

**HIRE PURCHASE  
and  
HYPOTHECATION CASES**

**JUDGEMENTS OF  
*THE SUPREME COURT*  
AND  
*HIGH COURTS IN INDIA*  
2006**

**FEDERATION OF INDIAN HIRE PURCHASE ASSOCIATIONS**

# **HIRE PURCHASE and HYPOTHECATION CASES**

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## FOREWORD

JUSTICE S. MOHAN  
FORMER JUDGE, SUPREME COURT  
PRESIDENT, WORLD CONGRESS OF POETS

I am glad to contribute a foreword to this book as it can be said that there is a paucity of such publications. The Federation of Indian Hire Purchase Associations has taken up a very useful and appreciable exercise of consolidating the decisions of the Supreme Court and different High Courts in India between 1987 and 2006 related to the NBFC industry.

It is necessary for the financiers to have a thorough knowledge of the law relating to hire purchase industry and the editor Mr. S. Srinivasan has taken the initiative and arranged the chapters and captioned them in such a way that the title of the chapters by itself gives a guidance for the readers as to where they could get assistance from.

Apart from collecting cases on Hire Purchase and Hypothecation the editor has also taken care to include judgements on several allied subjects such as Rights of Repossession, Dishonour of Cheques, Arbitration, Motor Vehicles Act, etc which is appreciable.

The publication of this exclusive treatise on the law of Hire Purchase and Hypothecation is therefore opportune. In a closely but clearly printed volume Mr. S. Srinivasan has covered adequately the field of Hire Purchase and Hypothecation and is to be congratulated on having compiled a useful and handy book in a reasonable compass - a full, accurate and interesting account relating to the industry.

I commend the services of the Federation of Indian Hire Purchase Associations of which my good friend Mr. Kailashmull Dugar is the President. I have no doubt that this publication will be a very useful guide to the financiers.



(JUSTICE S. MOHAN)

## **PREFACE**

Economic development of any country is characterized by sophistication of financial markets, its intermediaries, maturity of economic and revenue laws besides other things. The NBFC industry has contributed to the development of our country in a big way by providing finance at competitive rates to individuals/ organizations which were facing difficulty in obtaining the same from the banks. With asset funding close to 100,000 crore, the industry is also credited with generating direct and indirect employment to lacs of countrymen.

Federation of Indian Hire Purchase Associations (FIHPA), the apex body of financial entities in India has always taken up various issues concerning our business with the appropriate regulatory bodies. The Hire Purchase Act which was passed by Parliament in 1972 did not come into force and the same was rescinded. The general provision of the Indian Contract Act and a good deal of case laws derived from the decisions of the Supreme Court and various other Courts now govern the conduct of Hire Purchase and Hypothecation business. Therefore, the judgements have become very important and guiding factors for the business.

FIHPA first published Case Law Digest in 1980 and subsequently in 1983. A combined updated volume was bought out in 1987. Since then several cases have been decided by the various Courts relating to our business. There has also been a shift from Leasing and Hire Purchase to Hypothecation business.

As the assets (the ones that have been financed under hire purchase / lease/ hypothecation mode) of the NBFC industry are in papers called agreements, it becomes increasingly important for a NBFC to be aware of number of things like establishment of ownership, rights in case of breach of agreement by borrower, recourse available if the asset is missing, repossession rights consequent to persistent default by borrower etc. The stream of law has never been static in view of constant up-gradation and amendments in laws and also because of court judgments. Our industry has been subjected to plethora of statutes. Interest tax, service tax, VAT and then state taxes like lease tax, entry tax, octroi, etc. It was in this backdrop that the decision to come up with fresh volume of Case Law Digest for our industry was taken.

The present Case Law Digest covers the entire gamut of court judgments relevant for our industry. We are indeed thankful to Mr. S. Srinivasan, DGM (Corporate Affairs), Sundaram Finance Limited for compiling the judgments with his own valuable inputs on the same. We place on records our appreciation for the Herculean effort of Mr. S. Srinivasan. We hope, the digest would prove a very handy tool for all of us including the legal fraternity as we will have all the judgments at one place.

**I am extremely thankful to Justice S. Mohan, Former Judge of Supreme Court of India for writing the Foreword. Justice Mohan is one of the most respected judges of our Country having served with distinction as the judge of Madras High Court and as the Chief Justice of Karnataka High Court and later as the judge of Supreme Court of India. The Federation is grateful to him for his valuable contribution.**

**Chennai  
1<sup>st</sup> September 2006**

**Kailashmull Dugar  
President**

## INTRODUCTION

I. H M Seervai in the preface to his magnum opus 'The Constitutional Law of India' set out the reasons for dwelling a little too much on the facts of each case. The English authors merely refer to the propositions, the ratio of the case. They don't go into facts. But the average English lawyer has a ready access to a well stocked library. But the Indian lawyer is under a handicap. He may not have the reference book on the hand. That was the justification put forth by Seervai for a detailed factual exposition of each case. He didn't mind his book running into three volumes.

I have a like reason for accepting the request or rather the command of FIHPA to compile the important judgements of interest and relevance to our members. It has been a common experience that the courts in India have often fell into error even on fundamental issues. For want of immediate access to the relevant case laws, some of our members have suffered serious setbacks. If all the important decisions could be compiled into a handy volume, it was felt, it would considerably serve the interest of all the members. I have, therefore, been assigned with the privilege of presenting this compilation to the members of FIHPA. While doing so, I have attempted to enhance its utility by preparing useful head notes and an exhaustive index.

II. While law is never static and one has to come up with creative solutions to confront new challenges, in the main, we face only the same old problems. In fact, the issues that keep cropping up in our day to day legal operations can be broadly categorized under few heads. While I am not presumptuous enough to make any claim that the compilation is exhaustive, I can definitely state that we will be able to look for definite answers to our usual problems within the covers of this book. The members of FIHPA are engaged either in hire purchase financing or hypothecation/lease/loan transactions. In our operations, we have to tackle issues arising under the law of contracts, Indian Penal Code, Consumer Protection Act, Motor Vehicle Act, Arbitration and Conciliation Act, 1996, Criminal Procedure Code, Civil Procedure Code and a few other Statutes. Invariably they relate to our right of recovery and repossession.

It should be noted that there is no substantive statutory law governing hire purchase or hypothecation. Therefore, invariably the matter stands governed by the terms and conditions of the contract between the parties. Therefore, we must be aware of all those decisions which have upheld the principle of contractual obligations. Most of the issues can be answered in the light of this principle. The second major issue pertains to the sanctity of the arbitration clause that is incorporated in our agreements. The borrower attempts to thwart our efforts by resorting to the civil courts. We have to enter the fray and force a reference to the arbitral proceedings. The arbitrator can rule on his own jurisdiction. He can even determine the existence and validity of the arbitration agreement. The mode and manner of his appointment should be based on the terms of the agreement. Bias cannot be lightly attributed to him. Once he passes an award, the scope for judicial intervention is extremely limited.

Though the arbitration clause can really work to our advantage and his award cannot be easily set aside, there is still room for legislative improvement. Once a set aside petition is filed and notice issued, the court has no discretion in the matter. It cannot impose any condition. Suspension of the award is automatic. Please compare it to a money decree. If the judgement debtor wants to prefer an appeal, he has to deposit the decretal amount or at least provide security. A provision corresponding to this should be incorporated in the Arbitration and Conciliation Act also. In fact, the Supreme Court has called upon the parliament to bring about an amendment. But the wheels of law move slowly and the wheels of legal reform move even more slowly. I think a duty is cast upon us to lobby hard in this direction to bring about the legislative intervention.

I have included in this compilation certain important decisions arising out of the applications filed by us seeking interim reliefs. Another important issue is regarding our right to seek private repossession without the intervention of courts. Notwithstanding the discordant notes struck by some Judges, the correct view is that the financier is entitled to seek private repossession provided the terms of the agreement authorize him to do so. Whenever, the financier effects such seizure, the borrower as a counter blast gives a criminal complaint of theft against the financier. Supreme Court has held on more than one occasion that no criminal case is made out and there is no dishonest intention since the financier is merely asserting his rights under the agreement.

One emerging headache is the legal action faced by us through the consumer fora. Supreme Court has admitted a special leave petition on whether the hirer under a hire purchase agreement can claim the status of a consumer. It is pending adjudication. In fact, the jurisdictional issue will have to be thrashed out whenever we get a summons from a consumer forum. Recently, I had the bitter experience of suffering an interim order from a Consumer Forum, whereby a direction was issued to the RTO to renew the permit without the NOC from the financier. I had to invoke the jurisdiction of the High Court under Article 227 of the Constitution questioning the very maintainability of the proceedings before the consumer forum.

There are a host of other incidental issues. Whether we are liable to pay the M V tax for the period when the vehicle was with the borrower?. Whether the panel arbitrator can be said to be biased in our favour merely because we give him more than one assignment? Whether we are entitled to interim custody of vehicle financed by us and which was involved in an offence? Of course, I would be failing in my duty if I do not refer to the other major areas of litigation, namely the criminal prosecution under Section 138 of the Negotiable Instruments Act. I have included more than a dozen important decisions on this subject. A perusal of the same would go a long way in preempting the quashing of our complaints by the High Courts. As far as cheque dishonour complaints are concerned, one has to bear in mind only two things. First, follow the procedure set out in Section 138 and 141 of the Negotiable Instruments Act. Secondly, incorporate all the material averments. If this is borne in mind, then the accused will have no option but to come forward for a settlement.

III. I am dedicating this compilation to my employer M/S Sundaram Finance Ltd,. I would not be what I am but for their warm encouragement and support Every time they would prod me into coming out with some thing new. That is how I came to have a fairly good grip over all the areas relevant to our field. Hence I dedicate this compilation to my employer M/S Sundaram Finance Ltd., as an expression of my sincere gratitude.

*S. SRINIVASAN*



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(Monaben Ketanbhai Shah and another Vs. State of Gujarat and others 2004 (7) Supreme Court Cases 15) 210

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Section 138 of the Negotiable Instruments Act - Post dated cheques issued - countermanded before the date mentioned on the face of the cheque - 138 of the Negotiable instruments - attracted.

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Section 138 of the Negotiable Instruments Act - Post dated cheques - initially remains bill of exchange - becomes cheque on the date written on the cheque - validity period reckoned from the date mentioned on the face of the cheque and not the date of handing over.

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(Pankaj Mehra and Another etc. Vs. State of Maharashtra and Others 2000 (I) CTC 603 Supreme Court) 257

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Two arbitrators - common award passed - valid - if difference arises, third arbitrator can be appointed later under Section 11 (3) of the Act – grounds of challenge to an arbitral award very limited – award to be set aside on grounds of challenge under Section 12, 13 and 16 - only if such challenge was first raised before tribunal and rejected - composition of tribunal - not consistent with Part I of the Act - not a ground under Section 34 to challenge the award.

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20	Goaplast (P) Limited Vs. Chico Ursula D' Souza and other	25	219
21	GE Capital Transportation Financial Services Limited Vs. Dee Pharma Limited	92	789
<b>H</b>			
22	Hameed Vs. Jayabharat Credit & Invst. Company Limited and others	6	23
23	Haritha Finance Ltd. Vs. ATV Projects India Ltd.	74	663
24	Hari Om Maheswavi vs. Vineet Kumar Parikh	53	450
25	Hindustan Petroleum Corporation Ltd. Vs. Pink City Midway Petroleums	58	486
26	Hindustan Machine Tools Ltd. Vs. The Nedungadi Bank Ltd.	9	56
<b>I</b>			
27	I C D S Ltd., Vs. Bena Shabeer & another	27	231
28	ICICI Vs. Vibrant Investments	86	761
29	Indira vs. Adinarayana	24	214
<b>K</b>			
30	K.A. Mathai alias Babu and another Vs. Kora Bibbikutty and another	44	402
31	K P G Nair Vs. Jindal Menthol India Limited	30	254
32	Kalpana Kothari Vs. Sudha Yadav & Others	61	563
33	Katta Sujatha Vs. Fertilizers & Chemicals Travancore Limited	26	228



34	Kotak Mahindra Primus Ltd. Vs. State by D.S.P. Karnataka & another	42	392
35	Kotak Mahindra Primus Limited Vs. S.Laxmana Rao	55	470
36	Kotak Mahindra Finance Limited Vs. T.N. Balasubramanian	71	636
37	Krishna Reddy M.V. Vs. Andhra Bank	87	763
38	Krishnam Raju Finances Vs. Abida Sultana and Another	91	780
L			
39	Lakshmi General Finance Ltd. Vs. Inspector of Police, Salem and another	11	74
40	Lakshmi General Finance Ltd. Vs. Anantha Raja Rao	66	600
41	Lakshmi General Finance Ltd Vs. Novel granites	72	642
M			
42	Manipal Finance Corporation Ltd. Vs. T.Bangarappa and another	45	404
43	Mangayarkarasi Apparels Private Limited Vs. Sundaram Finance Limited	73	647
44	Mankaneer Jain School Welfare Society Vs. Anilkumar J Doshi	78	702
45	Modi Cements Limited Vs. Kuchil Kumar Nandi	33	279
46	M.M.T.C. Limited and another Vs. Medchl Chemicals and Pharma (P) Ltd and another	28	236
47	Monaben Ketanbhai Shah and another Vs. State of Gujarat and others	23	210
48	Manipal Finance Corporation Limited Vs. T.Bangarappa and other	4	17
49	Magma Leasing Limited Vs. 1. The State of West Bengal and 2. Ranjan Sengupta	15	120
N			
50	National aluminum Co. Ltd., Vs. Pres steel and fabrications Pvt. Ltd. & another	57	481
51	NEPC Micon Limited and others Vs. Magma Leasing Limited	32	269
52	Narayan Prasad Lodha Vs. Nikunj Kumar Lodha and others	60	548
53	Nedungadi Bank Ltd. Vs. 1. M/s.Pondy Metal Rolling Mills Pvt. Ltd., 2.M/s.Krishna Steels and 3.Thiru Gopalakrishnan	10	69
O			
54	Oil & Natural Gas Corporation Limited Vs. Saw pipes Limited	59	498
55	Orissa State Financial Corporation Vs. Range Officer, Sukinda and other	83	740
56	Orissa State Financial Corporation Vs. Narsingh Ch.Nayak and others	81	733
57	Orix Auto Finance (India) Ltd. Vs. Shri.Jagmander Singh and another	1	1
P			
58	Paramasivam R Vs. Tamil Nadu Industrail Investment Corporation Ltd, and another	20	161
59	Prasada Reddy & K S Devanathan Vs. State of A.P.	47	411
60	Pankaj Mehra and another etc. Vs. State of Maharashtra and others	31	257
61	Punjab National Bank Vs. Narain Dass and others	40	364
R			
62	Raja Kumari V. Vs. P.Subbarama Naidu and another	22	202
63	Rehaboth Traders and another Vs. Canara Bank and 2 others	13	102
S			
64	Sadasivam P.V. Vs. Industrial Credits and Syndicate Ltd.	5	19
65	Satyanarayan Kamalkumar Vs. United India Inusrance Company Limited	90	775
66	Secur Industries Ltd. Vs. Godrej and Boyce Mfg. Co. Ltd. & another	56	476

67	Seetharam Vs. Regional Transport Authority	50	424
68	M/s.Sivananda Steels Limited and another Vs. M/s.India Cements Capital Finance Limited	94	801
69	Sri Ananta Udyog Pvt. Ltd. Vs.Cholamandalam Investment & Finance Co. Ltd.,	96	816
70	Sri Rama Machinery Corporation Ltd. Vs. Standard Chartered Bank	19	150
71	Sugal and Damani Finlease Limited Vs. P.Subramania Reddy	75	675
72	Sunder Bai Ambalal Desai Vs. State of Gujarat	43	394
73	Sundaram Finanace Ltd. Vs. Kamaraj National Labour Organisation	95	809
74	Sundaram Finanace Ltd. Vs. N.E.P.C.Ltd.	64	584
75	Sundaram Finance Limited Vs. R.T.O. Madurai and other	52	433
76	Sundaram Finance Ltd. Vs. Ballurghat Transport Company Limited	79	718
77	State Bank of India Vs. S.B. Shah Ali and others	7	30
78	State of Maharashtra and others Vs. Sundaram Finance Limited and others	49	421
79	State of Gujarat and others Vs. Kaushikbhai K.Patel and another	48	414
80	The Branch Manager, State Bank of Mysore & Others Vs. Amarnath & others	8	51
81	Sudha Beevi Vs. State of Kerala	37	307
82	St. Marys Hire Purchase Vs. N.A. Jose	88	766
83	Syndicate Bank Vs. R.Veeranna & others	97	821
T			
84	Tamil Nadu State Construction Corporation Limited Vs. Gardner Landscape Private Limited	59	498
85	Tamilnadu Industrial Investment Corporation Ltd. Vs. Millneoum Business Solutions Pvt. Ltd.	80	725
86	Tarun Bargava Vs. State of Haryana & another	21	180
87	Tata Finance Limited Vs. Ajaya Kumar Biswal & others	3	15
88	Tata Finance Limited Vs Marjan Hossan and others	89	772
89	Tata Finance Limited vs. Kanoria sugar and general manufacturing Company Limited	84	745
90	Tata Finance Limited vs. H.P. Md. Madar	76	682
91	Thamodaran P.S.A. Vs. Dalmia Cements (P) Ltd.	35	297
92	The Superintending Engineer (Highways and Rural Works) Vs. D.G. Deivasigamani & another	70	632
93	Trilok Singh and others Vs. Satya Deo Tripathi	46	406
94	TVS invstments Limited Vs. Essorpee Mills Limited	93	796
U			
95	U.P. State Sugar Corporation Limited Vs. Jain Construction Co. And another	55	470
96	Union of India Vs. Popular Construction Co.	62	571
97	Union of India and another Vs. Ct.Shentilanathan and another	14	109
V			
98	Vivek Hire Purchase & Leasing Limited Vs. M/s.Paisapower.com Private Limited	85	752
W			
99	Wimco Ltd. Vs. Sambu Dayal Gupta and others	67	605
100	West Bengal Cements Ltd. Vs Syndicate Bank	39	359