
(2022) 05 SHI CK 0093
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 2 Of 2022

Miss Tara Vati

APPELLANT

Vs

UCO Bank

RESPONDENT

Date of Decision : 30-05-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 115, Order 39 Rule 1, Order 39 Rule 2
Specific Relief Act, 1963 — Section 41, 41(b), 41(h)

Citation : (2022) 05 SHI CK 0093

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Deepak Bhasin, Jitender Pal Ranote

Final Decision : Dismissed

Judgement

Sandeep Sharma, J

1. Instant civil revision petition filed under Section 115 of the CPC, lays challenge to order dated 31.12.2021, passed by the learned Additional District Judge-1, Shimla, HP, in CMA No. 14 of 2021, reversing/setting aside order dated 13.12.2019, passed by the learned Civil Judge (Jr. Div.), Court No.4, Shimla, District Shimla, HP in CMA No. 1414 of 2019 in CS No. 131 of 2019, whereby the court below while allowing application under Order 39 Rules 1 and 2 CPC, having been filed by the plaintiff-petitioner, restrained the defendant-respondent-bank from seizing/taking the possession of the vehicle bearing registration No. HP-63A-7036 from the plaintiff-petitioner, who is in lawful possession of the same till the case is decided on merits.

2. Precisely, the facts of the case as emerge from the record are that the plaintiff-petitioner filed suit for Permanent Perpetual Prohibitory Injunction, restraining the defendant from seizing/dispossessing/taking possession of the vehicle bearing registration No. HP-63-A-7036 from her and from anyone in lawful possession with a decree for mandatory injunction directing the defendant to

close the vehicle loan account No.09810610008065 and thereafter, issue NOC for removal of the hypothecation entry in the RC.

3. Plaintiff averred in the suit that vide letter dated 20.8.2018, vehicle loan to the tune of Rs. 3,38,000/- was sanctioned in her favour after payment of margin money. As per agreed terms, plaintiff was required to pay EMI @ Rs. 5387/- pm, which included interest and other necessary expenses. Plaintiff kept on paying the necessary remittances regularly to the defendant as per the schedule of the installments settled at the time of grant of loan and yet, outstanding amount was being shown in the account of the plaintiff and as such, she made a demand for supply of detailed settlement of accounts. Plaintiff requested the defendant to close the loan account and issue NOC so that entry with regard to hypothecation could be removed. However, defendant instead of supplying NOC issued demand notice dated 16.9.2019, showing the dues. When plaintiff enquired from the defendant-bank as to why the notice has been sent to her when all the outstanding dues have been cleared by making substantial deposit of Rs. 5,00,000/- lac on 11.6.2019 in her saving account for adjustment in the loan amount as agreed upon and suggested by the Chief Manager Smt. Bima Dutta, they had no answer, but instead, they threatened that either the plaintiff deposit the demanded amount or they may take away the vehicle. Alongwith the aforesaid suit, plaintiff also filed application under Order 39 Rules 1 and 2 CPC, praying therein to restrain the defendant Bank from taking forcible possession of the vehicle in question during the pendency of the case. Aforesaid application for interim injunction came to be resisted by the defendant-Bank by filing reply, wherein it specifically denied that plaintiff has paid the entire loan amount to the defendant. Defendant claimed that as per the terms of the loan sanction letter, loan was required to be repaid to the defendant bank in 84 equal monthly installments for Rs. 5387 alongwith interest @ 8.70%pa with monthly rest or such other rates as may be revised by the defendant Bank from time to time. Defendant claimed that plaintiff in consideration of sanctioning of the loan of Rs. 3,38,000/-accepted the terms and conditions of the loan agreement dated 20.8.2018, in favour of the defendant-bank. Smt. Geeta Devi daughter of Shi Deena Nath i.e. sister of the plaintiff stood as guarantor in favour of the plaintiff and executed a deed of continuing guarantee dated 20.8.2018 in favour of the defendant Bank. Defendant claimed that vehicle is purchased by the plaintiff with the financial assistance of the defendant bank and vehicle is hypothecated to the defendant bank and entry to that effect stands recorded in the registration certificate of the car. While denying that plaintiff kept on paying the amount as per the schedule of the installments, defendant claimed that immediately after release of the vehicle, she started delaying the payment on the one pretext or the other and thereby violated the terms and conditions of the loan sanction. Defendant further claimed that despite several requests and reminders to the plaintiff to repay the loan, she did not repay the same and defaulted in repayment schedule as a consequence of which, account was declared/classified as NPA on 31.1.2019. Defendant also averred that after account being declared/

classified as NPA, defendant again requested the plaintiff to repay the loan amount, but of no avail. Subsequently, on 11.6.2019, plaintiff deposited a sum of Rs. 38,000/- in her loan account, as a consequence of which, account again became regular. However, thereafter, plaintiff again defaulted in repayment schedule and was again classified as NPA on 30.4.2019. Defendants specifically stated in the reply that plaintiff apart from vehicle loan had raised two house loans for Rs. 40.00 lac and Rs. 35 .00 lac, respectively from the defendant-Bank, which were already classified as NPA and recovery proceedings against the plaintiff and her sister are pending adjudication before the DRT Chandigarh vide OA No. 1553 of 2019 for a sum of Rs. 76,94,326/-. Defendant further averred in the reply that on the request of the plaintiff, sum of Rs. 5,00,000/- was adjusted against all the NPA accounts to make arrangement for regularization of the loan accounts. However, after having made the aforesaid payment, plaintiff again defaulted in making the payment as per the loan repayment schedule. In the aforesaid background, defendant bank prayed for dismissal of the application.

4. Learned Civil Judge, Court No.4, Shimla, District Shimla, H.P., allowed the application filed under Order 39 Rules 1 and 2 CPC and restrained the defendant Bank from seizing/taking possession of the vehicle in question from the plaintiff till the case is not decided on merits.

5. Being aggrieved and dissatisfied with the aforesaid order passed by the learned Civil Judge, defendant bank filed an appeal in the court of learned Additional District Judge Shimla-1, HP, which came to be allowed vide judgment dated 31.12.2021. Learned District Judge while allowing the appeal having been filed by the defendant-Bank set-aside the order granting interim injunction dated 31.12.2019, passed by the learned Civil Judge, Court No. 4, Shimla. Being aggrieved and dissatisfied with the aforesaid order passed by the learned Additional District Judge, Shimla, plaintiff-petitioner has approached this Court in the instant proceedings, praying therein to set-aside the aforesaid judgment dated 31.12.2021, passed by the learned Additional District and Sessions Judge, Shimla and restore the order dated 13.12.2019, passed by the learned Civil Judge, Court No.2, allowing interim application under Order 39 Rules 1 and 2, passed by the court below.

6. I have heard the learned counsel for the parties and gone through the records.

7. Having heard learned counsel for the parties as well as perused material available on record vis-à-vis reasoning assigned in the judgment dated 31.12.2021, passed by the learned Additional District Judge, Shimla, this Court finds no merit in the present petition and as such, no interference is called for. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Deepak Bhasin, learned counsel appearing for the plaintiff-petitioner is that since plaintiff had deposited sum of Rs. 5.00 lac in saving bank account with the understanding that same would be adjusted against her vehicle loan account, there was no occasion, if any, for the defendant-respondent-bank to adjust the aforesaid amount deposited by the plaintiff in the

house loans. However, after having carefully perused the entire pleadings as well as other material available on record, I do not see any merit in the aforesaid submission made by the learned counsel for the plaintiff because it is not in dispute that plaintiff apart from raising vehicle loan also raised two home loans to the tune of Rs. 40,00,000/- and Rs. 35,00,000/-, respectively. It is also not in dispute that despite several requests, plaintiff failed to make her vehicle loan account regular and as such, it came to be classified as NPA on 31.12.2019. Since plaintiff also failed to make repayment of the house loans taken by her, her both the house loans were also declared/ classified as NPA. Once the vehicle loan account as well as other two house loan accounts were classified/declared as NPA by the defendant Bank, plaintiff with a view to regularize her loan accounts as detailed herein above, deposited sum of Rs. 5.00 lac, in her saving account. Though as per the plaintiff, aforesaid amount of Rs. 5.00 lac was agreed to be adjusted towards the vehicle loan, but no evidence worth credence ever came to be led on record by the plaintiff to substantiate her aforesaid claim. Reply filed by the defendant bank clearly reveals that sum of Rs. 5.00 lac was deposited by the plaintiff with a view to upgrade her NPA account and aforesaid sum was adjusted in three NPA accounts. Sum of Rs. 38,000/- was adjusted against her car loan account on 11.2.2019, to upgrade her loan account, whereas remaining amount was adjusted in other two house loan accounts so that same are also regularized. Since despite opportunity, plaintiff failed to deposit the amount, defendant bank initiated the recovery proceedings before the DRT Chandigarh for a sum of Rs. 76,94,326/-.

8. Though Mr. Deepak Bhasin, Advocate, vehemently argued that sum of Rs. 5.00 lac was deposited by the plaintiff in the saving bank account with a view to repay the car loan, but such claim/submission is not substantiated by any evidence, be it ocular or documentary. Neither there is any document suggestive of the fact that plaintiff while depositing sum of Rs. 5,00,000/- in her saving bank account specifically requested the defendant bank to adjust this amount in her vehicle loan account nor it is the claim of the plaintiff that aforesaid sum of Rs. 5.00,000/- was not required to be deposited by her in other two house loan accounts. Since there is no dispute that plaintiff besides raising vehicle loan to the tune of Rs. 3,38,000/- also took two house loans to the tune of Rs. 40,00,000/- and 35,00,000/-, respectively, and these two accounts were declared/ classified as NPA, plea made by the plaintiff that sum of Rs. 5.00 lac was deposited by her in her saving account with a view to clear her vehicle loan account, cannot be accepted. In the case at hand, plaintiff defaulted in making the payment of installment of the loan account despite several reminders and as such, defendant bank had no option but to declare the loan bank account of the plaintiff as NPA at the first instance. Since in the case at hand, plaintiff with a view to regularize her three loan accounts as detailed herein above, deposited sum of Rs. 5.00/- lac, same rightly came to be deposited/adjusted in three loan accounts so that all the NPA accounts of the plaintiff could be made regular.

9. Prima-facie case, balance of convenience and irreparable loss or injury are

three main factors to be kept in mind while considering the prayer for grant of injunction. Existence of aforesaid three ingredients is not only mandatory, rather they all should co-exist.

10. Before considering the prayer for injunction, the court is required to satisfy itself that the party praying for the relief has a prima- facie case and balance of convenience is also in its favour. While granting injunction, court is also necessarily required to consider whether refusal to grant injunction would cause irreparable loss/injury, if any, to such party and irreparable loss/injury, if any, can be compensated in terms of money or not. Similarly, court while deciding balance of convenience is also required to weigh protection of the plaintiff's right against need for protection of defendant's right or infringement of right. Apart from aforesaid well established parameters/ ingredients, conduct of the party seeking injunction is also of utmost important, as has been held by Hon'ble Apex Court in case *M/S Gujarat Bottling Co.Ltd. & Ors. v. The Coca Cola Co. & Ors.*, AIR 1995 2372. If a party seeking injunction fails to make out any of the three ingredients, court should be reluctant to grant injunction. Phrases, "prima facie", "balance of convenience" and "irreparable loss" have been interpreted by Hon'ble Apex Court in case titled as *Mahadeo Savlaram Shelke v. The Puna Municipal Corpn.*, J.T. 1995(2) S.C. 504, wherein Hon'ble Apex Court relying upon its earlier judgment in *Dalpat Kumar v. Prahlad Singh*, (1992) 1 SCC 719, observed that the phrases "prima facie case", "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation but words of width and elasticity, intended to meet myriad situations presented by men's ingenuity in given facts and circumstances and should always be hedged with sound exercise of judicial discretion to meet the ends of justice. The court would be circumspect before granting the injunction and look to the conduct of the party, the probable injury to either party and whether the plaintiff could be adequately compensated if injunction is refused. Though, existence of prima facie right is a condition for the grant of temporary injunction, but prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Satisfaction that there is a prima facie case is not sufficient to grant injunction, rather court considering prayer for injunction is under obligation to satisfy itself that non-interference by the court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction. The court while granting or refusing injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury, which is likely to be caused to the parties if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued.

10. In the case at hand, neither there is prima facie case in favour of the plaintiff nor balance of convenience lies in her favour, rather irreparable loss and injury would be caused to the defendant bank in case they are restrained from realizing

its own money, which was advanced to the plaintiff for purchase of vehicle. On the top of everything, very conduct of the plaintiff, which is quite apparent from the fact that despite repeated opportunities plaintiff failed to make the payment good, dis-entitles her from ad-interim injunction in terms of provisions contained under Section 41 (b) and (h) of the Specific Relief Act. Section 41 of the Specific Relief Act lays down the conditions where injunction can be refused, relevant paras whereof read as under:

" 41. Injunction when refused.—An injunction cannot be granted—

(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;

(j) when the plaintiff has no personal interest in the matter."

11. In the case at hand, plaintiff defaulted in making the payment of installment of the loan account, as a consequence of which, defendant bank was compelled to issue notices/reminders upon the plaintiff, enabling her to deposit the amount, but once she failed to do so, defendant-bank cannot be estopped from taking consequential action pursuant to breach of terms and conditions of the loan agreement including the taking possession of the vehicle in question. Mere fact that defendant bank with a view to recover the loan amount initiated recovery proceedings before the DRT Chandigarh, cannot be a ground to grant ad-interim injunction in favor of the plaintiff, who is a defaulter. In a suit filed by the plaintiff, it is/was incumbent upon her to prove that there is a prima-facie case in her favour and in the event of interim relief being denied to her, great prejudice and irreparable loss would be caused to her, but in the case at hand, it is quite apparent from the record that plaintiff despite repeated opportunities,

failed to make the repayment of the loan installments as per the installment schedule, as a consequence of which, repeatedly loan amount of the plaintiff came to be classified as NPA. The very fact that vehicle loan as well as house loan accounts were declared NPA on account of irregular payments by the plaintiff, estoppes the plaintiff to claim that there is a prima-facie case in her favour.

12. Once there is a condition in the loan agreement that in the event of non-payment of installments within the time stipulated in the agreement, bank is entitled to take possession of the vehicle, court below while considering the prayer made on behalf of the plaintiff has/had no jurisdiction to grant interim injunction, especially, when there is nothing on record to suggest that defendant bank before initialing recovery proceedings failed to afford opportunity of being heard to the plaintiff and it with a view to take possession of the vehicle hired the services of muscle men. In the case at hand, plaintiff herself approached the court of law, seeking restrain order against the defendant-bank and as such, onus is/was upon her to prove that possession of the vehicle is being taken illegally and unauthorisedly in violation of the terms and conditions of the loan agreement by the defendant bank, which she failed to do so.

13. Consequently, in view of the detailed discussion made herein above, this Court finds no illegality and infirmity in the impugned order dated 31.12.2021, passed by the learned Additional District and Sessions Judge, Shimla, H.P., and as such, same is upheld. As a consequence of which, present petition fails and dismissed accordingly.

All pending miscellaneous applications also stand disposed of accordingly.