
(2011) 05 CAL CK 0034
In the Calcutta High Court
Case No : C.O. No. 3548 of 2009

Pramil Banerjee

APPELLANT

Vs

H.D.F.C. Bank Ltd.

RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Citation : (2011) 05 CAL CK 0034

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : P.P. Roy, for the Appellant; Mainak Bose, Amitava Mitra and Dolon Dasgupta, for the Respondent

Judgement

Prasenjit Mandal, J.—Challenge is to the order No. 16 dated August 21, 2009 passed by the learned Judge, City Civil Court, 10th Bench in Title Suit No. 1020 of 2009 thereby rejecting an application dated June 23, 2009 filed by the Plaintiff.

2. The Plaintiff/Petitioner herein instituted a suit being Title Suit No. 1020 of 2009 for declaration and permanent injunction against the opposite party. The opposite party entered an appearance and it is contesting the said suit. The Plaintiff took a loan of Rs. 3,18,000/- from the opposite party/bank on condition to repay the said amount in 60 equal monthly installments at the rate of Rs. 7,657/- per month. The said loan was taken for the purpose of purchasing a vehicle which was hypothecated to the bank. The Plaintiff was not able to repay the loan entirely and when the opposite party intended to take possession of the vehicle-in-question, the Plaintiff filed the suit for the reliefs stated in the suit. He prayed for temporary injunction also. It was granted on condition that the vehicle-in-question would not be seized, provided the Plaintiff was able to make a payment of Rs. 20,000/-. The Plaintiff failed to make the payment as per direction of the Court and as such, the said vehicle was seized from the possession of the Plaintiff on June 19, 2009. Then the Plaintiff prayed for injunction again by filing the said application. At the time of hearing of the said application, the bank informed that the vehicle had already been sold to one Taj

Khan on June 29, 2009. So, the application was rejected. Being aggrieved, this application has been preferred.

3. Now, the question is whether the impugned order should be sustained.

4. Upon hearing the learned Counsel for both the parties and on perusing the materials on record, I find that there is no dispute that the Petitioner took a loan from the opposite party/bank for purchase of a vehicle-in-question and that he repaid the loan by some installments. But thereafter, he failed to repay the loan since August 2008. Thereafter, the Plaintiff filed the said suit for declaration and injunction and he got an interim order of injunction on condition that he must pay a sum of Rs. 20,000/- by March 27, 2009. But the Petitioner fails to make such deposits and the time was extended up to April 22, 2009 with direction that if no payment was made by the aforesaid date, the interim order of injunction would stand vacated. The Plaintiff having not complied with such order of making payment, the order of injunction was vacated on April 22, 2009. Thereafter, the vehicle was seized. The Plaintiff filed the application dated June 20, 2009 praying for not to dispose of the said vehicle. But at the time of hearing for the said vehicle, the bank informed that the vehicle-in-question had been sold to one Taj Khan on June 30, 2009 and a paper appearing at page No. 42 has been filed by the Defendant to show sale of the vehicle to Taj Khan on June 30, 2009.

5. But on careful perusal of the paper dated June 30, 2009 appearing at page 42, I find that this is not at all a paper to show the sale of the vehicle-in-question. But it could be at best considered as a letter from one Taj Khan to the bank. The Plaintiff has no concern with Taj Khan at all. This paper cannot be treated as a document for sale of the vehicle inasmuch as it does not lay down the name of the seller and the buyer and the consideration price of the vehicle. Such type of document could be prepared at any time. So, no importance is to be given to this application.

6. However, on the basis of such a document, the learned Trial Judge has rejected the application of the Plaintiff holding that the vehicle is not in possession of the Defendant bank. Since immediately after seizure of the vehicle, the Plaintiff took necessary steps to prevent the disposal of the vehicle by the opposite party bank, I think some positive directions should be passed against the bank.

7. Thus, this being the position, in order to carve such type of action on the part of the bank, effective measures should be taken. Accordingly, the opposite party bank is directed to file an affidavit within two weeks from the date of communication of this order to the learned Trial Court to the effect whether he had actually sold the vehicle and if so at what price and to whom, it had sold the vehicle. If it is found from the affidavit that the vehicle had been sold by the Defendant bank without waiting for any order from the Court, the bank shall give a security to the amount that it had obtained from the Plaintiff by installments, so as to ensure repayment of the amount that is entitled by the Plaintiff after

deduction of the depreciation value of the vehicle for use. The learned Trial Judge shall give direction upon the Defendant bank to furnish a security within a specified period as fixed by him. Thereafter, he shall proceed with the suit in accordance with law.

8. The impugned order cannot be supported. It is, therefore, set aside. The said application is disposed of with such orders.

9. Considering the circumstances, there will be no order as to costs.

10. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.