Ext.P1 order issued by a competent Court and to

consider and take decision on Ext.P2 application for the issuance of fresh registration certificate relating to vehicle No. KL-13/AD-9942.

3. The petitioner is a Company registered under the Companies Act and is governed by the Banking Regulations Act of 1949. The 3rd respondent herein has availed a loan of Rs.5,05,645/- for the purchase of a brand new 2019 model Hyundai Aspa passenger car on the strength of a loan agreement executed on 21.02.2019. The 3rd respondent failed to repay the loan installments. SARFAESI proceedings were initiated against the 3rd respondent and his mother for getting possession of the vehicle and ultimately, as per Ext.P1 order issued by the competent court the vehicle in question was taken possession by the Advocate Commissioner and the same has been garaged at Royal Auto parking Morayur, Malappuram District for safe custody. Because of the failure on the part of the 3rd respondent to clear off the loan arrears the petitioner had made an application before the 1st respondent on 04.12.2021 under Rule 61(2) of the Central Motor Vehicle Rule for the issuance of Fresh RC relating to vehicle No.KL-13AD-9942. However, according to the petitioner, the 1st respondent has refused to consider Ext.P2 application purportedly on account of the reason of black listing of the vehicle in question. It is also stated by the petitioner that a perusal of Exhibit.P3 RC status would reveal that the commercial Court, Manjeri has passed an order in MCA.No.1/2022 in I.A.No.1/2022 dated 16.02.2022 and citing the same, objection was raised by the registered owner. It is submitted that the order passed by the Chief Judicial Magistrate Court as evidenced by Ext.P1 has been validly made invoking the provisions of SARFAESI Act which cannot be interdicted except by the order of this Court or by the Debt Recovery Tribunal on the strength of valid cases filed by the aggrieved party. It is submitted that the issuance of Ext.P4 order does not restrain the 1st and 2nd respondents from considering the application for issuance of fresh RC which is filed invoking the provisions of Section 51(5) of the Motor Vehicles Act which is a provision specifically enacted for protecting the right of the financiers. When there is no action from respondents 1 and 2, this writ petition is filed.

4. Heard the counsel for the petitioner and the Government Pleader.

5. When this writ petition came up for consideration on 17.03.2022, this Court issued notice to respondents 3 and 4. Notice to the 3rd respondent is returned with an endorsement "unclaimed". The 4th respondent accepted the notice. In such circumstances, this Court allowed the petitioner to take out notice to the 3rd respondent by special messenger. The messenger returned the notice unserved stating that the mother of the 3rd respondent informed that the 3rd respondent is out of India. The mother of the 3rd respondent and other relatives refused to accept notice. Hence, even now service to the 3rd respondent is not complete. I think no further steps need be taken to service notice to the 3rd respondent, in the manner in which this writ petition is going to be disposed of.

6. The petitioner filed Ext.P2 application for transfer of ownership based on Ext.P1 order obtained from the competent court. When such an application is

received, the 1st respondent has to consider the same and pass appropriate orders in accordance to law. Therefore, there can be a direction to the 1st respondent to consider Ext.P2 and pass appropriate orders. It is also made clear that, if any transfer is made, that will be subject to the final decision of the proceedings pending before the Commercial Court, Manjeri, as evident by Ext.P4 order.

Therefore, this writ petition is disposed of in the following manner:

1. There will be a direction to the 1st respondent to consider and pass appropriate orders in Ext.P2, as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment.
2. If any transfer of vehicle is ordered based on Ext.P2, the same will be subject to the final decision in Misc.Civil Appeal (Arbitration) No.1 of 2022 pending before the Commercial Court, Manjeri.