SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Rakesh Verma Vs. Apple Finance Ltd.

Rakesh Verma Vs. Apple Finance Ltd.

SooperKanoon Citation : sooperkanoon.com/1111802

Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : Aug-12-2008

Judge : J.D. Kapoor, President &Amp; the Honourable Ms. Justice Rumnita Mittal, Member

Appeal No. : Appeal No. 867 of 2004

Appellant : Rakesh Verma

Respondent : Apple Finance Ltd.

Judgement :

J.D. Kapoor, President:

1. Vide impugned order dated 30.8.2004, the complaint of the appellant seeking appropriate relief in view of the illegal action of the respondent by taking forcible possession of the vehicle by using muscleman for the recovery of unpaid instalments, was dismised by the District Forum.

2. Feeling aggrieved the appellant has preferred this appeal.

3. In identical cases we have taken a view which has been upheld by the National Commission in Revision Petition No. 737 of 2005 titled Citicorp Maruti Finance Ltd. v. S. Vijayalaxmi, III (2007) CPJ 161 (NC) and subsequently by the Honble Supreme Court in Appeal (Crl.) 267 of 2007 titled Manager, Icici Bank Ltd. v.

Prakash Kaur and Ors., III (2007) SLT 1=138 (2007) DLT 248 (SC)=I (2007) DLT (Crl.) 865 (SC)=I (2007) CCR 538 (SC)=II (2007) BC 504 (SC), that no financier, bank has authority to forcibly take possession of the vehicle as the loan agreement or the hypothecation agreement are civil contract and, therefore, have to be executed through civil remedy i.e. through intervention of the Court. Unless the bank is equipped with the order from the Court for repossessing the vehicle it has no authority to go to the house of the borrowers to take away the vehicle forcibly.

4. Whenever any bank resorts to such a method it is liable to compensate the consumer as to the mental agony, harassment and humiliation suffered by him and return the post-dated cheques as with the possession of the vehicle contract of loan stands terminated. At the most bank can charge the unpaid instalments and refund the margin money contributed by the consumer.

5. In this regard the observation of the National Commission in Citicorp Maruti Finance Ltd. v. S. Vijayalaxmi in Revision Petition No. 737/2005 are quote worthy and are as under:

When a vehicle is purchased by a person (consumer) by borrowing money from the money lender/financier/banker, the consumer is the owner of the vehicle and not the money lender/financier/banker, unless the ownership is transferred.

In a democratic country having well established independent judiciary and having various laws it is impermissible for the money lender/financier/banker to take possession of the vehicle for which loan is advanced, by use of force.

Legal or judicial process may be slow but it is no excuse for employing musclemen to repossess the vehicle for which loan is given. Such type of instant justice cannot be permitted in a civilized society where there is effective rule of law. Otherwise, it would result in anarchy, that too, when the borrower retorts and uses the force.

A hire-purchase agreement is a normal one under which owner hires goods to another party called the hirer and further agrees that the hirer shall have an option to purchase the chattel when he has paid a certain sum, or when the hire-rental payments have reached the hire-purchase price stipulated in the agreement.

As against this, when a person desires to purchase vehicle/goods and not having sufficient money on hand, borrows the amount needed from a money lender/financier/banker and pays it over to the vender of the vehicle, the transaction between the consumer and the money lender will unquestionably be a loan transaction. In such a case the vehicle purchased by the consumer is registered in the name of the consumer and remains at all material times so registered in his name. The consumer remains qua the world at large the owner and remains in possession of the vehicle. By an agremeent the vehicle can be given as security for the loan advanced. In such a case, the right to seize the vehicle is merely a licence to ensure compliance with the terms of the so-called hire purchase agreement (Re. AIR 1966 SC 1178).

It is to be stated that many financiers/banks are in race for giving loan for purchase of vehicles or various articles. After giving loan and taking interest in advance, the polite behaviour changes because of the documents which are signed on the dotted lines by the borrower. On occasions, borrower suffers harassment, torture, or abuses at the hands of the muscleman of the money lender. Such a behaviour is required to be prohibited and the process of repossession is required to be streamlined so as to fit in cultural civilized society. Let the rule of law prevail and not that of jungle where might is right.

In such cases even the police does not register the FIR or help the aggrieved consumer. In the present case, nothing has been done by the Police for years despite the complaint. In any case, taking of pound of flesh is required to be discouraged.

In case when the vehicle was repossessed by use of force, and thereafter, sold without informing the complainant, in our view, it would be unjust to direct the consumer to pay the balance amount, as alleged by the financier to be outstanding, If such a relief is given to the money lender/financier, it would be unjust enrichment to the money lender and against equity. The question may arise for consideration only if the complainant willingly surrenders the vehicle for sale and for recovery of the outstanding amount. Then, in such cases, consumer dispute would not arise.

Where the vehicle is forcefully seized and sold by the money lender/financier/banker it would be just and proper to award reasonable compensation to the complainant. Reasonable compensation would depend upon facts of each case.

6. In view of the foregoing reasons, we allow the appeal, set aside the impugned order and send back the matter with the direction to the District Forum for deciding it afresh on merit.

7. Since the complaint was filed in the year 2000, the District Forum shall decide the matter positively within two months from the date of receipt of this order as only final arguments are to be heard.

8. The parties shall appear before District Forum on 17.9.2008.

9. Bank guarantee/FDR, if any, furnished by the appellant be returned forthwith.

10. A copy of this order as per the statutory requirements be forwarded to the parties free of charge and also to the concerned District Forum and thereafter the file be consigned to Record Room.

Appeal allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com