

(2017) 10 KL CK 0023

In the High Court Of Kerala

Case No : 1 of 2017 (S) IN Con Case(C) 1386 of 2017

SHIYAS MOHAMMED MUKKANNIYIL

APPELLANT

Vs

M/S.INDUSIND BANK, (VEHICLE FINANCE DIVISION],

RESPONDENT

Date of Decision : 04-10-2017

Acts Referred:

Citation : (2017) 10 KL CK 0023

Hon'ble Judges : Navaniti Prasad Singh, Raja Vijayaraghavan V

Bench : DIVISION BENCH

Advocate : I.DINESH MENON, L.RAJESH NARAYAN, G.HARIHARAN

Final Decision : Disposed

Judgement

1.We have heard the learned counsel for the appellant, who was the respondent in the contempt proceedings and the writ petitioner, as well as the learned counsel for the Bank.

2.Learned counsel for the bank submits that they are not interested in the appellant's bus. They are interested in payment of their dues. So long as adequate provision is made for payment of the dues they do not gain anything by seizing or detaining the bus.

3.On the other hand, the learned counsel for the appellant submits that by surrendering the bus no one will gain in as much as it would deprive the appellant the source of income using which he would liquidate the dues thus depriving the bank of its money. It would of no gain to the bank as by holding the bus

they do not get the money. On the other hand, if the bus is released to the appellant, the appellant can make money and repay the loan.

4. We think that the submission of the appellant has to be accepted. As per the writ court's direction, for the release of the vehicle which has been seized by the bank, the petitioner was directed to pay 50% of the total dues of about Rs.47 lakhs, i.e., about 23.5 lakhs on or before 10.5.2017. It is not in dispute that the appellant paid this amount in full and hence got release of the bus. Thereafter, the balance was to be paid in six equal monthly installments, last of which was November, 2017. Except for a sum of Rs.6 lakhs paid after the initiation of the contempt proceedings no other payment has been effected.

5. It is for that, the contempt proceedings were initiated by the bank. Even though the appellant sought some more time to pay the installments as his commercial vehicle had been lying seized for long and took some time to be repaired before it could be plied, the time was refused. The appellant was given one day's time to clear the balance or surrender the vehicle. ? This order was passed yesterday. He was to make payment today or surrender the vehicle today.

6. Having heard the learned counsel, we are of the view that upon the undertaking been given by the appellant today in court that he would liquidate the entire dues outstanding by 30.11.2017, which was the date of the last installment as per the learned Single Judge, we direct that the order of the learned Single Judge in the contempt proceedings would not operate. If the appellant fails to clear off the entire dues by 30.11.2017, he would without demur surrender the vehicle

with the bank on 1.12.2017 and he would have no excuse or cause to make any grievance thereafter.

The order of the learned Single is thus modified in the manner above and this appeal stands disposed of.