

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.797 of 2023

Arising Out of PS. Case No.- Year-0 Thana- District- Patna

PRINSU KUMAR S/O RAM NARESH SINGH R/O Village- Champapur,
Ghoswari, P.S- Bakhtiyarpur, Distt.- Patna, Bihar

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Home Department, Government of Bihar Patna, Bihar.
2. The Deputy Inspector General, Begusarai, Bihar Begusarai, Bihar
3. The Superintendent of Police, Khagaria, Bihar. Khagaria, Bihar.
4. The SHO, Muffasil Thana, Khagaria. Muffasil Thana, Khagaria
5. Sri Ratesh Kumar Ratan, The then SHO, Muffasil Thana, Khagaria Muffasil Thana, Khagaria, Bihar.
6. CNH Industrial Capital (India) Pvt. Ltd registered office at 4th floor, rectangle no.1, behind mariot hotel, commercial complex, D-4, Saket New Delhi-110017 and corporate office at ATC Tower, Plot 14A, 4th floor, Sector-18 Gurugram-122015, Haryana
7. CNH Industrial Capital(India) Pvt. Ltd. R/O 4th floor, D.S. Business park (the Mall), Near Keshav Hospital, Saguna (Saguna More), P.S- Danapur, Patna-801503.
8. Venkatesh Sharma, State Head Finance, CNH Industrial Capital(India) Pvt. Ltd. R/O 4th floor, D.S. Business Park (The Mall), Near Keshav Hospital, Saguna (Saguna More), P.S- Danapur, Patna-801503
9. Om Prakash Singh, Sales Manager, Bihar, CNH Industrial Capital (India) Pvt. Ltd. R/O 4th floor, D.S. Business Park (The Mall), Near Keshav Hospital, Saguna (Saguna More), P.S- Danapur, Patna-801503
10. Sunil Singh, Proprietor, Kisan Tractors M.G. Road, Khagaria -851204, Mo. No.- 7004062671.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Md. Waziur Rahman, Advocate Mr. Nishant Kumar Sinha, Advocate
For the Respondents No. 06 to 09 :		Mr. Amish Kumar, Advocate Mr. Prahakar Thakur, Advocate
For the State	:	Mr. Iqbal Asif Niazi, AC to GP 5

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 05-04-2024

The fact of the case is more or less indisputable. The writ petitioner purchased a harvesting machine under Hire Purchase Agreement executed by and between the writ petitioner



and the Respondent no. 6, who is a Non-Banking Financial Corporation. The agreement was executed on 15th November 2019, by virtue of which the finance company agreed to pay loan of Rs. 24,80,000/- (Twenty four lakhs and eighty thousand only) for purchasing the said harvesting machine. The petitioner made initial payment of Rs. 8,00,000/- (Eight lakhs only) towards the sale price of the said harvesting machine. It is the case of the petitioner that immediately after purchase of the said machine, there was upsurge of COVID 19 pandemic. During the COVID 19 pandemic, all works and functions including the agricultural work was closed during the period between 1st January 2020 and 19th July 2022. Along with others, agricultural sector was also affected adversely and the petitioner could not make use of the harvesting machine for the purpose of agriculture to augment income. As a result, he was not regular in payment of monthly installments. However, the petitioner paid Rs. 7,00,000/- (Seven lakhs only) approximately during the said period. It is alleged by the petitioner that without issuing any notice to the petitioner calling upon him to make payment of the outstanding dues and also without any notice of repossession, the private respondents with the help of the police personnel attached to the local police station illegally entered into the premises of the petitioner on 1st December 2022, and took over



forcible possession of the vehicle. It is contended by the petitioner that by such illegal act and omission to perform the preconditions of the loan agreement, forcible possession of harvesting machine caused serious prejudice to the petitioner. As an agriculturist, agriculture is the only source of sustenance of the petitioner. By illegal possession of the harvesting machine, the respondents with the help of the police authority have infringed the basic human and fundamental right of life of the petitioner. By such act of the private respondents, the petitioner's right to live with dignity and honor have been infringed. Therefore, the petitioner has prayed for a direction by issuance of appropriate writ upon the respondents no. 01-04 to restore the possession of the vehicle, i.e., New Holland TC 5.30 Combine Harvester unto him and other incidental reliefs.

2. It is submitted by the learned counsel for the petitioner at the outset that generally a Hire Purchase Agreement between two persons is essentially contractual in nature. Until and unless, it is shown that the Hire Purchase Agreement itself is unconscionable or opposed to public policy. The action of the lender cannot be subject to interference in writ petition. The decision of the Hon'ble Supreme Court in ***Orix Auto Finance (India) Ltd. v. Jagminder Singh***, reported in (2006) 2 SCC 598



is the law relating to contractual nature of Hire Purchase Agreement which still holds good on the field.

3. Learned Advocate for the petitioner, however, relies upon the decision of the Hon'ble Supreme Court in *Citicorp Maruti Finance Ltd. v. S. Vijayalaxmi*, reported in (2012) 1 SCC 1.

4. In paragraph 27 of the above mentioned decision, it is stated that till the time, the ownership is not transferred to the purchaser, the hirer normally continues to be the owner of the goods, but that does not entitle him on the strength of the agreement to take back possession of the vehicle by use of force. The guidelines which had been laid down by the Reserve Bank of India as well as the appellant Bank itself, in fact, support and make a virtue of such conduct. If any action is taken for the recovery in violation of such guidelines or the principles as laid down by this Court, such an action cannot be struck down. Therefore, it is submitted by the learned Advocate for the petitioner that in a Hire Purchase Agreement, Finance Corporation can take possession of the vehicle on due compliance of the legal provisions and the contractual obligations arising between the parties. In this regard, he refers to Clause 14 of the Hire Purchase Agreement which deals with repossession and sell of asset. Clause 14 runs thus:-

14. Repossession and sale of Asset



14.1 For the purpose of repossession and sale of Asset.

“(a) The Lender (or its agents) shall have the right to enter the premises where the Asset is located and possess the Asset from the Borrower by giving a written notice of 7 (seven) Business Days. Upon taking possession of the Asset, the Lender shall give another written notice of 7 (seven) Business Days asking Borrower to repay all amounts remaining outstanding and due and payable by the Borrower under this Loan Agreement. If the Borrower fulfil its payment obligations under this Loan Agreement within the timelines mentioned above to the satisfaction of the Lender, it shall re-deliver the Asset to the Borrower.

(b) Failure by the Borrower to fulfil its payment obligations within the time set out in sub-clause (a) above shall entitle the Lender to dispose of the Asset By private contract, public auction or any other method permitted under applicable laws.

(c) The lender may dispense with the requirement of giving notices, as above, if it in its sole discretion determines that (a) the Borrower intends to part with the possession of the Asset; (b) the Asset is being used for unlawful purposes; or (c) the Asset has been dismantled in part or full by the Borrower thus leading to reduction in its value.”

5. It is submitted by the learned Advocate for the petitioner that before entering into the premises of the petitioner, it was held to be bounded duty of the lender to give a written notice of 7 business day upon taking possession of the asset. The lender shall give another written notice of 7 business day asking the borrower to repay all amounts remaining outstanding and due and



payable by the borrower under the loan agreement. If the borrower fulfills its payment obligations under the loan agreement within the timeline mentioned above to the satisfaction of the lender, the lender shall re-deliver the asset to the borrower. According to the learned counsel for the petitioner no notice whatsoever was served upon him. On the contrary, taking illegal help of the police authority, the private respondents took over illegal possession of the combined harvester.

6. Learned Advocate for the petitioner also refers to the clause relating to arbitration in case of any dispute between the lender and the borrower. It is contended on behalf of the petitioner that the respondents did not apply for arbitration for resolving the dispute relating to non-payment of loan amount. Thus, the respondents failed to comply with the provisions of the contract/Hire Purchase Agreement executed between the parties. In support of his contention, the learned Advocate for the petitioner refers to a decision of a Co-ordinate Bench in the case of *Dhananjay Seth and Ors. Vs. Union of India and Ors.* reported in (2023) 4 BLJ 284. In this decision also, forcible repossession of the vehicle by the financier was deprecated on the ground that it would violate the basic fundamental right to earn livelihood by the petitioner with dignity. When the petitioners are complaining of



deprivation in the hands of the contesting respondents without following law and by use of force which cannot be permitted in a State governed by rule of law. It is contended that the respondents did not take recourse of the SARFAESI Act and, on the contrary, took over illegal possession of harvesting machine. Thus, the learned Advocate for the petitioner concludes submitting that the petitioner is entitled to repossession of the harvesting machine.

7. Learned counsel for the respondents, on the other hand, straightway draw my attention to the counter affidavit filed on behalf of the respondents no. 06-09. Referring to paragraph 09 of the counter affidavit, it is submitted by the learned counsel for the private respondents that the petitioner was under obligation to pay the first installment of Rs. 146100 on 2nd March 2020. He did not make such payment. On the contrary, he paid first installment on 6th August 2020. Thereafter, also he was absolutely irregular in payment of EMI due to non payment of EMI. The said loan account was declared as NPA (Non Performing Asset). Subsequently, on 1st may 2021, the respondents issued notice to the petitioner stating failure on his part to pay installment and requesting him to pay installment regularly along with the outstanding amount of Rs. 180657/-. The petitioner failed to comply with the said notice. Subsequently, the respondent issued



loan recall notice on 8th June 2021, calling upon the petitioner to clear total outstanding dues of Rs. 1740605/-(Seventeen lakhs forty thousand six hundred five only) in respect of the said loan transactions within a period of 7 working days, failing which the answering respondent would be constrained to proceed for recovery of the said amount at the terms of the loan agreement. The petitioner failed and neglected to comply with the said notice, marked as Annexure R6/4. Thereafter, the respondent informed the local police authority that they were going to take repossession of the harvesting machine. On service of such notice, the hypothecated asset was repossessed by the respondent. As per the Clause 14 of the agreement, the respondent also issued notice to the petitioner, co-borrower as well as the guarantor with regard to the repayment of loan amount on 7th December 2022 and demand was made for Rs. 19,26,093/-(Nineteen lakhs twenty six thousand and ninety three only) in spite of service of pre-sell notice, the petitioner failed to pay any amount in order to take back the possession of the combine harvester. The account statement of the petitioner's loan account demonstrates the total outstanding amount of Rs. 23,66,315.29/-(Twenty three lakhs sixty six thousand three hundred fifteen rupees and twenty nine paise only) on the date of filing of the counter affidavit, i.e., 17th July 2023.



Therefore, it is submitted by the learned Advocate for the respondents that Clause 14 was scrupulously followed and prepossession notice, post-possession notice and sale notice was served not only upon the petitioner but also upon the co-borrower and the guarantor. The learned Advocate for the private respondents refers to a decision of the Hon'ble Supreme Court in the case of *Anup Sarmah v. Bhola Nath Sharma*, reported in *(2013) 1 SCC 400*. The Hon'ble Supreme Court reiterated in the above mentioned report that in an agreement of hire purchase, purchaser remains merely a trustee/bailee on behalf of the financier/financial institution and the ownership remains with the latter. Thus, in case the vehicle is seized by the financier, no criminal action can be taken against him as he is repossessing the goods owned by him. The decision of *Anup Sarmah* (supra), clearly contradicts the ratio laid down by the Hon'ble Apex Court in *Citicorp Maruti Finance Ltd. v. S. Vijayalaxmi*, (supra). Till such time, as the ownership is not transferred to the purchaser, the hirer normally continues to be the owner of the goods but that does not entitle him on the strength of agreement to take back the possession of the vehicle. However, in all the decisions including the decision referred to by the learned Advocate for the State in *M/s Magma Fincorp Ltd. v. Rajesh Kumar Tiwari*, reported in



(2020) 10 SCC 399. It is laid down that the hirer cannot take forcible possession without following the due process of law of the asset. Due process of law must be followed. Now, coming to the instant case, it is now required to be considered as to whether the lender followed the terms of the contract and due process of law. Annexures R/6 series are the notices which are required to be issued in terms of Clause 14 of the Hire Purchase Agreement to the hirer before taking possession of the vehicle. Therefore, I am not in agreement with the learned Advocate for the petitioner that no notice was served before taking repossession of the asset. Due notices were served. The petitioner failed to comply with the said notices and thereafter, police authority was informed to the effect that the respondents would take repossession of the same obtaining police help. Thus, I find that the requirement of Clause 14 was substantially complied by the petitioner.

8. Last but not the least, Hire Purchase Agreement was executed between the petitioner and respondents no. 06-09. The grievance of the petitioner is that respondents no. 06-09 took over forcible possession of the harvesting machine in violation of the terms of agreement. Thus, the obligation between the parties arises out of contractual relationship between the parties. The State authority was involved as party respondents to bring this writ



petition within the jurisdiction of this Court. However, essential disputes relates to non-compliance of contractual obligation and resultant effect of breach of contract. A contractual obligation is not amenable to writ jurisdiction, until and unless, it does not violates any public policy. In the instant writ petition, the petitioner has not made out any case that the action, on the parts of the respondents, violates public policy.

9. In view of the above discussion, I do not find any merit in the instant writ petition and accordingly, the instant writ petition is dismissed on contest. However, there shall be no order as to cost.

(Bibek Chaudhuri, J)

Suraj Dubey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.04.2024
Transmission Date	08.04.2024

