
(2010) 03 OHC CK 0004

In the Orissa High Court

Case No : Writ Petition (C) No. 8041 of 2008

SREI Infrastructure Finance Ltd.

APPELLANT

Vs

Smt. Manaswani Pattnaik

RESPONDENT

Date of Decision : 31-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A
Constitution of India, 1950 — Article 226, 227

Citation : AIR 2011 Ori 60

Hon'ble Judges : B.P. Ray, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.P. Ray, J.—The Petitioner has filed this writ application under Articles 226 & 227 of the Constitution of India challenging the order passed by the learned Civil Judge (Sr. Division), Sambalpur vide order dated 20-5-2008 passed in Misc. Case No. 7 of 2008, under Annexure-5, which arises out of C. S. No. 19 of 2006.

2. The case of the Petitioner in short is that it is a non-banking finance Company registered under the Companies Act. The Petitioner advance a loan to the opp. party to the tune of Rs. 14,00,000/- to enable the opp. party to purchase two numbers of Tata Tipper Trucks. The opp. party executed a hire purchase agreement with the Petitioner on 13-10-2003, a copy of which has been annexed as Annexure-1 to the writ application. The opp. party paid Rs. 1,64,688/- towards down payment. The Petitioner asserts that from the year 2005 the opp. party failed to pay the monthly instalment for which after intimating the opp. party, the Petitioner repossessed both the vehicles in the month of February, 2006. Soon after the vehicles were repossessed, the opp. party filed C. S. No. 19 of 2006 in the Court of the Civil Judge (Sr. Division), Sambalpur seeking relief of declaration and other reliefs. Along with the suit, the opp. party filed an application for injunction registered as I. A. No. 7 of 2006 to restrain the Petitioner from selling the vehicles and further to release the vehicles in favour of

opp. party. The Petitioner appeared in the suit and filed objection to the injunction application stating therein that the hire purchase agreement contains an arbitration clause for which the suit was not maintainable and the matter should be referred to an arbitrator. Learned Civil Judge by order dated 6-5-2006 though dismissed the interlocutory application filed by the opp. party yet directed release of both the vehicles in favour of the opp. party on a suitable term and condition. While directing the release of the vehicles learned Civil Judge further directed that the opp. party should pay 50% of the dues pending against him towards default amount to the Petitioner within one month whereafter the vehicles were to be released. The learned Civil Judge also directed that the opp. party has to furnish an undertaking to the effect that any violation on her part in complying with the said order would not entitle the opp. party to get the vehicles released in her favour. This order has been enclosed as Annexure-2 to the writ application.

Challenging the order under Annexure-2, the opp. party came up in appeal before this Court in F. A. O. No. 228 of 2006 which was disposed of by this Court by order dated 10-11-2006 with the direction that the learned Civil Judge would quantify the outstanding amount so as to enable the opp. party to deposit 50% of the said amount and/or specify the approximate amount which the opposite party was required to deposit. It appears, in terms of the order dated 10-11-2006 passed in F. A. O. No. 228 of 2006, the learned Civil Judge by order dated 9-2-2007 under Annexure-4 has quantified the amount at Rs. 2 lakhs which the opp. party was required to deposit within a month for release of the vehicles in question. It further appears from the record, the opp. party deposited Rs. 2 lakhs with the Petitioner in terms of the order under Annexure-4 and accordingly, the Petitioner released the vehicles in favour of the opp. party on 4-7-2007.

3. The Petitioner has alleged that although the opp. party deposited the amount quantified by the learned Civil Judge, yet the opp. party did not furnish any undertaking in terms of the order under Annexure-2 and after release of the vehicles on 4-7-2007 the opp. party did not pay the monthly instalments as well as the balance amount. For non-payment of the balance amount and monthly installments, the Petitioner repossessed both the vehicles again on 18-4-2008. After the Petitioner repossessed the vehicles, the opp. party filed an application under Order 39, Rule 2-A, CPC for disobedience of order which was registered as Misc. Case No. 7 of 2008. Learned Civil Judge by the impugned order under Annexure-5 dated 20-5-2008 though declined to take action as visualized under Order 39, Rule 2-A, Code of Civil Procedure, yet directed the Petitioner to release both the vehicles in favour of the opp. party failing which, it directed that it would be deemed that the Petitioner has deliberately violated the order. This writ application has been filed challenging this order passed by the learned Civil Judge.

4. Although the opp. party has entered appearance in pursuance of the notice yet

the opp. party has not filed any counter-affidavit. Admittedly, both the vehicles were released in favour of the opp. party on 4-7-2007 after the amount was quantified and on deposit being made by the opp. party in terms of the order dated 9-2.-2007. After the vehicles were released,, the opp. party did not pay the monthly instalments and also the balance default amount for which the Petitioner repossessed the vehicles on 18-4-2008. Therefore, in my view, the Petitioner has not violated any order of the Court so as to be proceeded under Order 39, Rule 2-A, Code of Civil Procedure. Therefore, the learned Civil Judge was justified in declining to take action under the provisions of Order 39, Rule 2-A, Code of Civil Procedure. But at the same time, the learned Civil Judge acted illegally in directing release of the vehicles in favour of the opp. party. Since the Petitioner took repossession of the vehicles on 18-4-2008, because of the default in regard to payment of the balance dues as well as the monthly instalments, the Petitioner was well within its right to take repossession of the vehicles. In such view of the matter, the learned Civil Judge has committed gross illegality in directing release of the vehicles and that to without requiring the opp. party to make payment in regard to the default amount. As such the order of the Civil Judge directing release of the vehicles in favour of the opp. party is unsustainable and the order under Annexure-5 is quashed to that extent.

The writ application is accordingly allowed to the aforesaid extent.

The suit is of the year 2006. According to the Petitioner, the suit is not maintainable in view of the fact that the hire-purchase agreement contains an arbitration clause. Since the scope of the suit is very limited, I direct the learned Civil Judge to dispose of the suit as expeditiously as possible preferably within a period of 3 months and while doing so, the learned Civil Judge shall also decide the issue as to whether the suit is maintainable in view of the arbitration clause in hire-purchase agreement.