

(2023) 07 GAU CK 0029

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4310 Of 2023

Pahlan Ali

APPELLANT

Vs

HDB Financial Services Ltd And Anr.

RESPONDENT

Date of Decision : 31-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 12, 226

Citation : (2023) 07 GAU CK 0029

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : M Hussain, M Sharma

Final Decision : Dismissed

Judgement

1. Heard Shri M Hussain, learned counsel for the petitioner, who is aggrieved by a Pre Sale Notice dated 17.07.2023 issued by the respondents in connection with an auction process for a vehicle purchased by the petitioner by taking financial assistance from the respondents.

2. Also heard Shri M Sharma, learned counsel appearing for the respondents.

3. It is the case of the petitioner that he had purchased a Tata Hitachi Ex 210 LC Super Hydraulic Excavator GP Bucket from GD Motors, Guwahati by taking financial assistance from the respondents. It is admitted that due to failure in payment of installments, the vehicle was possessed by the respondents and by the Pre Sale Notice mentioned above, the auction process has been initiated.

4. Shri Hussain, learned counsel for the petitioner submits that the petitioner is ready and willing to pay the installments within a particular period and interference, accordingly be made by this Court. The learned counsel for the petitioner in support of his submissions has relied upon a decision of the Hon'ble Supreme Court in the case of ICICI Bank Ltd. Vs. Prakash Kaur & Ors., reported in (2007) 2 SCC 711.

5. Shri Sarma, learned counsel for the respondents, however, seriously raised the issue of maintainability of this writ petition as, the respondents are private entities and the cause of action, if any, has arisen out of a contract. He further submits that the facts would show that there has been admitted default in payment of installments.

6. The rival submissions made by the learned counsel for the parties have been duly considered.

7. Apparently, the respondents arrayed herein are as follows: 1. The HDB Financial Services Ltd.,

A-57, Rolex Shopping Centre, Station road, Goregaon West,

Mumbai-400062, and

2. The HDB Financial Services Ltd.

represented by its Branch Manager, First Flour, Joynagar,

H. No.-112, Opposite Reliance Smart & Zudio, Assam,

Dispur-781022.

8. The respondents are private entities. The dispute in question arises from a contract between the two private entities in which there is admitted default on the part of the petitioner in payment of installments. The facts further reveal that out of the 40 cheques presented, only 19 have been honoured and the rest 21 have been dishonoured and the fact of dishonouring of cheques started from September, 2020 itself.

9. The Hon'ble Supreme Court in the case of Ramakrishna Mission v. Kago Kunya, reported in (2019) 16 SCC 303 while discussing the earlier case laws had held as follows:

"29. More recently in K.K. Saxena v. International Commission on Irrigation & Drainage [(2015) 4 SCC 670], another two-Judge Bench of this Court held that a writ would not lie to enforce purely private law rights. Consequently, even if a body is performing a public duty and is amenable to the exercise of writ jurisdiction, all its decisions would not be subject to judicial review. The Court held thus :

'43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is "State" within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of

contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is "State" under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law.'

...

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33...In *Federal Bank Ltd. v. Sagar Thomas*, reported in (2003) 10 SCC 733 while deciding whether a private bank that is regulated by the Banking Regulation Act, 1949 discharges any public function, the Court held thus :

'33. ... in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a 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 put 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. The 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.'"

10. In the said case of *Ramakrishna Mission (supra)*, the following case laws were also discussed:

- i) *Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722;
- ii) *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, (2002) 5 SCC 111; and
- iii) *Jatya Pal Singh v. Union of India*, (2013) 6 SCC 452.

The Hon'ble Supreme Court accordingly reversed the decision of the High Courts and has laid down that a writ petition is not maintainable.

11. So far as the case of *ICICI Bank Ltd. (supra)* cited by the learned counsel for the petitioner is concerned, this Court has, however, noticed that the facts of the said case were wholly different as, there was an allegation of forced dispossession and a police case under serious provisions of the IPC was also lodged and was pending.

12. In view of the aforesaid facts and circumstances and also the settled law holding the field, this Court is of the considered opinion that the present petition under Article 226 of the Constitution of India is not maintainable both on the ground that the respondents are not amenable to the writ jurisdiction under the facts of the case and also that the dispute is one which has arisen from a private contract. This Court has also been apprised that there is a dispute redressal mechanism in the form of arbitration.

13. In the above view of the matter, the writ petition is dismissed on the ground of maintainability. However, the petitioner may take recourse to other available mechanism for redressal of his grievance, including the arbitration, if so advised.