Case No. 19

1999 (1) M.L.J. 210

IN THE HIGH COURT OF JUDUCATURE AT MADRAS.

Present : - S.S. Subramani. J

C.R.P.Nos. 2379 and 2380 of 1998
and C.M.P.Nos.12073 and 12074 of 1998
26th October 1998

Sri Rama Machinery Corporation Limited by its
director Sunil Jhun Jhunwala Petitioner

Vs

Standard Chartered Bank by its Manager
A.P. Thiruvedi and another Respondents

Seizure of vehicle - No prior notice necessary - Principle governing the actions of statutory or administrative authority not applicable - matter to be decided based on the terms of the contract entered into between the parties -

Cases referred to:-

R.Paramasivam v. The Tamil Nadu Industrial Investment Corporation Ltd. 1993 Writ L.R 273 (Para 19)

Union of India v. Tulsiram Patel. (1985)3 S.C.C 398. (Para 21)

Mary Teresa Dias v. Hon'ble Acting Chief Justice, A.I.R.1985 Ker. 245.(Para 22)

R. Thiagarajan , for Petitioner.

C.V.Niranjan, for Respondent No.1.

Kuberan for Ramu Associates. for Respondent No.2

The Court made the following

ORDER: These revisions are filed by the plaintiff in O.S.No.429 of 1998 on the file XVI Assistant Judge. City Civil Court Madras.

2. Petitioner, who is a Public Limited Company, availed financial assistance from the first respondent in the suit, for purchasing a FORD Car. The price of the vehicle as per the invoice as Rs.8,4,782. Petitioner availed a loan of Rs 6,77,238. 43 from the first respondent –Bank. Petitioner agreed to pay interest at 18.36% per annum. It also

agreed to repay the entire amount in various instalments and it has to pay a sum of Rs 15,187 towards principal and Rs.10.388 towards interest. In all Rs.25,575 for one installment. Plaintiff paid nine instalments on the basis of the agreement. It has to pay 27 more instalments and the installment comes to an end in July 2000.

3. Whileso, the company met with great financial difficulty and the money which had been earmarked for payment of instalments could not be in time. It is the case of the petitioner that there was various legal proceedings between the plaintiff-company and the Tamil Nadu Electricity Board with regard to the power supply and on account of certain discrepancies in the plant and machinery erected and the power supplied by the Tamil Nadu Electricity Board. In view of the financial difficulties, two cheques issued by the plaintiff were dishonored and plaintiff immediately coming to know about the same wanted to substitute the same by two pay orders. But the defendant refused to accept the same.

4. Whileso, first respondent wanted the plaintiff to produce the R.C. Book and tax papers through the representative of the company. Believing the representation of the Bank. Plaintiff's representative presented all the documents pertaining to the R.C.Book of the vehicle and tax papers. Thereafter, First respondent after retaining the documents also requested that they wanted to inspect the vehicle believing that representation. The vehicle was also produced for inspection. But the first respondent refused to part with the vehicle and seized the same.

5. It is the case of the petitioner that the first respondent acted violating the business ethics and it is not entitled to repossess the vehicle without valid notice. It is its further case that unless the first respondent establishes the default in payment of installment is deliberate, the power of seizure cannot be exercised arbitrarily and unilaterally. When payment could not be made for a short period and that too for unforeseen circumstances and when it is beyond the control of the control of the petitioner, first respondent should not have acted harshly. According to the petitioner, the default is not voluntary.

6. It is further stated in the plaint that after seizure of the vehicle. First respondent sent a telegram as if the petitioner has been dispossessed of the vehicle in accordance with law. For the said telegram, a reply was sent by the counsel of the petitioner on 3.7.1998 wherein it is stated that the seizure of the vehicle is invalid and the first respondent committed breach of Trust and the first respondent cheated the petitioner by retaining the R.C.Book and insurance papers of the vehicle. According

to petitioner. First respondent has no manner of right or interest to seize the vehicle without notice or without following the terms of the Hire purchase agreement dated 7.8.1997. Since, the action of the first respondent is illegal, immoral and opposed to all canons of principles of law. Plaintiff is compelled to come to this Court to seek declaration that the seizure of the vehicle effected by the first respondent on 20.6.1998 is illegal.unauthorised and void ab initio and for mandatory injunction directing the first respondent to release the vehicle.

7. Along with the suit, two interim applications in I.A.Nos.10002 and 10003 of 1998 were also filed. In I.A.Nos.10002 of 1998, the relief sought for is to grant a permanent injunction restarting the first respondent, and all persons clarming under it from dealing with the vehicle. Except in accordance with law and in terms of the Hire purchase Agreement. In I.A.No.10003 of 1998 the relief sought for is for a mandatory injunction directing the first respondent to deliver the vehicle belonging to the petitioner within the time to be fixed by the court.

8. A common counter-affidavit was filed by the first respondent and after hearing the both sides, counsel of the Lower Court dismissed both the applications. These orders are challenged in these revisions under Art 224 of Constitution of India.

9. When the matter came up for admission I ordered notice of motion. After appearance or parties, I heard all the learned counsel.

10. The learned counsel for the petitioner argued that the first respondent herein has acted illegally and harshly in seizing the vehicle and thereafter has even created documents fraudulently to prove that the vehicle had already been sold before the suit has been filed. The argument is when a party comes to the court with fraudulent documents, he is not entitled to any benefit whether he is a plaintiff or defendant. The further argument is that when the first respondent in this case has come to court on the basis of forged documents, the principle that the party must come to the court with clean hands, must be applied to first respondent also. If that principle is accepted, the first respondent's counted –affidavit could not be accepted and consequently petitioner is entitled to the relief sought for.

11. As against the said contention, the learned counsel for the first respondent submitted that the petitioner is exploiting the typographical mistake or error on the date mentioned in their affidavit and the same cannot be exploited when it is evidencely clear that there is apparent mistake. To prove that mistake, documentary evidence is

produced and the genuineness of which cannot be impeached by any one.

12. In this revisions, the second respondent is the person who has purchased the vehicle from the first respondent. The learned counsel for the second respondent also submitted that he has paid the amount to the first respondent only by cheque the details of which are given in the counter affidavit.

13. I will first consider the question how far the injunction applications itself are maintaining and thereafter come to the question as to there is any fraud as alleged by the petitioner.

14. It is admitted by the petitioner that he has executed a car loan and hypothecation agreement to the first herein. It is also admitted that all the terms and conditions of the agreement are put down in writing and the same binds both the parties.

15. The relevant portion of Clauses 12 and 13 of the agreement read thus:

> "12. Without prejudice to the Bank's other rights. If the borrower/s fail/s to pay any amount payable by the borrower/s to the Bank under this agreement within 15 days of demand or of such amount becoming due and payable or if any event of default occurs the Bank shall be entitled to forthwith take physical possession of the vehicle and sell or otherwise deal with the vehicle to enforce the Bank's security and recover the Borrower's outstanding. The Borrower/s agree/s and undertake/s not to prevent or obstruct the Bank from taking possession of the vehicle and that the Bank's representatives will have unrestricted right or entry in and to any premises where the vehicle is located. The Bank will be entitled to sell, give on hire or otherwise deal with the vehicle by public or private auction to private auction or private treaty, without being liable for any loss.
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> 13. The Bank shall be entitled to take repossession of the vehicle. Irrespective of whether the loan has been recalled. Whenever in their opinion of the Bank, there is apprehension of any money not being paid or the Bank's security being jeopardized.

A reading of this clauses make it clear that the Bank has an unrestricted power to seize the vehicle when there is default. It has also get the power to seize the vehicle when it apprehends that the money advanced by it is being jeopardized.

16. As per Clause 6 of the agreement, the borrower has to deliver post-dated cheque and it is further agreed that these cheques will be honoured on the first presentation itself. The amount also has to be paid every month on the due date is also admitted in the affidavit. Two instalments for the month of May and June 1998 were defaulted by the petitioner is also admitted in paragraph 14 of the affidavit. Though the cheques were presented they were dishonoured twice, when it was presented on 3.5.1998 and 10.5.1998. Likewise the cheque for the month of June 1998 was also dishonoured twice on 3.6.1998 and 10.06.1998. Thereafter on 23.06.1998,a telegram was issued informing the petitioner that the total outstanding on his account is Rupees 6,03,596 and he was directed to pay the amount with in a period of seven days, failing which the loan would stand terminated. On receipt of this said telegram the petitioner immediately wrote back to the first respondent expressing is regret for what has happened and it further assured that in future, it will honour the cheques in time. It also informed the first respondent that they will be giving fresh cheques in order to settle the outstanding dues. The various reasons why the cheques could not be honoured is also stated in that letter. It was thereafter, the first respondent requested for the inspection of the documents as well as the vehicle.

17. On 3.7.1998, first respondent further informed the petitioner that the period stated in the telegram dated 23.6.1998 has already expired and the outstanding amount has not been paid and hence the loan stands terminated. It is also stated that it had received quotation for the sale of the vehicle for Rs. 6,54,000. First respondent further informed the petitioner that it will wait for another 24 hours to repay the entire outstanding, failing which the Car will be sold to the highest bidder. As I said earlier, meanwhile the car was seized by the first respondent for which a telegram was issued by the first respondent in seizing the documents as well as the vehicle. In the telegram. It is also stated that the petitioner is willing to settle the claim. For the said telegram a reply was also sent by the respondent's counsel repudiating the allegations therein and the actions are taken in terms of the hypothecation agreement.

18. The vehicle was sold to the second respondent on 6.7.1998. On 9.7.1998 two demand drafts were sent to the first respondent for the instalments of May and June 1998. The same was returned by the first respondent since the vehicle was already sold to the second respondent. The suit was filed on 12.7.1998 for declaration and without impleading the second respondent.

19. From the agreement executed by the petitioner with the first respondent it is clear that the first respondent got the power of seizure and it has only acted in

terms of the agreement. The argument of the counsel that the first respondent had acted harshly and without issuing notice and the power of seizure should not be exercised unless there is willful default are arguments which could not be accepted. The further argument that under no circumstances power of seizure could be exercised without notice is also an argument without any basis. In this case we are not dealing with any statutorily or administrative authority where the principles of could be applied or where the principle of Natural Justice will have to be read into every action of the authorities. Here is a case of contract signed by both parties and admitted by both of them. In such cases, the Principles of Natural Justice or prior notice before seizure have no application. Even in the case of administrative authority, the applicability of principles of Natural Justice was considered by this Court in the decision *R.Paramasivam v.The Tamil Nadu Industrial Investment Corporation Ltd. 1993 Writ L.R.2 73.* In paragraph 22 of the judgement. The Full Bench held,

> "…. there was no necessity for a notice of seizure before the lorry was seized…"

That is a case where the Tamil Nadu Industrial Corporation has given financial assistance for purchase of lorry to the petitioner before them. One of the arguments was before seizure of the lorry prior notice is required. After holding that there is no necessity for notice their Lordships said that the applicability of principles of Natural Justice will naturally depend on the exigencies of the situation and the nature of the hypothecated assets. The Full Bench took judicial notice of the fact that the hypothecated vehicle could be removed out of the State, if prior notice is given and the very purpose of seizure will be defeated. The Full Bench further held if urgent action is to be taken that will be a circumstances to be taken note of to exclude or limit the Principles of natural justice.

20. In Penumbra of Natural Justice by Tapash Gan Choudhary at page 43. the learned author said thus:

> " The rules of Natural Justice should not be allowed to be exploited as a purely technical weapon to undo a decision which does not in reality cause substantial injustice. "The fact that the applicant has suffered no prejudice as a result of the error complained of may be a reason for refusing him relief. It is necessary to keep in mind the purpose of the public law principle that has technically been violated and ask whether that underlying purpose has in any event been achieved in the circumstances of the case. If so, the courts may decide that the breach has caused no prejudice and there is no need to grant relief."

Natural Justice, it must be kept in mind, is not a static concept. In the administration of justice it is part of a judicial vocabulary. It is recognized as a guiding factor in administrative law and forms the constitutional basis for judicial scrutiny of legislative and executive actions. The principles of Natural Justice may have to yield to the " demands of necessity" where the "jurisdiction is exclusive and there is no legal provision for calling a substitute."

While, as a general rule, scrupulous adherence to the principles of Natural Justice is insisted upon, confinement of the principles within their proper limits has been favoured by the courts. It has been suggested not to stretch the rules too far. Courts now-a-days are decrying any attempt to make unnatural expansion of Natural Justice and are warning against stretching the concept of justice to illogical and exasperation limits. The principles of Natural Justice should stretched to the ridiculous edge or opportunity at every stage. It must be pragmatically allowed fruitful play to meet the given fact situation. Natural Justice unbound is as bad as its being kept out of bounds. The Apex Court's view in this context is very clearly focused *in Satyavir Singh's* case, where it observed that the concept of Natural Justice is a magnificent thoroughbred on which this nation gallops forwards towards its proclaimed and destined goal of "Justice, social, economic and political". This thoroughbred must not be allowed to turn into a wild and unruly horse, careering off where it lists, unsaddling its rider and bursting into fields where the sign " no pasaran" is put up"

In the same of volume at page 58, the circumstances under which Principles of Natural Justice could be excluded is also stated. Which read thus:

> " It is well established both in England and in India that were a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action such a right can be excluded. Thus the rule may be discarded in an emergent situation where immediate action brooks no delay to prevent some imminent danger or injury or hazard to paramount public interests:

21. In the case between *Union of India v. Tulsiram Patel, 1985) 3 S.C.C.398,* in paragraph 101, it is held thus:

> " Not only therefore can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well-defined exceptions to the memo *judex in cause sua* rule as also to the *audi alterim partem* rule. *The nemo judex in causa sua* rule is subject to the doctrine of necessity and yields to it as pointed out by this Court

in J. Mohapatra & Co. v. State of Orissa. So far as the *audi alteram partem* rule is concerned, both in England and in India it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion: nor can the *audi alteram partem* rule be invoked if importing would have the effect of paralyzing the administrative process or where the need for promptitude or the urgency of taking action so demands, also pointed out in *Maneka Gandhi case* at Page 681."

22. *In Mary Terasa Dias v Hon'ble Acting Chief Justice. A.I.R. 1985 Ker .245.*a Division Bench of Kerala High Court in paragraph 18 held thus:

> "Natural Justice is not a static concept. It is part of a judicial vocabulary in the administration of Justice. It is not extra legal though it may be "extra legislative" it is recognized as a guiding factor in administrative law and forms the constitutional basis for judicial scrutiny of legislative and executive actions. It is the sense of Justice that represents the ethics of judicial conscience. While a statute may expressly abrogate the principles of Natural Justice, these principles may also have to yield to the "demands of necessity" where the "jurisdiction is exclusive and there is no legal provision for calling a substitute."

23. From the above facts, it is clear that is no necessity to issue notice even in the case of certain administrative action. If this is the position even in the case of administrative orders, in the case of contracts, it can be said that there is no need for prior notice. If prior notice is issued before the seizure of the vehicle, naturally the vehicle will be taken away from the vehicle will be taken away from the jurisdiction of the State and the very purpose of exercising the powers of seizure will be taken away.

24. In this case one more reason why no notice is required is, petitioner himself executed an irrevocable power of attorney in favor of the first respondent and one of the powers given in the power of attorney is to take possession of the vehicle. If first respondent exercises the power of attorney and if that, power creates an agency with interest, it cannot be said that the first respondent is legally and morally bound

to issue any notice before seizure. The argument of the learned counsel for the first respondent that it has acted only in fairness is only to be accepted.

25. The fact that the petitioner failed to pay the installment amounts is admitted. The fact that the company also to be closed down for few months is also admitted. There may be various reasons so far as the petitioner is concerned for not paying the amount of instalments after closure of the factory. But so far as the first respondent is concerned, it has only to consider whether its security is likely to be affected and the apprehension by it is also reasonable. According to me the bona fide action of the first respondent can never be doubted.

26. The learned counsel for the petitioner criticized the attitude of the first respondent as calling the petitioner as bankrupt or involved in financial crisis. According to the counsel, the allegations are without any basis. I do not think that such an argument could be accepted.

27. I also do not find any illegality in the procedure adopted by the first respondent in seizing the vehicle. It wanted the documents and vehicle for inspection. The same were handed over by the petitioner merely because these are entrusted to the first respondent for inspection, it does not follow that the first respondent should not exercise its power of seizure.

28. After two instalments were defaulted and the cheques are also dishonoured, a telegram was issued on 23.6.1998 informing the petitioner to close the loan and seven days time was granted. On the very same date, petitioner received it and it is evident from the reply of the petitioner itself. The vehicle was seized on 3.7.1998 and on the same day Counsel for the petitioner issued telegram. On the same date. Counsel for the respondent also informed the petitioner that the period granted to close the loan also expired and it has received an offer fro Rs. 6,54,000 for sale of the car. Petitioner was given 24 hours time to repay the entire loan. The telegram issued by the petitioner's counsel simultaneously on 3.7.1998 was also replied on 4.7.1998.

29. It must be understood that on 3.7.1998 except to state it is prepared to pay the amount, no payment has been made by the petitioner. On 6.7.1998, the car was sold to the second respondent. The details of the payment by the second respondent to the first respondent it also given in the counter-affidavit. All these are dated 6.7.1998. The vehicle was also handed over to the second respondent on 6.7.1998. It is thereafter two demand drafts were sent by the petitioner to the first respondent

on 9.7.1998. The same were returned by the first respondent.

30. I find that the first respondent has informed the petitioner to close the loan and also given reasonable time to settle the transaction. Only after reasonable notice the vehicle was also sold to the second respondent. The payment made by the petitioner on 9.7.1998 was rightly refused to be accepted since there was no vehicle with the first respondent and the Hire purchase agreement with the petitioner also came to an end. it was now represented by the learned counsel for the second respndent that the vehicle also changed hands and is now with the third party. There is no procedural irregularity or illegality by the first respondent either in seizuring the vehicle or in the subsequent sale to the second respondent.

31. Learned counsel for the petitioner gave importance to paragraph 4 of the counter affidavit of the Respondent in the lower court. It is true that there is some mistake in the statement. The lower court also took note of the same and found that it is apparent mistake. When the records are available to prove the mistake and the same were verified by the lower court. I do not think that this Court should take a different reasoning to differ from the same.

32. Learned counsel for the petitioner further submitted that these documents produced by the first respondent were all photo copies, which could not be admitted, and it is really fraud played on the court. The argument was that on the basis of the averments in the counter-affidavit, these documents can only be traded as fraudulently created of the purpose of the case. The further contention is that when the petitioner was denied the relief only on basis if these fraudulent documents, this Court could interfere under Art 227 of Constitution of India. I do not think that such an argument as put forward before the lower court and even now it stands only as allegation. There is no evidence nor fraud could find out from the available nor fraud could be inferred. Even if the vehicle has not been sold to the second respondent, the case of the petitioner is not going to be better, when once it is found that the seizure is valid.

33. The lower court has exercised the discretion in refusing the interim orders and I do not think that while exercising the powers under Art.227 of the Constitution of India. I should set aside the same. The court has passed the orders only within the limits of its power and on the basis of available materials. The only conclusion that could be arrived is to dismiss the application which is rightly done by the lower court. The order is based on materials and the lower court rightly appreciated the same
34. Even at the time of admission. I asked the learned counsel whether a revision

under Art 227 of Constitution of India is maintainable when orders has been passed on merits. I also brought to the notice of the counsel that the order is appeasable under O.43.Rule 1 of code of Civil Procedure. The learned counsel for the petitioner even at that time insisted that he has come to this Court only to put forward the case of fraud, which justifies his filing revision under Art.227 of Constitution of India. As on date there is no evidence of fraud.

35. In the result. I dismiss both the revision petitions with cost. It quantify the same as Rs.1.500 in each revision petitions. Consequently. C.M.P.Nos.12073 and 12074 of 1998 are closed

B S - Revision petitions dismissed.