

Case No. 5

AIR 2002 KERALA 207

S.SANKARASUBBAN AND R. BHASKARAN. J.J

P.V. Sadasivan, and another

Appellants

Vs

M/s. Industrial Credit & Syndicate Ltd.,

Respondent.

AFA No. 5 of 1998, D/-26-2-2002.

Financier under HP agreement - Hirer commits default - Vehicle repossessed and sold -sale proceeds not to be adjusted against the dues of the hirer - Financier as the Registered owner can appropriate the sale proceeds independently - Hirer also liable to pay insurance premium

Cases Referred:

K.L. Johar & co. v. Dy. Commercial Tax Officer, AIR 1965 SC 1082 (roll)

V.R. Kesava Kaimal, for Appellants. S. R.Dayananda Prabhu, for Respondents.

SANKARASUBBAN, J. :- This appeal is preferred by defendants I and 3 in O.S. No 415 of 1986 of the IIIrd Additional sub Court, Ernakulam against the judgment and decree in A.S.No.138 of 1990 of a learned single Judge of this Court. The facts of the case are as follows:

2. The suit was filed for recovery of money. According to the plaintiff, the appellants and one late Velayudhan executed a hire purchase agreement in its favour. On the basis of the hire purchase agreement, a vehicle was taken on hire. The hire purchase agreement had given the details of the monthly hire charges. The hire charges are to be Paid on the 21st of every month. The case of the plaintiff is that the appellants and the late Velayudhan defaulted payment from the 11th instalment. According to the agreement between the parties, the defendants have to pay the amount as hire charges in 35 instalments. The instalments are liable to be paid on 21st of every calendar month. If the payment of instalment is defaulted, The plaintiff has got right to seize the vehicle. According to the plaintiff, the defendants had paid hire charges due for the first 10 instalments only. A sum of Rs. 1,121/- is due for the 11th

instalment dated 21-8-1984. Subsequent 111 instalments from 21-9-1984 to 14-6-1985 were defaulted. Plaintiff is also entitled to a sum of Rs.2, 585/- being the insurance coverage of the vehicle.

3. Since there was default in the payment of instalment, the plaintiff in exercise of the right vested under the hire purchase agreement took possession of the vehicle on 14-6-1985. The suit was filed for recovery of hire charges amounting to Rs. 24,017.55 and also the following amounts:

Damages -cum-loss in value sustained to the plaintiff	Rs. 7,000.00
Insurance premium	Rs. 2,585.00
Notice charges	Rs. 75.00

4. A written statement was filed by the defendants. Inter alia, the defendants contended that they are not liable to pay the insurance premium. Further it was contended that there was no damage caused. The defendants raised another contention stating that after seizing the vehicle, it was sold for Rs. 70,000/-. This amount has to be adjusted with the amount due from the defendants to the plaintiff.

5. The trial Court found that the instalments were in arrears. It also found that the insurance premium was to be paid by the defendants. It accepted the contention of the defendants that the plaintiff would have sold the vehicle for Rs. 70,000/- and hence, no amount is due to the plaintiff. Thus, the suit was dismissed. Against that an appeal was preferred before a learned single Judge of this Court. The learned single Judge found that the amount was due as per the defaulted instalments. So far as the claim of damages is concerned, it was found that there was no proof. It found that as per the contract, the insurance premium has to be paid by the defendants and hence, an amount of Rs.2, 585/- was due from the defendants. With regard to the price of the vehicle, the learned Judge found fault with the lower Court in drawing an inference that the vehicle was sold for Rs. 70,000/-. The learned Judge took the view that since the entire instalments had not been paid as per the contract, the plaintiff continued to be the owner and hence, when once the vehicle has seized, the plaintiff can dispose of the vehicle as he pleases and the amount received therefrom cannot be adjusted, towards the amount due from the defendants. Hence, the appeal was allowed and the decree was granted for Rs.26, 677.55 with interest at 12% per annum and also costs. It is against the above judgment and decree that the present appeal is filed.

6. The main contention advanced by the learned counsel for the appellants Sri V.R.K Kaimal is that the amount obtained as sale price has not been stated by the plaintiff. According to him, the defendants are the owners of the vehicle and hence, any amount, which has been obtained by the plaintiff by way of sale price has to be adjusted with the amount due from the defendants. According to him, the plaintiff has not produced any evidence to show that the vehicle was sold only for Rs.19,500/-. Hence, the trial Court was correct in inferring the vehicle was sold for Rs. 70,000/-. If this amount is adjusted towards the amount due from the defendant, actually, the defendants will be entitled to get the amounts from the plaintiff.

7. On the other hand, learned counsel for the respondent/ plaintiff Sri S.R.Dayananda Prabhu contended that here is a case where the defendants defaulted payment from 11th instalment to 24th instalment. As per the contract, the vehicle was given only on hire. Every month, hire charges are to be paid. If default is committed in the payment of hire charges, the plaintiff is entitled to seize the vehicle. The defendants become the owners of the vehicle only after all the instalments are paid and at the option of the plaintiff. This option has not been exercised by the plaintiff. Further, he contended that the amount due has not been paid. Learned counsel cited certain decisions of the Supreme Court to show that hirer is to be the owner of the vehicle. Hence according to him, the defendants have no right over the sale price and the learned counsel prayed for confirming the judgment and decree of the learned single Judge.

8. Ext. A1 is the hire purchase agreement. Clause (iv) of the agreement says thus:

The hirer shall pay to the owners on the execution of this agreement the sum of Rs. 25,000/- as an initial payment by way of hire which shall become the absolute property of the Owners and will punctually pay to the Owners at their address for the time being at Manipal and without previous demand the sums mentioned in the margin here of by way of rent for the hire of vehicle the first payment to be made on the 21st day of October 1983..."

In the conditions, it is stated that the owners may terminate with or without notice the contract of hiring and forthwith retake and recover possession of the vehicle, if any monthly hire or part thereof is in arrears and left unpaid for a period of seven days after the date fixed for its payments Clause (v) of the agreement is as follows:

"If the Hire shall duly perform and observe all the terms and conditions in this agreement contained on his part to be performed and observed and shall in manner aforesaid pay to the Owners monthly sums by way of rent amounting together with the said sum of Rs. 25,000/- so paid on the execution of this agreement as aforesaid to the sum of Rs. 59,500/- and shall also pay to the Owners all other sums of money which may become payable to them by the Hirer under this Agreement the hiring shall come to an end and the vehicle shall at the option of the Hirer become his property and the Owner will assign and make over all their right, title and interest in the same to the Hirer but until such payments as aforesaid have been made the vehicle shall remain the property of the Owners and the Hirer mere bailee thereof"

This Clause shows that the plaintiff is to remain as owner of the vehicle till the entire hire charges are paid.

9. In *K.L. Hohar & Co. v. Dy. Commercial Tax Officer* AIR 1965 SC 1082, the Supreme Court held as follows:

"A hire -purchase agreement has two elements: (1) element of bailment and (2) element of sale, in the sense that it contemplates an eventual sale. The element of sale fructifies when the option is exercised by the intending purchaser after fulfilling the terms of the agreement. When all the terms of the agreement are satisfied and the option is exercised a sale takes place of the goods which till then been hired... "

Thus, it is clear that the plaintiff continues to be the owner of the vehicle. If that be so, the defendants are not entitled to claim any portion of the sale price.

10. We also agree with the learned single Judge that the insurance premium has to be paid by the appellants as per the terms of the contract. The arrears of amount on the instalments payable to the respondent is also correct.

11. In the above view of the matter, we don't find any ground to interfere with the judgment and decree of the learned single Judge. Appeal is dismissed. The learned single Judge has granted interest at 12%. Since the instalments itself are determined including the interest, we think, the interest at 12% is reasonable. Hence, we don't find any merit in the Cross Appeal. Cross Appeal is dismissed. No costs.

Appeal dismissed