**(2018) 07 PAT CK 0068**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 16764 Of 2009

Kant Singh APPELLANT

Vs

Regional Manager, Canara Bank And Ors RESPONDENT

**Date of Decision :** 02-07-2018

**Acts Referred:**

**Citation :** (2018) 3 PLJR 638

**Hon'ble Judges :** Anjana Mishra, J

**Bench :** Single Bench

**Advocate :** Dineshwar Mishra, Surendra Mishra, Sheela Sharma

**Final Decision :** Allowed

## Judgement

1. The present writ application has been filed by the petitioner seeking return of his seized tractor as well as other parts and accessories of the tractor,

which were illegally taken back by the respondent-Canara Bank, Ara Branch. The petitioner further seeks a direction to the respondent-Bank to

restrain them from charging interest for the period after the tractor was so seized.

2. The facts giving rise to the present writ application, briefly stated, are that the petitioner had approached the Ara Branch of the Canara Bank for

availing the loan facility for purchase of a tractor and after due execution of the loan documents, which he was called upon to sign, a loan of

Rs.3,00,000/- (Three lacs) was extended to the petitioner on the terms and conditions as mentioned in the loan documents executed between the

parties.

3. Under the terms of the loan documents/agreement executed by the petitioner, the purchased vehicle was to be hypothecated with the Bank and

 

apart from other terms and conditions detailed therein, it was also agreed upon that the respondent-Bank, acting through its Officers/Agents shall have

the liberty to take possession of the hypothecated vehicle and sell the same in order to recover the outstanding loan amount.

4. It was submitted by the learned counsel for the petitioner that the aforesaid loan, bearing Loan Account No.1798, was sanctioned to the petitioner

after he deposited a margin money of Rs.81,000/- in his account, bearing Account No.16456. Thereafter, the petitioner was given the tractor but

without any paper and accessories and, as such, shorn of such accessories and agricultural implements, the tractor had no use in the field of

agriculture. Even the tractor which was handed over to the petitioner did not have any papers. Thus, the Sonalika Tractor was handed over to him by

the Tractor Agency and at the time of handing over, certain signatures were obtained from the petitioner by the Tractor Agency on blank sheets of

papers on the assurance that the said papers would be used for registration of the tractor and preparing the insurance papers, which would be handed

over to him in the near future. It was submitted by the petitioner that in the absence of proper documents and/or any accessories, the Sonalika Tractor

continued to stand at the door of the petitioner and the representation made by the petitioner for release of the documents of the tractor and its

accessories vide his letter dated 08.06.2007 (Annexure 2) met with no response from Respondent No.2-Branch Manager of the Canara Bank.

5. On 02.02.2008, Respondent No.2-Branch Manager of the Bank and Respondent No.3-Tractor Dealer came to the petitionerâ??s house along with

two other persons and seized the Tractor, bearing Engine No.3092F 52C 68290, and issued a seizure certificate to the petitioner, stating that since the

borrower had failed to repay the loan by way of instalments as per agreed terms and conditions, the Bank was taking action in seizing and taking

possession of the said tractor in the presence of the witnesses (Annexure 3). The petitioner was also directed to meet the Branch Manager.

Subsequently, when the petitioner contacted the Branch Manager, he was directed to deposit Rs.22,000/- and was assured that on such deposits, the

tractor would be released in his favour.

6. In pursuance of the said instructions issued by the Branch Manager, the petitioner deposited Rs.22,000/- in the Bank. The Branch Manager directed

 

the petitioner to meet the seizing agent, who, however, declined to release the same. Despite all efforts, when the tractor was not released or handed

over back to the petitioner, the petitioner was constrained to file a complaint case, which was registered as Ara Muffasil P.S. Case No.221/08. In this

case, the Recovery Agent also took anticipatory bail, vide order dated 15.01.2009. In the said order of anticipatory bail, the learned counsel for the

petitioner submitted that the Recovery Agent, namely, one Satyendra Singh, had admitted that he had seized the vehicle on the instructions of the

Branch Manager of the Canara Bank due to non-payment of the instalments of loan. Learned counsel for the petitioner has further stated that the

petitioner was also informed by the Recovery Agent that the Tractor in question had been stolen and the Recovery Agent filed a complaint case of

theft of the tractor but the Bank Manager, which was duly informed of the same by the Recovery Agent regarding the theft, did not file any case of

theft nor did he take any action as was required to be initiated by them. On the contrary, the respondent-Bank still continued to saddle the petitioner

with further interest and went on sending further reminders to deposit the instalments, which itself is indicative of the mala fide action of the Bank

authority. He thus prays that the petitioner cannot be saddled with any further interest and the tractor in question should be returned with all

accessories and parts, as were seized by the Recovery Agent, as it has already been held by this Court in various judgments that appointing of

Recovery Agents by the Bank for recovery of the loan is bad and contrary to law.

7. In response to the averments made in the writ application, the respondent-Canara Bank has appeared and filed a counter affidavit. The contention

of the respondent is that the petitioner was sanctioned a loan amount of Rs.3,00,000/- on the terms and conditions as mentioned in the loan documents

and the purchased vehicle was also hypothecated with the Bank. Apart from other terms and conditions as fixed in the loan agreement, it was also

agreed upon that in the event of default, the respondent- Bank, acting through its Officers/Agents, shall have the liberty to take possession of the

hypothecated vehicle and sell the same in order to appropriate the sale proceeds and recover the outstanding loan amount. Thus, after issuing the legal

notice dated 15.03.2007 to the petitioner to pay the instalments, the hypothecated vehicle was repossessed by Respondent No.4, its Recovery Agent, since the petitioner had failed to respond to the said legal notice.

8. It was further submitted that Clause 19 of the Loan Agreement entitles the Bank to sell and hypothecate the vehicle and recover the amount and

adjust the same in the loan account. However, it was contended by the respondent-Bank that after the seizure of the vehicle by Respondent No.4, the

vehicle in question was in his custody. It was further submitted that when the vehicle in question was in possession of Respondent No.4, it was stolen,

for which he had filed a case before the court of the Chief Judicial Magistrate, Bhojpur at Ara, bearing Complaint Case No.419 of 2008. The Bank

had also given an intimation to the United India Insurance Company regarding theft of the vehicle in question while it was in the custody of one

Satyendra Singh and thereafter on 08.08.2008 had also reminded the Superintendent of Police, Ara regarding theft of the tractor and requested him to

take appropriate steps in the matter so that the insurance papers could be processed. It is further stated that the Insurance Company, however,

repudiated the insurance claim of the Bank on the basis of the police report and, therefore, the Bank in exercise of its contractual rights was taking

appropriate action against the petitioner for recovery of the loan.

9. It was submitted that so far as the contract of the loan between the petitioner and the respondent-Bank is concerned, the Bank has nothing to do

with the supply of accessories and so far as the relief as claimed by the petitioner regarding non-charging of interest on the basis of non-supply of

such accessories is concerned, it is wholly untenable, as supply of accessories has nothing to do with the respondent-Bank and is independent of the

contract between the petitioner and the Dealer, which relates to the purchase of the tractor. It was contended that in any event, the aforesaid

allegation of non-supply of accessories by a private dealer was an issue which could not be addressed in a writ proceeding and if the petitioner had

any such grievance, it was open to him to move for redressal of his grievances before an appropriate Consumer Forum.

10. Thus, it was contended that the Bank was fully entitled to recover the loan from the petitioner, which amounted to Rs.11,41,516/- as on

31.03.2017. Thus, the writ application was devoid of any merit and is fit to be dismissed. In support of his contention, learned counsel for the Bank has

cited a judgment of the Apex Court in the case of Anup Sarmah v. Bhola Nath

 

Sharma, reported in (2013) 1 SCC 400. It has been reiterated that in

an agreement of hire purchase, the purchaser remains merely a trustee/bailee on behalf of financier/financial institution and ownership remain with

latter. Thus, in case vehicle is seized by financier, no criminal action can be taken against him as he is repossessing goods owned by him. Therefore,

there was no wrong committed by the Bank and it is fully entitled to recover the vehicle in the case of default and amounts due from the petitioner can

well be recovered by them. Thus, the writ application is devoid of any merit and is fit to be dismissed.

11. I have heard learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent- Bank. It appears that the petitioner

had, indeed, taken a loan for purchase of a tractor for agricultural purposes and the Bank had to supply the same through the Tractor Agency along

with accessories. The contention of the petitioner that he was not supplied the papers regarding the purchase of the vehicle by the Agency has not

been disputed by the Bank. The legal notice, which was said to have been sent to the petitioner, vide Annexure B, also does not indicate as to whether

the legal notice was received by the petitioner as there is nothing on the record to prove the same. The legal notice is expected to have been sent by

registered post, but neither has any registration slip been appended with Annexure B nor is there anything to show that the same was received by the

petitioner, indicating the demand of the Bank. Moreover, this notice also indicates that the petitioner had obtained the loan for the tractor as well as

accessories but, admittedly, the accessories were never given to the petitioner.

12. Under such circumstances, this Court cannot but presume that the Bank authorities had, in fact, been operating in a wholly irregular manner and

their action cannot be sustained in any Court of Law. Thus, this Court is of the opinion that the action which was taken against the petitioner without

any proper notice is wholly in violation of the settled principles of law and a public body cannot be permitted to function in an arbitrary manner at its

own whims and fancies.

13. Apart from the above, this Court also takes serious note of the manner in which the Bank authorities took resort to engaging Recovery Agents to

seize the vehicle in question from the premises of the petitioner. It is well settled law, as has been decided in a catena of cases by this Court as well as by the Apex Court, that financier has a right to take possession in terms of the contract but the use of force, by Banks, of engaging

thugs/hooligans/gangsters on contract in the guise of Recovery Agents for such recovery by the Banks has been strongly deprecated. The manner in

which the Bank authorities have seized the tractor of the petitioner is clearly indicative of the fact that they had adopted irregular practices and had

arbitrarily taken over possession, more so because the vehicle in question was not immediately handed over to the Bank by the Recovery Agent but

was retained by itself for a period of one month and thereafter, declared to have been stolen, is enough to raise the suspicion of this Court with respect

to the modus of operation by the Bank and its Recovery Agents. This indicates that there has been clear harassment to the petitioner.

14. What is more appalling to notice is that while the respondent-Bank had acted in this irregular manner, the Bank has tried to seek a claim from the

insurance authority but on its own part has not informed the police nor has taken any step against the Recovery Agent from whose possession the

vehicle was allegedly stolen. Over and above, it has also proceeded to add interest on the loan which was granted to the petitioner and is also now

seeking to recover a sum of over Rs.11,00,000/- from the petitioner. Such action by the Bank is wholly unreasonable, arbitrary and unconscionable and

cannot be sustained in any Court of Law. In this context, learned counsel for the petitioner has referred to a decision of the Apex Court in the case of

Citicorp Maruti Finance Ltd. Vs. S. Vijayalaxmi, reported in (2012) 1 SCC 1 and also in the case of Pinki Devi Vs. The State of Bihar & Ors,

reported in 2008(2) PLJR 151, wherein it has been clearly held that the hirer is not entitled to take possession back of the mortgaged vehicle by using

force for default of payment and in the said judgment, it has been reiterated that the principles laid down in the case of ICICI Bank Ltd. Vs. Prakash

Kaur, reported in (2007) 2 SCC 711, and the guidelines by the Reserve Bank of India have to be followed for recovery of loans and possession of the

vehicles. Paragraph 27 of the judgment reported in (2012) 1 SCC 1 (supra) is clear on the issue, which is reproduced herein below :

â??27. Till such time as the ownership is not transferred to the purchaser, the hirer normally continues to be the owner of the goods, but that does not

entitle him on the strength of the agreement to take back possession of the vehicle by use of force. The guidelines which had been laid down by

 

Reserve Bank of India as well as the appellant Bank itself, in fact, support and make a virtue of such conduct. If any action is taken for recovery in

violation of such guidelines or the principles as laid down by this Court, such an action cannot but be struck down.â??

15. In the instant case, this Court, while striking down the impugned action of the respondent-Bank in recovering the vehicle, is also shocked to note

that not only the vehicle was illegally removed from the premises of the petitioner but the same was also subjected to theft while it was in possession

of the Recovery Agent. Such action is clearly indicative of the collusive action of the Bank as no steps were taken by it to file any case against the

Recovery Agent. Rather it merely chose to take claim of the lost/stolen vehicle from the Insurance Agency and it was rightly declined by them in

view of there being no police report to the said effect.

16. Thus, this Court finds and holds that on account of such action by the respondent-Bank, the petitioner cannot be saddled with the interest and be

made accountable for its payment. It accordingly directs that the Bank is restrained from taking any action against the petitioner for recovery of the

Bank loan and the interest portion as has been saddled on him by the Bank.

17. So far as the return of the vehicle is concerned, the Bank shall take necessary steps for return of the vehicle from the Recovery Agent and take

appropriate steps to return the same to the petitioner in proper condition and/or adequately compensate the petitioner to the extent of the investments

made by him towards purchase of the tractor.

18. The writ application is allowed to the said extent. No costs.