

Case No. 6

**AIR 1986 KERALA 206**

**M.M. PAREED PILLAY. J**

Hameed

Petitioner

Vs.

Jayabharat Credit & Investment Co.Ltd. and Others

Respondents

C.R.P. No. 2277 of 1985 - D.D/- 21-11-1985

**Hire Purchase Agreement - hirer sells the vehicle to third party - default committed - owner entitled to seize the vehicle from the third party - power of seizure is not a penalty - section 74 of the Indian Contract Act not applicable - nature of Hire purchase agreement explained**

Under the agreement defendant 1 owner of the bus agreed to give the bus on hire to defendant 2. The hirer was to pay to the owner monthly hire charges. When the entire amount due to the owner was paid the contract of hire would come to an end and the vehicle would at the option of the hirer become his absolute property. Until the full payment was made the bus would remain the property of the owner. The hirer was prohibited from selling or mortgaging the vehicle to anyone. On default in payment the owner was empowered to seize the vehicle. The plaintiff purchased the bus from the hirer defendant 2 and undertook to pay the amount due to the owner defendant 1. As the full amount due to owner was not paid the owner under the agreement became entitled to seize the bus. In such case, the agreement between the hirer defendant 2 and the owner of the bus defendant 1 was clearly a hire purchase agreement and since the bus remained the property of the owner defendant 1 until the full amount was paid, the agreement could not be regarded as a loan transaction whereby the vehicle was given as a security for the loan. The stipulation in the agreement empowering the owner to seize the vehicle on default of payment could not be regarded as one by way of penalty under sec.74 and was enforceable. As defendant 1 continued to be the owner of the bus sec.74 had no application and the defendant 1 could not be said to be entitled only to reasonable compensation. Since the plaintiff was a purchaser of the bus from defendant 2, he was bound by the hire purchase agreement and could not claim better rights than defendant 2. The action of defendant 2 in handing over the possession of the bus to the plaintiff could not

obviously bind defendant 1 and therefore defendant 1 was entitled to take possession of the bus from the plaintiff. AIR 1965 Pat 214 and AIR 1955 Nag 269, Rel. on: AIR 1963 SC 1405 and AIR 1966 SC 1178 Disting. (Paras 6,7,9,11).

Cases Referred :	Chronological Paras
AIR 1966 SC 1178	8
AIR 1965 Pat 214	9
AIR 1963 SC 1405	8
AIR 1955 Nag 269	10

M.M. Abdul Aziz and M.M. Meeran for Petitioner  
V.N. Achutha Kurup and C.S. Rajan for Respondents

#### ORDER

Revision petitioner is the petitioner-plaintiff in I.A. 4177/85 in O.S. 1017/85 of the II Additional Munsiff Court, Ernakulam. The suit has been filed for declaration that defendants 1 to 3 have no right, title or authority to take possession of the bus bearing Registration No. KEE 4998 from the plaintiff and for permanent injunction restraining them from taking possession of the bus from him.

2. From the 4th defendant, plaintiff purchased the bus over which the former had entered into hire purchase agreement with the first defendant. According to the plaintiff, the principal amount due from the 4th defendant to the 1st defendant was Rs. 1,84,982.40. Plaintiff purchased the bus on 3-5-1983 undertaking to pay the amount due to the 1st defendant. It is the case of the plaintiff that Rs. 2,30,784/- has been paid towards the loan and the balance amount due from him to the 1st defendant is only Rs. 64,630/-. Contention of the plaintiff is that the transaction between defendants 1 and 4 though described as hire purchase agreements is only a loan transaction, that defendants 1 to 3 have no right to seize the bus from his possession and the at any rate they should not be allowed to take law into their own hands and forcibly take possession of the bus even if amount is due from him. The learned II Addl. Munsiff did not grant injunction. Plaintiff filed C.M.A. 99/1985 and the I Additional District Judge, Ernakulam after hearing both sides refused to interfere with the order of the learned Munsiff.

3. Main contention of the revision petitioner (plaintiff) is that even if the transaction between defendants 1 and 4 is construed as hire purchase agreement, 1st defendant cannot seize the vehicle as the forfeiture clause in Ext. B1 agreement is penal in nature and under S. 74 of the Contract Act reasonable compensation as determined by the Court alone can be allowed. Counsel for the 1st defendant contended that the agreement is between 1st defendant and 4th defendant and therefore plaintiff has no locus standi to challenge any terms in it. Another contention is that plaintiff alone is not competent to file the suit. It is pointed out that Ext. A2 agreement shows that plaintiff and another person have purchased the bus from the 4th defendant and as that person does not figure as a plaintiff the suit is not maintainable.

4. In Ext. A2 agreement executed between plaintiff and 4th defendant it is mentioned that the bus is subject to hire purchase agreement, that Rs. 2,07,416/- remains to be paid to the 1st defendant and that the plaintiff and the co-executant should pay the same to the 1st defendant in monthly instalments. It is further recited that when the hire purchase amount and other liabilities mentioned in Ext. A2 are fully discharged the registration certificate of the bus would be transferred by the 4th defendant to the plaintiff and the other contracting party. As plaintiff himself has admitted in Ext. A2 that the transaction entered into between the 1st defendant and the 4th defendant is hire purchase agreement, he cannot now contend that the document evidences only a loan transaction.

Counsel contended that assuming that Ext. B1 evidences hire purchase agreement even then 1st defendant cannot seize the vehicle as the plaintiff and 4th defendant have paid lion's share of the amount as per Ext. B1 and only a small portion of the amount remains due to the 1st defendant. Counsel contends that the recitals in Ext. B1 entitling the 1st defendant to seize the vehicle is totally opposed to the reasonable compensation that could be awarded by the court and as the above clause is highly penal it cannot be enforced and only reasonable compensation within the meaning of S. 74 of the Contract Act could be awarded.

5. There cannot be any doubt that Ext. B1 is a hire purchase agreement. Clause V of Ext. B1 provides that the hirer (4th defendant) shall duly perform and observe all the terms and conditions of the agreement and shall pay to the owner (1st defendant) monthly hire charges. It also mentions that when the contract of hiring shall come to an end, vehicle shall, at the option of the hirer become his absolute property and until such payment it shall remain the property of the owners. It also states that the hirer

shall have the option to get the vehicle at any time during the currency of the agreement by paying in lump sum the balance of the hire charges due under the agreement.

Clause XI(6) prohibits the hirer from selling, mortgaging, pledging or hypothecating the vehicle. As per the above clause, the hirer also agreed not to remove the vehicle out of State of Kerala without the written permission of the owner. Under Cl. XI(8) the hirer has to declare to the Registering Authority that the vehicle in his possession is subject to the hire purchase agreement and this will not in any way affect or prejudice the owners.

6. The true effect of a transaction can be determined from the terms of the agreement considered in the light of the surrounding circumstances. Recitals in Ext. B1 would show that it is a hire purchase agreement. It is difficult to accept the contention of the revision petitioner that Ext. B1 evidences only a loan transaction. Such a contention revision petitioner cannot make especially in view of the averments in the plaint.

7. The crucial point to be decided is as to whether clause XV of Ext. B1 empowering the 1st defendant to seize the vehicle is a stipulation by way of penalty and whether only reasonable compensation as provided under S. 74 of the Contract Act could alone be granted by the Court. To decide the above point Ext. B1 agreement has to be considered as a whole. The intention of the parties as can be gathered from Ext. B1 is very relevant in that context. Ext. B1 begins with clause I whereby the 1st defendant agreed to give on hire and the 4th defendant agreed to take on hire the vehicle. Cl. II provides that on execution of this agreement hirer shall pay to the owners at Bombay a sum of Rs.1/- in consideration of the option to purchase given to the hire under Cl. V. Clause V provides that the hirer shall duly perform and observe all the terms and conditions of the agreement. It also states that when the entire amount due to the owners is paid the contract of hire shall come to an end and the vehicle shall at the option of the hirer become his absolute property. The above clause further provides that until the payments have been made the vehicle remains the property of the owners. In view of the various recitals in Ext. B1 it is not possible to hold that it evidences a loan transaction whereby the vehicle is given as a security for the loan. Ext. B1 in unmistakable terms shows that the 1st defendant continues to be the owner of the vehicle and the 4th defendant has to pay the monthly instalments and after the payment of the last instalment he has to make the option.

As 4th defendant has agreed to the conditions set out in Ext. B1 he is bound to perform it punctiliously. His rights are dependent upon the performance of the conditions in Ext. B1 and his responsibility cannot all the minimized or negated by saying that he sold the vehicle to the plaintiff. At amount due to the 1st defendant has not been fully paid 4th defendant or the Plaintiff claiming through him cannot claim a superior right. C1. XI(6) of Ext.B1 prohibits the 4th defendant from selling or mortgaging the vehicle to anyone, 4th defendant's action in handing over the possession of the vehicle to the plaintiff cannot obviously bind the first defendant.

8. The decision referred to by the plaintiff's counsel, AIR 1963 SC 1405 has no application to the fact of the case in hand as that case relates to agreement of sale of immovable properties. Another decision relied on by the plaintiff's counsel, AIR 1966 SC 1178 is also not helpful to him. This is a case where a customer desirous of purchasing a motor dealer, agrees to purchase the vehicle, and makes part payment of the price to the dealer and then approaches the financier for a loan to be advanced to him.

The facts of the above case would show that the customer had on the date of the application for loan sold to the financier the motor vehicle and entered into an agreement called hire purchase agreement under which the financier agreed to let out to the customer and the customer agreed to take on hire the motor vehicle for a specified terms subject to the conditions mentioned in the agreement. Such is not the case as we find from various recitals in Ext. B1. In AIR 1966 SC 1178 at 1185 (Sundaram Finance Ltd. v. State of Kerala) it has been held as follows :

“But a hire purchase agreement is a more complex transaction. The owner under the hire purchase agreement enters into a transaction of hiring out goods on the terms and conditions set out in the agreement, and the option to purchase exercisable by the customer on payment of all the instalments of hire arises when the instalments are paid and not before. In such a hire purchase agreement there is no agreement to buy goods; the hirer being under to legal obligation to buy, has an option either to return the goods or to become its owner by payment in full of the stipulated hire and the price for exercising the option. This class of hire purchase agreement must be distinguished from transaction in which the customer is the owner of the goods and with a view to finance his purchase he enters into an arrangement which is in the form of a hire purchase agreement with the financier, but in substance evidences a loan transaction, subject to hiring agreement under which the lender is given the license to seize the goods.”

From the recitals in Ext. B1 it can be seen that the first defendant is the owner of the vehicle and the 4th defendant only the hirer. Ext. B1 agreement cannot be classed in the category of agreements where the customer is the owner of the goods and he with a view to get financial assistance entered into an arrangement with a financier.

9. Regarding the question whether in a hire purchase agreement it would be open to the owner to seize the vehicle in case of default of payments by the hirer. Patna High Court in Enayathullah Khan v. Jalan Trading Co., AIR 1965 Patna ----- either of the operation of the principle associated in S. 74 of the Contract Act or any principle of equity in order to give any relief to the hirer. S. 74 of the Contract Act stipulates for compensation when a contract has been broken by one of the contracting parties. As the recitals in Ext. B1 show that 1st defendant continues to be the owner of the vehicle it is difficult to apply S. 74 of the contract Act and hold that the 1st defendant can only claim reasonable compensation.

10. In AIR 1955 Nag 269 (Nathulal v. Balakrishnan ) it has been held in para 11 as follows:

It is thus clear that the transaction between the parties was at the inception on of hire purchase with option to purchase at the end. The property in the truck did not pass to the plaintiffs merely on the execution of the agreement. The provision enabling the owner to resume possession on default in payment is enforceable, if the agreement is a bona fide hire purchase agreement, and equity will not release the hirer from the effect of his default, even if clearly all installments have been paid and the arrears are tendered before action being brought, the provision not being in nature of a penalty."

As the plaintiff has no case that he has paid up the entire amount due to the 1st defendant in order to entitle him to exercise the option of purchase he cannot thwart the rightful claim of the 1st defendant. The contention of the plaintiff that registration certificate stood in the name of the 4th defendant and that he purchased the vehicle from the 4th defendant cannot obviously come to his rescue as the 1st defendant is the owner of the vehicle as evidenced by Ext. B1 agreement. Whatever rights 4th defendant had obtained are only subject to the hire purchase agreement and till the last pie is paid to the 1st defendant and the option is exercised by the hirer to purchase the vehicle after having paid the entire amount due to the 1st defendant, 4th defendant cannot legally retain possession of the vehicle as against

the claims of the 1st defendant and as plaintiff has purchased the vehicle knowing full well about the hire purchase agreement entered into between the 1st defendant and the 4th defendant the (plaintiff) is certainly bound by the terms and conditions in Ext. B1 and at any rate he cannot question it and contend that only reasonable compensation alone could be granted in favour of the first defendant.

11. The learned District Judge has rightly held that the plaintiff who is claiming rights under the 4th defendant has no right independent of Ext. B1 as against the 1st defendant. Plaintiff who claims to have purchased the bust from the 4th defendant who is a hirer under Ext. B1 agreement cannot obtain better rights than the 4th defendant.

I do not find sufficient reasons to interfere with the order of the Court below. C.R.P. is dismissed. No order as to costs.

Petition dismissed.