

(2001) 08 JH CK 0057
In the Jharkhand High Court
Case No : CWJC No. 566 of 2000 (R)

Om Prakash Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-08-2001

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9
Constitution of India, 1950 — Article 226, 227

Citation : (2001) 08 JH CK 0057

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : P.K. Bhowmik, Md. Hatim and K.K. Mishra, for the Appellant; Anand Sen and Deepak Kumar, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—Heard Mr. P.K. Bhowmik, learned Counsel for the petitioner and Mr. A. Sen, learned Counsel for the respondent No. 5.

2. In this writ application the petitioner has prayed for issuance of appropriate writ directing the respondents to release the vehicle bearing No. BR-16 G-2989 which has allegedly been seized by the police officials of Sakchi Police Station.

3. The petitioner's case is that the vehicle in question was purchased by the petitioner from Ashok Leyland Ltd. after getting it financed from M/s. Ashok Leyland Finance India Ltd. through its Jamshedpur Branch. The petitioner entered into an agreement with the Ashok Leyland Finance Ltd. and in terms whereof the petitioner was depositing instalments. It is alleged that the Financier forcefully snatched away all the papers from the custody of the driver of the vehicle and also filed a criminal case in the Court of Judicial Magistrate, Jamshedpur. In the meantime, the vehicle was seized by the police and is lying within the campus of Sakchi police station.

4. A counter-affidavit has been filed by the respondent No. 5, namely, M/s.

Ashok Leyland Finance India Ltd., Jamshedpur (in short "the financier"), stating, inter alia, that the vehicle was purchased by the petitioner put of loan advanced by it and hire-purchase agreement was entered into between the parties on 16.9.1997. The petitioner failed to pay the instalments due in time despite repeated requests and reminders. It is stated that the petitioner got a frivolous complaint case filed through the driver. In the, meantime, the vehicle was seized on 26.12.1999 by the agent of the receiver in terms of the order passed by the City Civil Court, Calcutta in Case No. 8224/99 and parked it in the campus of Sakchi police station. A copy of the order, dated 26.11.1999 passed by the City Civil Court has been annexed as Annexure F to the counter-affidavit.

5. From perusal of the copy of the order (Annexure F) passed by the City Civil Court, Calcutta, it appears that the financier filed an application u/s 9 of the Arbitration and Conciliation Act for appointment of receiver and issuance of injunction. The City Civil Court appointed a receiver in respect of the vehicle in question and directed for taking possession of the vehicle with the assistance of local police station. It further appears that pursuant to that order the vehicle was seized by the receiver with the help of the police. Moreover, the petitioner's own case is that against the order of cognizance taken in the complaint case filed at the instance of the driver, the respondents moved this Court for quashing the criminal case and also for stay of warrant of arrest and the order passed by the City Civil Court. The said application has been registered as Cr. Misc. No. 8772/99(R) and the same is pending. In such circumstances, the appropriate remedy available to the petitioner is to appear in the case pending in the City Civil Court, Calcutta and to make a prayer for appropriate relief and also to take step in the quashing matter pending before this Court.

6. In the facts and circumstances of the case, this Court cannot exercise its jurisdiction under Articles 226 and 227 of the Constitution of India and to grant relief to the petitioner. This writ application is, therefore, dismissed.

7. Writ application dismissed.