

Case No. 16

104 (2003) Delhi Law times 1015 (DB)

**DELHI HIGH COURT**

**Usha Mehra & Pradeep Nandrajog, JJ**

BHAGYA PRODUCTS (P) LTD.

Petitioner

Vs

COMMISSIONER OF POLICE & ORS.

Respondents

CrI. W.No. 525 of 2003-Decided on 29-05-2003

**Default by borrower - Right to repossess the asset financed - Mode of repossession - R.B.Is guidelines issued to banks made applicable to NBFCs also.**

**COMMENTS:** Having noted that the parties are governed by the written contract and are bound by the terms thereof which they have entered into with open eyes, it is surprising that the Delhi High Court should have issued binding guidelines against all finance companies. Court cannot legislate. When RBI itself has not till date made applicable the guidelines on fair practices code for lenders to NBFCs, the Court has no jurisdiction to do so.

**Result : Petition disposed of.**

Counsel for the Parties :

For the Petitioner : Mr. B.R. Handa, Senior Advocate with Mr.S.K Jha and Mr. S.K. Pandey, Advocates.

For the R.B.I : Mr. H.S. Parihar, Advocate.

For the U.O.I: Mr. Sanjay Jain, Advocate.

For the Respondent No 4: Mr. Punit K. Bhalla, Advocate .

### **JUDGMENT**

Usha Mehra J. By way of the present petition, petitioner seeks directions against respondent No.2 to register an FIR on his complaint against respondent No. 4. Though, during the pendency of the present proceedings parties have entered into a compromise, but keeping in view the fact that such petitions are recurringly being filed we

are of the opinion that some directions are required to be given in the matter as we are of the opinion that the conduct of some of the finance companies is predatory.

2. Before we deal with the directions which we propose to give in the matter for future guidance we may record the settlement arrived at between the parties for the purposes of the present position.

3. Respondent No. 4 had financed the purchase of two cars by the petitioner. The two cars are Ford Ikon bearing No. DL-3CS-8568 and the other is Honda City bearing No. DL-3CS-9191. There are two defaults in repayment of the monthly instalments for finance in respect of both the cars. Respondent No.4 in purported exercise of its power to repossess the vehicle ie. Honda City, repossess the same on 29.4.2003. Petitioner claimed that the repossession was in fact a case of cars matching.

4. Today in Court Mr. B.R Handa, Senior Advocate handed over a banker cheque in the sum Rs. 18,410/- for the monthly instalment due in the month of May, 2002. On 28.05.2003 two bankers cheques in the sum of Rs.18,410/- each for the months of April, 2003 and May, 2003 were handed over with the tender of these banker cheques complete instalment till the month of May 2003 in respect of Honda City car stand paid. It has been agreed between the parties that no repossession charges would be paid to respondent No.4 and for all outstanding dues in respect of the car be it on account of cheque bouncing charges or overdue charges a sum of Rs.15000/- be paid by the petitioner to respondent No.4 in full and final settlement of the dues as of May 2003. A cheque in the sum of Rs. 15,000 / -has been handed over pursuant to the said settlement which has been accepted by Mr. Punit K. Bhalla, subject to the cheque being cleared for payment. Mr. B.R. Handa assures that the said cheques would be honoured. It has further been agreed between the parties that in respect of outstanding amounts due in respect of Ford Ikon car the petitioner would clear the same in three equated monthly instalments payable by the 15th day of each calendar month. It was agreed that the current instalment payable for the month of June 2003 and onwards would be paid on the date as per agreement. The arrears in respect of the Ford Ikon would be cleared in three instalments the first being paid on 15.6.2003 and the next two instalments would include the cheque bouncing charges and overdue charges in respect of the Ford Ikon car. It was further agreed that for any future default the bank would be entitled to repossess the vehicle. It was also agreed that the petitioner will offer for inspection the Ford Ikon car.

5. In view of the agreement above directions are issued to the respondent No 4 to give back possession of the Honda City car to the Petitioner. On inspection of the Ford Ikon car being given to it by the petitioner, the petitioner would be bound by the settlement arrived at which has been noted by us in our order.

6. As noted by us large number of such kind of petitions are being filed in the Court and we are noticing virtually one such petition being filed in this Court every day. We are conscious of the fact that the police in Delhi is already over worked and if these kinds of cases are referred for investigation to police it would cause an unnecessary stress on the police force. Besides the dispute between the parties are essentially of a civil nature arising out of the alleged default under the finance agreement. Surely, it can be nobody's case that for a default under a business transaction, the person to whom the amount due has a right to use force, who then, where a right exists in favour of a party to repossess and asset financed by it or on an asset on which it has a loan dispute would always arise as to the mode of repossession.

7. We had issued notice to the Reserve Bank of India to inform this court whether it had framed any guidelines to deal with this kind a situation. Guidelines dated 5.5.2003 "Guidelines on Fair Practices Code for Lenders" have been placed on record.

8. Guidelines framed by the Reserve Bank of India provide as under :

- i. Before taking a decision to recall/accelerate payment of performance under the agreement or seeking additional securities, lenders should give notice to borrowers, as specified in the loan agreement or a reasonable period, if no such condition exists in the loan agreement.
- ii. In the matter of recovery of loans, the lenders should not resort to undue harassment viz persistently bothering the borrowers at odd hours use of muscle power for recovery of loans etc.

9. The normal practice adopted by all lenders in case of car finance is that the policy is made to issue post -dated cheques spread over the period under which the parties have agreed that the loan has to be repaid. This period stretches from one

year up to 3 years in most of the cases. From the cases being filed in the court we have noticed that the normal period is 3 years, most the agreements are stereo - type agreements and they provide that if there are two consecutive defaults the lender would be entitled to recall te entire loan and if not paid whthin a week, the lender would be entitled to repossess the vehicle and sell the same to realise its dues. Since post-dated cheques are issued, it does happen that a cheque is not cleared for payment and this results in the financiers recalling the loan. The vehicle is then tracked down and repossessed wherever it may be. The driver of the vehicle may be on the road, he may be in the market place, but this does not become the concern of the financier and it is this which leads to the filing of petitions in this Court that the appeals (Police ?) be directed to register an FIR against the finance company.

10. Conscious of the fact that parties are governed by a written contract and are bound by the terms of the contract which they have entered into with open eyes. Who in view of the guidelines framed by the Reserve Bank of India which we find are not being honoured strictly by the finance companies we issue the following guidelines to be strictly followed by all finance companies before it exercises its power to repossess a vehicle :

- i Whenever a cheque is not honoured for payment , it would be immediately brought to the notice of the borrower by issuance of a notice under registered post, to be posted at the address provided by the borrower and proof of despatch by registered post at the given address would be considered as sufficient proof of service of notice.
- ii 7 days time should be given reckoned from the date of service of the registered notice for clearance of the amount under the dishonoured cheque.
- iii In case of second dishonour of cheque similar notice be provided drawing the attention of the borrower to the term of the agreement entitling the lender to recall the entire loan. This notice should again give 7 days time to the borrower to pay the outstanding amounts as on date. The 7 days time to be reckoned from the date of service of the notice.

- iv If the amount is not paid, It would be open to the finance company to exercise its power under the finance agreement to recall the loan. If it exercises this power another notice be given to the borrower intimating that the loan has been recalled and the borrower should be called upon to tender the amount due within 7 days of receipt of notice. This notice again be sent by registered post at the address given by the borrower.
- v If no amount is paid within the stipulated period as per the notice finance company would be authorised to repossess the vehicle but this power of repossession would not entitle the finance company to track the vehicle while plying on the road.
- vi In case the borrower refuses to sign the papers. when the car is repossessed, on repossession of the vehicle immediate information be provided by the finance company to the local police intimating the time and place when the vehicle was repossessed.

11. Subject to the guidelines framed by us which would be binding on all the financial companies, the matter having been settled between the parties. No directions are required to be given.

The petition stands disposed of.