

(2016) 07 AHC CK 0118
In the Allahabad High Court

Case No : Civil Misc. Writ Petition Misc. Single No. 15837 of 2016

Lal Krishna Verma

APPELLANT

Vs

Cholamandalam Investment & Finance Co. Ltd.

RESPONDENT

Date of Decision : 13-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 7 ADJ 383

Hon'ble Judges : Dr. Devendra Kumar Arora, J.

Bench : Single Bench

Advocate : Vikas Verma, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

Dr. Devendra Kumar Arora, J.—Petitioner, Lal Krishna Verma, had taken a loan amounting to Rs. 3,50,000/- from Cholamandalam Investment and Finance Company Limited, Deokali Branch, District Faizabad for agricultural purposes i.e. for purchasing a Tractor

2. The aforesaid amount was to be paid in instalment as agreed upon between the parties but the petitioner defaulted in making regular payment as such a demand notice contained in Annexure-1 to the writ petition has been issued by the respondent-company. It is said that the possession of the Tractor has also been taken by the agent/representative of the Company, causing serious prejudice to the petitioner, who had already deposited Rs. 2,00,000/- towards loan amount.

3. In the backdrop of the aforesaid facts, this writ petition has been filed for quashing the aforesaid demand notice and for a direction to release the tractor.

4. In contrast, learned Standing Counsel submitted that the respondent-financial institution being a non-statutory private company, no writ petition for a mandamus or an order in the nature of mandamus could lie against the Company.

5. I have considered the submission of the learned Counsel for the petitioner and perused the record.

6. The allegations made in the writ petition are against the Cholamandalam Investment and Finance Company Limited, Deokali Branch, District Faizabad, which is a private body and its agent, who had repossessed the vehicle. However, it transpires from the record that when the recovery agent had repossessed the vehicle, the petitioner has moved an application under Section 156(3) of the Code of Criminal Procedure.

7. It may be observed that the respondent-company being a non-statutory body and one incorporated under the Companies Act, there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus.

8. The jurisdiction of High Court to issue writ under Article 226 of the Constitution of India has come up for consideration on several occasions before the Apex Court. The Apex Court in the case of Federal Bank Ltd. v. Sagar Thomas and Ors. (2003) 10 SCC 733 again considered the scope of issuance of Writ under Article 226 of the Constitution against a private Bank and held in paragraphs 27 and 33 as under:-

"27. Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment say Air (Prevention and Control of Pollution) Act, 1981 or Water (Prevention and Control of Pollution) Act, 1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance of those provisions. For instance, if a private employer dispense with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and have issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance or violation of any statutory provision by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to.

33. For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find

such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. Respondent's service with the bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed."

9. The aforesaid principle has been reiterated by a Division Bench of this Court in Dharmendra Kumar Yadav v. Manager, Commercial Auto Sales (P); Writ Petition No. 66283 of 2010 decided on 6.12.2010.

10. In view of the aforesaid legal position, the writ petition being not maintainable is hereby dismissed. However, it would be open to the petitioner to take such criminal action or any other action against the respondent as may be permissible under law.

11. With the aforesaid observations, the writ petition is dismissed.