(2004) 09 DEL CK 0093

In the Delhi High Court

Case No : FAO 259 of 2004 and CM. Application 10828 of 2004

Standard Chartered Bank APPELLANT

Vs

Shiv Shankar Gupta RESPONDENT

Date of Decision : 10-09-2004

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, 151

Citation : AIR 2005 Delhi 74 : (2005) 1 BC 179 : (2004) 114 DLT 184 : (2004) 77 DRJ 131

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : Puneet K.Bhalla, for the Appellant; B.B.Chadha, for the Respondent

Judgement

R.S. Sodhi, J.—This appeal is directed against the order dated 19.7.2004 of the Additional District Judge, Delhi whereby the learned Judge on an application under Order 40 Rule 1 read with Section 151 CPC appointed a receiver and vide his separate order dated 27.7.2004 directed the receiver to take possession of Vehicle No. DL-IC-F-6702 and hand over the same on superdari to the plaintiff therein.

2. Brief facts of the case as noted by the Additional District Judge are as follows:-

"The plaintiff has filed the present suit for declaration, possession, damages, mandatory and permanent injunction against the defendants. According tot he plaintiff, sometime in the year 2002 the officials of the defendant no.1 approached him and persuaded him to have a credit card facility to which the plaintiff agreed and accordingly a current account no.52205350948 was opened in the defendant bank. The plaintiff is also owner of Tata Safari having registration no.DL-1CF-6702 which he had purchased from one Alok Gupta on cash down basis and this vehicle was never financed by the defendant bank at the time of its purchase. The plaintiff was represented that this card would be valid for 50 months having a sanctioned limit of Rs.2,92,000/- carrying an interest of 15%. For three months the plaintiff was unable to deposit the amount.

On 12.5.2003 the plaintiff found one letter and he was threatened that the bank will repossess the car in case the plaintiff failed to pay sum of Rs.44,954/- within three days from the receipt of the notice. From 25.5.2003 to 29.5.2003 the plaintiff was hospitalized and the son of the plaintiff was using the said car. On 2.6.2003 eight persons traveling in White Sumo Car suddenly stopped the car and forcefully opened the doors of the car and entered inside. These persons were carrying knives. They threatened the son of the plaintiff if he shouted for help. These persons also took away sum of Rs.50,250/-which the son of the plaintiff was carrying. The son of the plaintiff after the notice went to the defendant bank to deposit the amount. The defendant bank with malafide intention and with ulterior motives failed and refused to accept the Installment. The plaintiff thereafter filed a suit for permanent and mandatory injunction. The defendant appeared in the court and alleged in the written statement that the vehicle has been sold for a sum of Rs.3,04,000/-. The plaintiff withdrew that suit with liberty to file fresh suit for damages. The plaintiff has thus filed the present suit.

The defendant no.1 in the written statement has raised preliminary objections that the intention of the plaintiff was malafide right from the day of the inception of the mileage account limit agreement entered between the parties. As per the agreement the defendant had sanctioned an overdraft facility to the plaintiff against the security of vehicle and the plaintiff undertook to pay the minimum repayment i.e. 5% of the outstanding balance on the monthly basis but despite the undertaking, the plaintiff withheld the amount. Despite reminders, the plaintiff did not make the payment and as per the terms and conditions of the mileage account cum overdraft agreement, the defendant bank took over the peaceful possession of the said vehicle on 2.6.2003. This vehicle has already been sold by the defendant after receiving the due consideration from the purchaser i.e. defendant no.2 and now the plaintiff has no right to claim the possession, mandatory and permanent injunction in respect of the said vehicle."

3. It is contended by counsel for the appellant Bank that the vehicle in question has already been sold to the appellant in FAO No. 255/2004, Ms. Dimple Shingla. He contends that the suit being one for possession and damages the court would be in a position to compensate the respondent fully and the amount received on account of sale of vehicle has been adjusted and credited to the account of the plaintiff in the suit, the possession of the vehicle with Ms. Dimple Shingla ought not to be disturbed.

4. On the other hand, counsel for the respondent submits that the order under challenge suffers from no infirmity. He submits that he be not deprived of the possession of the car since he is the rightful owner of the vehicle in question.

5. Heard counsel for the parties and have gone through the order under challenge. It appears to me that the vehicle in question was sold by the Bank to Ms. Dimple Shingla who has paid the entire amount and the proceeds so received by the Bank put into the account of the respondent herein, Therefore, there is no

irreparable loss being caused to the respondent. Even otherwise the court can always compensate the respondent. In this view it would not be proper to take away the vehicle from the second purchaser and hand over the same to the respondent during the pendency of the suit. Consequently, I set aside the order under challenge and dismiss the application under Order 40 Rule 1 CPC.

6. It is made clear that any violation of any law by the second purchaser shall not bind the plaintiff in the suit qua vehicle no. DL-IC-F-6702.

7. With this FAO 259/2004 & CM.APPL.10828/2004 are disposed of.

8. Any observation made in the order shall have no effect on the merits of the case. dusty.