

(2018) 03 PAT CK 0084

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.5363 of 2018

Pankaj Kumar Pankaj Kumar

APPELLANT

Vs

The State Bank of India Through The Branch Manager &
Ors? The State Bank of India Through The Branch Manager
& Ors

RESPONDENT

Date of Decision : 23-03-2018

Acts Referred:

Citation : (2018) 03 PAT CK 0084

Hon'ble Judges : VIKASH JAIN

Bench : Single Bench

Advocate : Kumar Praveen;Kaushlendra Kumar Sinha; Kaushal Kr. Jha;

Final Decision : Disposed Of

Judgement

1.Heard learned counsel for the petitioner as well as learned counsel for the respondents.

2. The present writ petition has been filed for the following reliefs:

(A) For issuance of an appropriate writ/writs, order/s, direction/s commanding the respondents to release the petitioner's vehicles ASHOK

LEYLAND 12M BUS (ASH AC DELUXE SLEEPER BUS) BEARING registration No. (1) BR11T/6626, Engine No. ETEZ418090, Chassis

No. MB1PREJC 2EETPO976 and

(2) BR11T/6627, Engine No. EYEZ410244, Chassis No. MB1PREJC4EGYXA5008 so taken over in possession by the respondent State Bank

of India through their recovery agent musclemen in most illegal and arbitrary manner violating the direction and guidelines of Hon'ble Apex

Court and Hon'ble High court and also violating the guidelines of the Reserve Bank of India for not indulging in repossessing the vehicle on hire

purchase agreement this action has been taken by the respondent bank due to default in payment of installments. The aforesaid buses of petitioner

were virtually snatched by the musclemen of recovery agent at the instance of the respondent bank at about 7 A.M. when the aforesaid buses of

petitioner was on way to Patna bus stand from Purnia with passengers.

(B) For direction to the respondent bank/recovery agent to hand over the physical possession of the petitioner aforesaid buses in a fit condition as

it existed at the time of possession by the recovery agents from the drivers of petitioner's buses. The buses of the petitioner are at present in the

possession of recovery agent/respondent bank.

(C) For direction to the Respondent bank and its officials to compensate the loss of business of petitioner as well as compensation for the

Economical, Physical and Mental harassment/agony to the petitioner by such arbitrary and unwarranted action by the recovery agent of the

respondent bank which has been depreciated by the Hon'ble Court and Hon'ble Apex Court in several judicial pronouncements.

(D) For any other relief/relies to which the petitioner is found entitled under the facts and circumstances of the present case.

3. Learned counsel for the petitioner states that a loan of Rs. 74 lakhs was taken from the respondent Bank in the month of November 2014 and

its EMI (equated monthly instalment) was fixed Rs.1.42 lakhs per month for 84 months. The loan was to be repaid by January, 2022. The

petitioner purchased two buses bearing registration nos. BR11T/6626 and BR11T/6627 utilising the aforesaid loan as well as Rs. 22 lakhs of his

own fund. The monthly instalments were being regularly paid until one of the buses, namely, BR11T/6626 met with an accident on 09.01.2017 and

was off road while undergoing repairs for the heavy damage suffered and could only start plying once again after 15.03.2017. The Bank, in the

meanwhile, on 28.02.2017 classified the petitioner's loan account as NPA. On 07.01.2018, the petitioner's bus bearing registration No.

BR11T/6626 was forcibly taken from the driver by the respondent-bank's musclemen, pursuant to which the petitioner made payment of Rs.

1,56,200/- on the next day i.e. on 08.01.2018 and further payment of Rs. 3,00,000/- , a day later on 09.01.2018, requesting for some time to

make payment of the remaining dues. However on 1.02.2018, the other bus

bearing registration no. BR11T/6627 was forcibly taken possession of by the recovery agent of the respondent Bank. It is stated that these two buses of the petitioner have now been put up for auction sale in terms of the notice published on 16.03.2018 which is fixed on 26.03.2018.

4. Learned counsel for the petitioners states that the petitioner undertakes to make payment of 10% of the total outstanding amount within a period of 15 days hereof and the remaining amount in six equal monthly instalments. Reliance is placed on a decision of the Apex Court in the case of

Manager, ICICI Bank Ltd. Vs. Prakash Kaur & Ors. (AIR 2007 Supreme Court 1349) wherein the Hon'ble Apex Court directed release of the vehicle in question on certain terms and conditions.

5. Having regard to the nature of the grievance of the petitioner and in the interest of justice, this Court directs that auction sale of the two vehicles

of the petitioner shall remain stayed for the time being. The parties shall sit together and reconcile the accounts of the petitioner and ascertain the

amount outstanding as on date. This exercise should be done within a week from today. Thereafter the petitioner is granted liberty to make

payment of 10% of such outstanding amount within a period of one week of such determination. Upon such payment, the bus of the petitioner shall

be provisionally released forthwith. The remaining amount shall be paid by the petitioner in six equal monthly instalments with liberty to the Bank to

repossess the buses and proceed for auction in case of failure of payment of any of the monthly instalments by the petitioner.

6. It is made clear that the petitioner, upon release of the vehicles, shall not create any encumbrance in respect of the buses nor dispose of the

same until outstanding dues of the bank have been cleared in full.

7. The writ petition accordingly stands disposed of.