

Case No. 3

(2000) 9 Supreme Court Cases 238
(Before S.P. Kurdukar and R.P. Sethi, JJ.)

TATA FINANCE LTD.

Appellant

Vs

AJAYA KUMAR BISWAL AND OTHERS

Respondents

Civil Appeal No. 149 of 2000, decided on January 7, 2000

Default by hirer - repossession by financier - hirer files writ petition - writ petition allowed with direction to release the vehicle on payment of a particular sum in instalments and leaving the parties to be governed by the arbitration award to be passed in the pending proceeding - High Court's order set aside

Held:

The effect of the impugned order is that the truck would be released to the 1st respondent and again in case he commits default, the appellant will have to run after him to follow the same procedure. Apart from this, if any damage is caused to the hired truck, that will complicate the issue further. It is also to be noted that the appellant has referred the matter to arbitration and the same is pending. In view of all these facts and circumstances of the case, the impugned order cannot be sustained and the same is required to be aside.

Appeal Allowed R-M/22716/S

ORDER

1. Leave granted
2. Heard learned counsel for the parties
3. The appellant is Tata Finance Limited which had given the truck to the 1st respondent under a hire-purchase agreement dated 4-1-1995. Under the said agreement the respondent was to pay a sum of Rs. 15,000 (fifteen thousand) per month as hire charges in addition to the additional deposit of Rs. 89,030. The regular and timely payment of hire charges was the essence of the contract and in the event of breach of any such payment the appellants were entitled to claim back the hired vehicle and also demand the balance money after giving due notice. It appears that the 1st respondent had committed breach of this agreement. Several cheques issued by him towards hire charges were dishonored by the bankers due to insufficient funds

in his account. Several letters were addressed by the appellant to the said respondent but the amounts were not paid. Finally on 5-9-1997 the appellant called upon the 1st respondent to pay a sum of Rs. 2 lacks and 20 thousand which had become due and payable under the agreement or return the truck. After expiry of the said period under the letter dated 5-9-1997 and because of non-payment of hire charges by the 1st respondent, the appellant seized the vehicle. There doesn't seem to be any dispute that on 10-7-1998 the 1st respondent was liable to pay the outstanding hire charges of Rs. 2 lacks and 20 thousand. The appellant in terms of the hire-purchase agreement referred the matter to the arbitrator has entered upon arbitration.

4. Respondent 1 on 7-8-1998 filed a writ petition Article 226 of the Constitution before the High Court of Orissa at Cuttack challenging the seizure of the vehicle and a direction to the appellant to release the vehicle. The learned Division Bench of the Orissa High Court disposed of the said writ petition as under.

“The petition is closed and disposed of with direction that on payment of Rs. 1 lack in three equal installments the vehicle shall be released .

As arbitration proceeding is pending, parties shall be governed by the arbitration award”

5. It is against this order the appellant has filed this appeal

6. Despite several opportunities to the 1st respondent he had not filed any counter-affidavit. We have gone through the relevant material on record and are satisfied that the impugned order cannot be sustained. The effect of the impugned order is that the truck would be released to the 1st respondent and again in case he commits default, the appellant will have to run after him to follow the same procedure. Apart from this, if any damage is caused to the hired truck, that will complicate the issue further. It is also to be noted that the appellant has referred the matter to arbitration and the same is pending. In cannot be sustained and the same is required to be set aside. Accordingly, the impugned order is set aside and the appeal is allowed. There will, however, be no order as to costs.