
(1981) 08 AHC CK 0064
In the Allahabad High Court
Case No : Civil Revision No. 636 of 1980

Ramesh Chand Gupta

APPELLANT

Vs

Automobiles Financing Corporation and Others

RESPONDENT

Date of Decision : 03-08-1981

Acts Referred:

Arbitration Act, 1940 — Section 20

Criminal Procedure Code, 1973 (CrPC) — Section 115

Citation : (1981) AWC 604

Hon'ble Judges : R.R. Rastogi, J

Bench : Single Bench

Advocate : R.A. Sharma, for the Appellant;

Final Decision : Allowed

Judgement

R.R. Rastogi, J.—This is defendant's application in revision u/s 115 of the Code of Criminal Procedure directed against the order passed by the II Civil Judge, Kanpur dismissing the application of the Defendant-applicant for release of the disputed vehicle on his furnishing security to the satisfaction of the Court. The brief facts are these. The Plaintiff opposite-party No. 1, M/s. Automobiles Financing Corporation, a partnership firm, carries on business in advancing loans and financing purchase of buses etc. Under hire purchase agreement dated 29th of January, 1977 the Plaintiff advanced a loan to the Defendant-applicant and Defendants-opposite parties 2 and 3 for purchase of a bus. The loan was payable in instalments. It appears that some disputes arose between the parties and there was also an attempt on the part of the Defendants to transfer the vehicle to a third person. There was criminal litigation between the Defendants and that person and the vehicle was seized by the police. In the meantime the Plaintiff opposite party No. 1 filed an application u/s 20 of the Arbitration Act on 20-7-1978. On that very date an application 5-C was given which contained three alternative prayers viz., the disputed vehicle be seized and possession thereof be delivered to the Plaintiff firm, or the disputed vehicle be attached

before judgment or the Defendant be restrained from taking possession of the said bus from police station district Agra. This application purported to be u/s 20 of the Arbitration Act read with Order 38 Rule 5 and Order 39 Rules 1 and 2 of the Code of Criminal Procedure. On this application that very day the Court below passed an ex-parte interim order directing the Officer-in-charge of Police Station Chatta, district Agra not to release the disputed vehicle in favour of the Defendants. A commission was issued to a Vakil Commissioner to serve that order on the police officer as also on the Defendants. The Commissioner gave his report and it appears that in the meantime the police had already given delivery of the disputed vehicle to the Defendants. The case was then taken up on 14th of October 1978. Nobody appeared from the side of the Defendants on that date and the Court below made an order for issue of warrant of attachment of the disputed bus. That warrant was also given to a Commissioner for service. The Commissioner seized the vehicle from the possession of the Defendant on 10-1-1979 and gave it in the possession of the Plaintiff.

2. Thereafter an application was given by the Defendants for recalling the order dated 14-10-1978. That application was rejected on 10-8-1979 and then on 1-5-1980 the Defendants gave another application for releasing the bus in favour of Defendant No. 1, who is the applicant before this Court on his furnishing adequate security. This application was 72-C-2. The Plaintiff opposed this application. The Court below has rejected the application mainly on the ground that the order passed on the application of the Defendants for recalling the order dated 14-10-1978 had become final and also that the order dated 14-10-1978 was itself a final order in this behalf. In the opinion of the Court below if the Defendant-applicant was aggrieved with those orders he should have approached the higher Court for proper relief. Aggrieved, Defendant No. 1 has come up to this Court with a prayer to revise this order.

3. It has been submitted before me on behalf of the Defendant-applicant that it was under Order 38 Rule 5 of the Code of Criminal Procedure that the Plaintiff had given its application for attachment of the disputed vehicle and the order of attachment was passed under sub-rule (1) of Rule 6. Now, the Defendant-applicant made an application under Rule 9 of Order 38 which reads :

Where an order is made for attachment before judgment the Court shall order the attachment to be withdrawn when the Defendant furnishes the security required, together with security for the costs of the attachment or when the suit is dismissed.

Under this rule the attachment made under the preceding Rule 6 is to be withdrawn when two situations arise, (1) when the Defendant furnishes security as required along with the security for costs of the attachment and secondly when the suit is dismissed. According to the learned Counsel the Court has no option but to release the attachment when either of these situations obtains in the case. He has invited my attention to a Full Bench decision of this Court rendered in Abdul Hamid Vs. Karim Bux and Others, . After examining various

cases cited at the bar his Lordship Trivedi, J. speaking for the majority has observed :

Examining the cases propounding the different views it appears that most of the High Courts are of the opinion that an attachment before judgment ceases after the dismissal of the suit even if no express order is passed. According to the majority view an attachment would terminate no sooner the suit is dismissed by the trial Court. The view of this Court throughout has been that an attachment before judgment ceases on the dismissal of the suit.

Further, it has been held :

The language of Order 38 Rule 9 no doubt is capable of both the interpretations, but the well recognised rule of interpretation is that where the language is capable of two interpretations and where the Section of the Act has received a judicial construction and said construction has long been acted on without any alteration in the statute, the interpretation so recognised and acted on is to be accepted on the principle of stare decisis because it is the general maxim that even a point of law has been settled by decision it forms a precedent which is not afterwards to be departed from.

As noted above Rule 9 of Order 38 contemplates two situations when attachment before judgment shall be withdrawn and those situations are when the Defendant furnishes the required security together with the security for the costs of the attachment and the other when the suit is dismissed. In view of the aforesaid Full Bench decision, in the event of the either of the situations occurring in a case the Court has to withdraw the attachment made under Order 38 Rule 5 of the Code of Criminal Procedure. Unfortunately the Court below has not proceeded to examine the case on the basis of this provision and has thus refused to exercise jurisdiction vested in it. The matter therefore, needs consideration on merits afresh.

4. It was, however, submitted on behalf of the Plaintiff opposite party that under the terms of the hire purchase agreement itself the Plaintiff has a right to obtain possession of the vehicle in the event of the conditions of that agreement not being fulfilled by the hirer. I do not think that this aspect can be examined by this Court. The Plaintiff did not seek attachment of the vehicle in exercise of any such right. The application was given for attachment of the vehicle under Order 38 Rule 5 of the Code of Criminal Procedure read with Order 39 Rules 1 and 2.

5. The view taken by the Court below that the order dated 14th October, 1978 was final is not correct because on that date only an interim order was passed directing issue of warrant of attachment of the vehicle. On the previous date, that is, 20th July, 1978 the interim order consisted of a direction to the police officer concerned not to hand over possession of the vehicle to the Defendant hirer. The fact that the defendant's application for recalling the order dated 14th October, 1978 was rejected on 10th August, 1979 would also not make that order final because the attachment was made on 10th January 1979. The

Defendant-applicant had filed objection to that attachment. No order was passed confirming the attachment after 10th January, 1979.

6. From what has been discussed above, the matter needs fresh decision according to law. The revision application is hence allowed and the impugned order passed by the Court below on 15-7-1980 is set aside. The Court below is directed to decide the application of the Defendant applicant (72-C-2) and the plaintiff 's objection (74-C-2) thereto on merits after hearing the parties. There will be no order as to costs.