
(1999) 12 RAJ CK 0031
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5007 of 1999

Umed Khan

APPELLANT

Vs

Kamal alias Kamaludeen

RESPONDENT

Date of Decision : 22-12-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 168

Citation : (2001) ACJ 703 : AIR 2000 Raj 158 : (2000) 2 RLW 714 : (2000) 2 WLC 700

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : D.K. Parihar, for the Appellant;

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—The claim petition filed by the original claimant-respondent No. 1 against the driver (the present petitioner owner and insurance company was decided by the Claims Tribunal, Bhilwara on 17-10-1996 and the award was passed against driver and owner respondents Nos. 1 and 2 respectively in the claim petition jointly and severally for Rs. 25.000/- with interest at the rate of 12 per cent per annum with effect from 18-9-1991 (Annex. 2). It has become final in the sense that neither the owner nor the driver (the present petitioner) has challenged the same in a higher Court.

2. When the claimant tried to execute the award passed by the Tribunal in his favour against the present petitioner, who is a driver, he (the petitioner) filed an application under Order 21 Rule 59, C.P.C. before the Tribunal which was rejected by the learned Tribunal by his judgment and order dated 25-11-1999 (Annex. 1). The aforesaid order dated 25-11-1999, (Annex. 1) has been challenged by the present petitioner the driver, before this Court under Article 226 of the Constitution.

3. The learned counsel Shri Parihar for the petitioner vehemently submitted that

when the award has been passed by the Tribunal against the driver as well as the owner of the vehicle then the claimant should first execute the claim against the owner and if the claimant fails to recover the amount from the owner then only he can proceed against the petitioner otherwise not. In support of his aforesaid submission he has relied upon a Judgment of a learned single Judge of this Court in the case of Roop Chand Maheshwari and Others Vs. State of Rajasthan and Others,

4. I fail to understand that how the judgment of Roop Chand Maheshwari and Others Vs. State of Rajasthan and Others, has any application in the present case. In Ganga Lahari's case (supra) a decree was passed against the judgment debtor as well as against the surety. On the facts of that case the learned single Judge of this Court held that the decree ought to have been executed against the judgment debtors first and if the decree had not been fully satisfied then only the execution petition could have been filed against the surety.

5. There cannot be any quarrel with the proposition of law laid down by this Court in Roop Chand Maheshwari and Others Vs. State of Rajasthan and Others, However, in this case the money decree was not passed but an award has been passed against the petitioner-driver as well as the owner of the vehicle jointly and severally. If the award has been passed jointly and severally then both the driver and the owner of the vehicle were required to satisfy the award. It is up to the claimant to decide against whom he should execute the award. If he chooses to get the decretal amount from the driver and filed an application for execution of the decree against the driver then in such type of cases the Court cannot interfere and in my opinion, the learned Tribunal has rightly rejected the application filed by the present petitioner before it on 25-11-1999 (Annex. 1).

6. Mr. Parihar has also relied upon the Hon'ble Supreme Court judgment in the case of Shyam Singh v. Collector, District Hamirpur, U.P., reported in (1993) 76 Comp Cas 525. It was a case wherein a bank advanced the loan to an agriculturist against mortgage of his land for purchase of a tractor and the tractor was hypothecated to the Bank. The bank initiated recovery proceedings through Tehsildar and a tractor was attached for the purpose of sale. Similarly proceedings for sale of mortgaged land were also initiated. On the facts of that case, direction was Issued by the Hon'ble Su-preme Court to the authorities to ascertain whether the entire dues were realised by the sale or tractor or not. In my humble opinion the judgment of the Hon'ble Supreme Court in Shyam Singh's case (1993) 76 Comp Cas 525) (supra) has no application to the instant case at all.

7. Lastly, Mr. Parihar submitted that under the Rajasthan Motor Vehicles Rules. 1990 the procedure prescribed under Order XXI, C.P.C. has to be followed by the Tribunal. Going through the impugned order at Annex. 1, it cannot be said that the Tribunal has committed breach of any rule or provisions under C.P.C. or under the Motor Vehicles Rules.

8. Before parting it must be stated that when the bus of the petitioner was attached, at that time, the petitioner gave a cheque to the claimant and got the bus released but the said cheque was returned to the claimant by the Bank on the ground that there was no sufficient balance in the account of the driver (the petitioner). This is nothing but a fraud or cheating committed by the petitioner with the claimant. When there is a final award passed in favour of the original claimant-respondent No. 1 and when after considering all the relevant facts and circumstances of the case, the learned Tribunal dismissed the application submitted by the present petitioner by its Impugned order dated 25-11-1999 (Annex. 1), then in my opinion this Court cannot exercise its extraordinary jurisdiction under Article 226 of the Constitution. The law is well settled that those persons who do not come with clean hands before the Court are not entitled for any relief much less the discretionary relief. From the attitude of the petitioner it is clear that the petitioner is not entitled for any relief from this Court.

9. In view of the above discussion, this petition fails and it is dismissed. The stay petition also stands dismissed.