(2013) 06 BOM CK 0091

In the Bombay High Court

Case No : Criminal Writ Petition No. 151 of 2002 with Criminal Application No. 382 of 2003

Tukaram APPELLANT

Vs

The State of Maharashtra and Others RESPONDENT

Date of Decision : 25-06-2013

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138
Sales of Goods Act, 1930 — Section 31

Citation : (2013) ALLMR(Cri) 3409 : (2013) 4 BomCR(Cri) 249

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : A.G. Godhamgaonkar, for the Appellant; S.B. Pulkundwar, APP for Respondent Nos. 1 to 5/State, Mr. R.N. Chavan, H/f Mr. Vijay Sharma and Mr. B.G. Deshmukh, Advocate, for the Respondent

Judgement

T.V. Nalawade, J.—The proceeding is filed to challenge the order made by the J.M.F.C., Nanded on Exhibit-1 in Miscellaneous Criminal Application No. 99 of 2001. By this order, the J.M.F.C., ordered to give interim custody of the vehicle to present Respondent No. 7. Both the sides are heard.

2. One Tipper bearing No. MH-26/B-7239 was purchased by the Petitioner by taking loan from Respondent No. 6, Development Credit Bank Limited, Nanded. It is contended that it was higher purchase agreement, but additional security was given by mortgaging immovable property. A lone of Rs. 5,97,000/- was taken for purchasing a Tipper and it was to be repaid in forty-eight monthly installments.

3. The Petitioner committed default in making the payment of installments and so, Respondent No. 6 took the possession of the vehicle as provided under the agreement. The Petitioner filed civil suit to prevent Respondent No. 6 from taking the possession, but, the Bank filed Say that vehicle was already taken in possession. The vehicle was put to auction sale and the vehicle was sold to the

highest bidder, Respondent No. 7.

4. It is the case of the Petitioner that the Credit Bank created false record and Panchanama of taking the custody of the vehicle. Allegations are made that even when the RCTC book record was with him, by making false representation, duplicate record was obtained from RTO office by Respondent No. 6.

5. It is the case of the Petitioner that the vehicle was still in his possession. It is contended that on 5th March, 2002, when the vehicle was parked at Chandansingh Corner, CIDCO, Nanded, its custody was taken over by the Police at it was dangerously parked. It is contended that the Petitioner then moved Miscellaneous Criminal Application No. 99 of 2002 for custody of the vehicle. It is contended that the Police gave no objection for the same. It is contended that Respondent No. 7 also filed similar application in the Court and he also claimed the custody of the vehicle by making false contentions. It is contended that Respondent No. 7''s case that he is the registered owner, is false and the defence is based on false record. The Magistrate made order in favour of Respondent No. 7 and this order is under challenged.

6. Both the sides are heard.

7. Copies of the relevant papers are produced by both the sides. It is the case of the Bank that it was a hypothecation agreement and under clauses 15, 16 and 17 of the agreement, right was given to the Bank to take possession of the vehicle and sell it by auction in case of default committed by the borrower. It is contended that default was committed and so, the possession of vehicle was taken on 25th November, 2001. It is the case of the Bank that correspondence was made with the Petitioner to ask him to pay the arrears of the installments and advertisement was published in daily newspaper before putting the vehicle for auction sale. It is contended that two cases were required to be filed u/s 138 of the Negotiable Instruments Act as the cheques in respect of the installments already given, had bounced. It is contended that in the auction, Respondent No. 7 was the highest bidder and so, the vehicle was sold to him. It is contended that even after taking the vehicle in possession, there was a correspondence between the Bank and the Petitioner and sufficient time was given to the Petitioner to pay the installments. It is contended that after selling of vehicle to Respondent No. 7 on 20th February, 2002, steps were taken to transfer the vehicle in name of Respondent No. 7 and accordingly, the record was created in RTO office.

8. It is the case of the Bank that though initially ex-parte temporary injunction was given by the Civil Court, it was vacated and the temporary injunction application was rejected by the Court on 16th March, 2002 when the Civil Court considered the reply of the Bank. The Bank has contended that, it has no concern with the subsequent development as the custody of the vehicle was handed over to Respondent No. 7 by it on 22nd February, 2002.

9. A copy of the order made by the Civil Court by which temporary injunction application was rejected is on the record. The Civil Court rejected the application

by holding that the present Petitioner failed to prove his possession over the vehicle on the date of the suit. There are copies of correspondences dated 28th November, 2001, 28th February, 2002 etc. There is a copy of Panchanama dated 25th November, 2001. This record is sufficient to make out prima-facie case in favour of the Bank. Much was argued regarding compliance of the provisions of the Motor Vehicles Act like Rule No. 55 by learned counsel for the Petitioner, but those provisions need not be considered in view of the position of law in respect of the points involved in the present proceeding.

10. When the Criminal Court grants custody of the vehicle, it is only interim arrangement. The parties can go to Civil Court for getting decision on the entitlement on the basis of title. In the present matter, the suit is already pending in the Civil Court and the Civil Court has refused temporary injunction in favour of the Petitioner by holding that the Petitioner failed to prove his possession over the vehicle on the date of the suit. This single circumstance is sufficient for dismissal of the proceeding.

11. Other side placed reliance on the case reported as Vasantha Viswanthan and Others Vs. V.K. Elayalwar and Others, . The Apex Court has discussed the provisions of Section 31 of the Sale of Goods Act and some provisions of the Motor Vehicle Act. The Apex Court has laid down that the effective date for transfer of vehicle is the date when the property in the vehicle transfers in favour of the purchaser. It is observed that the property in vehicle does not transfer on the date of transfer of registration as provided in the Motor Vehicle Act. There cannot be any dispute over this preposition. Reliance was placed on the case reported as [1997 Mh.L.J. 656] Bombay High Court (Kishan Pandurang Kagde Vs. Baldev Singh Gian Singh and another). In that case also, the High Court held that the ownership had transferred to the purchaser under the documents created by the parties under the provisions of Section 31 of the Sale of Goods Act and so, the transferee was entitled to possession.

12. In view of this position of law and in view of the aforesaid record in respect of rights of parties including the right of the Bank, this Court holds that there is no possibility of interference in the order made by the J.M.F.C. and so, the petition stands dismissed. In view of the dismissal of criminal writ petition, pending Criminal Application No. 382 of 2003 does not survive and the same stands disposed of.

