
(2004) 12 KL CK 0029
In the High Court Of Kerala
Case No : AFA No. 6 of 1992

M/s. Business Bankers and Others

APPELLANT

Vs

K. Anandan and Another

RESPONDENT

Date of Decision : 08-12-2004

Acts Referred:

Citation : AIR 2005 Ker 128 : (2005) 1 CivCC 800 : (2005) 1 ILR (Ker) 78 :
(2005) 1 KLJ 97 : (2005) 1 KLT 226 : (2005) 1 RCR(Civil) 560

Hon'ble Judges : R. Bhaskaran, J;M.N. Krishnan, J

Bench : Division Bench

Advocate : P. Ravindran, for the Appellant; R. Harikrishnan, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Krishnan, J.—This is an appeal preferred against the judgment in A.S. No. 303 of 1985 rendered by a learned single Judge of this court. The original suit O.S. No. 29 of 1983 was filed by the appellants against the respondents for realisation of Rs. 28,219/- as the amount due towards the hire purchase transaction. It is the case of the appellants that they had entered into a hire purchase agreement with the defendants in respect of a Benz Goods Vehicle bearing Registration No. KLV 7957 on 1.5.1981 and that the defendants had agreed to pay a sum of Rs. 50,820/- in 18 equal instalments. Since the defendants did not keep the vehicle in good condition and failed to pay the instalments possession was retaken on 24.7.1982. As the defendants did not wipe off the liability notice was issued on 21.12.1982 and the vehicle was sold for a price of Rs. 20,000/-. It is for the balance amount due the suit is filed. The defendants would contend that the vehicle was in good condition and it was seized on 24-7-1982 without any reason. The hire purchase agreement was never terminated and no notice was issued regarding sale. According to them the vehicle would have fetched a value of Rs. 90,000/- and that the sale is not valid. It is further contended that the appellants are not entitled to claim any amount.

2. The Principal Sub Judge, Kollam granted a decree in favour of the plaintiffs for

the amount claimed. It is against that decision A.S. No. 303 of 1985 was filed before this court. The learned single Judge by judgment dated 8.8.1991 allowed the appeal and dismissed the suit. The learned single Judge found that there was no proper notice of sale and that the respondents were never informed about the sale and further that the sale had not been conducted properly. It is the correctness of that decision what is challenged in this appeal.

3. Admittedly Ext.A1, is the hire purchase agreement. As per Ext.A1, the appellants are the owners of the vehicle and the respondents had undertaken to pay Rs. 50,820/- in 18 equal instalments. Under the terms of Ext.A1 the appellant's are entitled to retake the vehicle and defaulted instalments and damages, if any, can be claimed from the hirer. It is the case of the appellants that the vehicle was not used in a proper manner and the damage was caused due to reckless manner in which the vehicle was used. As per the agreement the appellants are entitled to recover the arrears due under the hire purchase agreement.

4. As per the stipulation in the agreement the appellants had re-possessed the vehicle. At the same time the hirer is also interested to get the maximum price for the vehicle so that it will reduce his liability. So it is necessary that the vehicle has to be disposed of with notice and knowledge of the respondents. In this case the vehicle is repossessed by seizure on 24.7.1982. Though PW1 would depose that notice was sent terminating the hire purchase agreement no scrap of paper is produced to prove the same. According to the respondents in this appeal the vehicle was in a road-worthy condition and it would have fetched Rs. 90,000/-. The appellants would deny it. Admittedly the vehicle was seized from the roadside and driven to the compound of the appellants. They had not even prepared a mahazar regarding the condition of the vehicle on 24.7.1982. The contention of the appellants is that it was published in Janayogam Daily well in advance. Neither the receipt nor the copy of the paper is produced in this case. The appellants submits that there was only one purchaser and the vehicle was sold for Rs. 20,000/-. Strangely no paper is prepared and kept regarding the sale. All these things are against the ordinary human conduct.

5. Ext.A6 is the copy of the notice alleged to be issued by the appellants. It is dated 21.12.1982 Ext. A7 cover which is addressed to the 1st respondent would show that it was posted only on 23.12.1982, i.e. on the next day of the sale. Notice addressed to the 1st respondent was returned as not served. The first attempt to locate him was made on 27.12.1982 and ultimately sent back on 5.1.1983. Regarding the 2nd respondent the letter is received by him only on 28.12.1982. So the attempt to serve a notice was made only after sale and the direction was to pay the amount due or to make effort to get the maximum price within 7 days from 21.12.1982. The 1st respondent was not at all served with a notice even. So the materials available speak in volume about the irregularity and illegality of the conduct of the sale and absolute violation of the principles of natural justice. We find that the learned single Judge was absolutely correct in

taking the view that that the whole thing is not done properly.

6. The learned counsel for the appellants had cited the decision reported in AIR 1934 151 (Nagpur) and contends that the vehicle belonged to the appellants and it can be disposed of by them as they wished. There is no quarrel about the said proposition. The right to sell is not in dispute but the mode of sale is in dispute in this case. What was considered in that case cited was regarding the right to proceed for the balance after the sale of the typewriter. There cannot be any dispute regarding the validity of the same. But in this case when the vehicle is re-possessed and without terminating the hire purchase agreement and without intimating the hirer about the intention to sell and the sale is effected absolutely in a haphazard manner the dictum laid down in the above case cannot be made use of by the appellants to escape from the non-compliance of the procedural formalities. So on an analysis of the entire materials available we have absolutely no hesitation to hold that the learned single Judge had analysed and evaluated the entire case on the proper perspective and had arrived at the correct decision that the appellants are not entitled to claim any relief in the suit. We do not find any ground to interfere with the decision rendered.

Therefore the appeal fails and the same is dismissed. But under the facts and circumstances of the case there will be no order as to costs.