

(2011) 05 SHI CK 0125
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 136 of 2011

Pawan Kumar

APPELLANT

Vs

Magma Financial Corporation and Others

RESPONDENT

Date of Decision : 12-05-2011

Acts Referred:

Citation : (2011) 05 SHI CK 0125

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This petition is directed against the judgment dated 30.3.2011 passed by the learned Additional District Judge, Solan whereby he allowed the appeal of Respondent No. 1 and set aside the order of the learned Trial Court and allowed Respondent No. 1 to sell/transfer the vehicle subject to certain conditions.

2. The undisputed facts are that the Plaintiff had raised a loan from ICICI Bank-Respondent No. 3 for purchase of a truck. According to the Plaintiff, he had repaid the full amount of the loan, but the ICICI Bank showed that some amount is still outstanding and transferred the outstanding liability in favour of Respondent No. 1.

3. The Petitioner claims that this could not have been done since there was no liability and even if there was any liability it could not be transferred. On this basis it was urged that the truck of the Plaintiff which had been seized by the Respondent No. 1 be not sold. Alongwith the suit, an application for interim stay was filed before the learned Trial Court praying that the truck be not sold/transferred till the disposal of the suit. The learned Trial Court granted injunction in favour of the Plaintiff.

4. The learned Additional District Judge, Solan after hearing the parties set aside the order of the learned Trial Court and gave the following directions:

15. Keeping in view my aforesaid discussions of law and facts, the appeal is allowed. The order of the Id. Trial court is set-aside. The Appellant is allowed to transfer the vehicle subject to following conditions:

i. The Appellant may release the vehicle in favour of Respondent if Respondent is ready to give security/Bank guarantee in the court for alleged balance amount claimed by Appellants or if Respondent is ready to deposit the amount in court.

ii. The vehicle shall be sold in open auction.

iii. Before confirmation of sale, the Appellants shall give option to Respondent to bring better buyer or purchase himself on payment of auction amount.

iv. In all the above said eventualities, the amount shall be deposited in court and shall be invested in fixed deposit and shall be released as per final decision of the case.

5. I have heard Mr. G.D. Verma, learned Sr. Advocate for the Petitioner who has argued that the learned Lower Appellate Court should not have passed the aforesaid order and the truck should not be ordered to be sold.

6. This contention in my view cannot be accepted. Whether the Plaintiff has a good case or not, no purpose will be served in keeping the truck parked and not selling the same. If the truck is kept parked, it will become scrap. Neither the interest of the Plaintiff, nor that of the Defendant will be served by keeping the truck parked for the long duration of the litigation. The learned Lower Appellate Court has protected the rights of the Plaintiff and had directed that in case the Plaintiff is ready to give security or guarantee for the alleged balance amount claimed by Respondent No. 1, then the truck shall be released in favour of the Plaintiff alone. In case this is not done, the vehicle in question will be sold in an open auction and the Plaintiff will be given option to participate in the same or to bring a better buyer for the payment of outstanding amount. These are very reasonable directions, and I find no error in the same. Therefore, the petition is dismissed. No costs.