(2003) 05 AHC CK 0251

Allahabad High Court

Case No: C.M.W.P. No. 5806 of 2002

Nand Auto Hire Purchase (P.) Ltd.		APPELLANT
	Vs	
Regional Transport Officer and Others		RESPONDENT

Date of Decision: May 8, 2003

Acts Referred:

- Central Motor Vehicles Rules, 1989 - Rule 55
- Motor Vehicles Act, 1988 - Section 51, 51(1), 51(5)

Citation: (2003) 5 AWC 3960

Hon'ble Judges: R.S. Tripathi, J; M. Katju, J

Bench: Division Bench

Advocate: A.K. Srivastava, for the Appellant; Anoop Trivedi, Gopal Srivastava and S.C., for the Respondent

Final Decision: Dismissed

Judgement

M. Katju, J.

This writ petition has been filed against the impugned order dated 31.12.2001, Annexure-9 to the writ petition passed by the Additional Transport Commissioner, Head Quarter, U.P. and for a mandamus directing the Respondent No. 1 to issue a fresh registration certificate in favour of the Petitioner company declaring the Petitioner company as owner of the Truck in question.

2. The Petitioner is doing business of Automobile Finance and it financed a sum of Rs. 3,80,000 to the Respondent No. 3 for purchasing the truck in question, and a Hire Purchase Agreement was entered into the registration certificate. The Respondent No. 3 failed to pay the dues of the Petitioner company and sold the truck to Respondent No. 4 Smt. Mamta Dwivedi who allegedly assured the Petitioner that the entire dues of the Petitioner shall be paid by the Respondent No. 4. It is

alleged in paragraph 4 of the writ petition that the Respondent No. 4 requested that the Hire Purchase Agreement of the Petitioner company may be deleted from the registration certificate and a fresh Hire Purchase Agreement may be entered showing the name of the Respondent No. 5 as Financier and the name of the Respondent No. 4 may be declared as owner of the vehicle. The Petitioner on 1.12.1999, wrote a letter to the Respondent No. 1 the Regional Transport Officer, Kanpur, with the prayer that the vehicle may be registered in the name of the Respondent No. 4 and the name of the Respondent No. 5 may be entered as Financier vide Annexure-1 to the writ petition. True copy of the registration certificate has been annexed as Annexure-2 to the writ petition. It is alleged in paragraph 5 of the petition that when the Respondent No. 1 failed to issue fresh registration certificate the Respondent No. 4 also failed to keep her promise to pay the dues of the Petitioner company. The Petitioner company on 12.6.2000 vide Annexure-3 to the writ petition filed an application before the Respondent No. 1 to transfer the vehicle in the name of the Petitioner in terms of Section 51(5) of the Motor Vehicles Act. The Respondent No. 1 issued letter dated 16.10.2000 asking the Petitioner to submit the payment receipt vide Annexure-4 to the writ petition. The Petitioner sent letters dated 17.10.2000 and 1.2.2001 to the Respondent No. 1 praying for issuance of fresh registration certificate vide Annexures-5 and 6 to the writ petition. The Petitioner company issued notice to Respondent Nos. 1 and 2 through its counsel on 26.2.2001. The Respondent No. 1 issued letter dated 13.3.2001 asking the Petitioner to release the vehicle in favour of the Respondent No. 4 although the Respondent No. 4 had failed to pay the dues of the Petitioner company. True copy of the letter dated 13.3.2001 has been annexed as Annexure-8 to the writ petition.

3. It is alleged in paragraph 8 of the writ petition that Respondent No. 1 has acted illegally and arbitrarily by not issuing fresh registration certificate in favour of the Petitioner. The Petitioner company took possession of the vehicle in question being Truck No. UP 78 N/8683 because the Respondent Nos. 3 and 4 had failed to pay the dues of the Petitioner company and committed fraud upon the Petitioner company. The Additional Transport Commissioner (HQ), U. P., then passed order dated 31.12.2001 disallowing the claim of the Petitioner for fresh registration certificate vide Annexure-9 to the writ petition. In paragraph 9 of the writ petition it is alleged that the Respondent No. 3 has illegally transferred the vehicle in favour of the Respondent No. 4 in collusion and to defraud the Petitioner company. The name of the Petitioner company exists in the registration certificate under the Hire Purchase Agreement and Respondent Nos. 3 and 4 have failed to pay the dues of the Petitioner company, which is in possession of the truck in question. The Petitioner has relied on Section 51(5) of the Motor Vehicles Act, 1988.

4. A counter-affidavit has been filed by the Respondent No. 5 and we have perused the same. In paragraph 4 of the same it is alleged that Respondent No. 4 had requested the Respondent No. 5 to pay the dues of the Petitioner and upon her

request the Respondent No. 5 paid and liquidated the entire dues and a new account was opened in the Books of the Respondent No. 5. It is alleged that the Petitioner and the Respondent No. 5 are sister concerns doing Hire Purchase Finance business and Vishnu Bhagwan Agrawal is managing partner of Respondent No. 5 and is also Managing Director of the Petitioner company. It is alleged that Respondent Nos. 3 and 4 have not paid the dues of the truck in question and have played fraud in collusion with the Respondent Nos. 1 and 2 to defraud the Petitioner company. In paragraph 12 of the same it is stated that the vehicle is lying in the open and its value is deteriorating. In paragraph 17 of the same it has been prayed that Respondent No. 1 may be directed to issue new registration certificate of ownership to the Respondent No. 5 with permission to sell the vehicle in question.

5. A counter-affidavit has also been filed on behalf of the Respondent Nos. 1 and 2 and we have perused the same. In paragraph 5 of the same it is stated that on 26.2.1999 there was a written agreement between the Respondent Nos. 3 and 4 to the effect that the vehicle in question will be run by the Respondent No. 4 and the amount due shall be paid by the Respondent No. 4 to the Petitioner. It was further agreed that when the amount of the hire purchase will be paid by the Respondent No. 4, the Respondent No. 3 will transfer the papers in favour of the Respondent No. 4, vide Annexure-C.A. 1 to the counter-affidavit. On 22.7.1999, the Respondent Nos. 3 and 4 made an application under Rule 55 of the Central Motor Vehicles Rules, 1989, for transfer of the registration in favour of the Respondent No. 4. A letter dated 21.12.1999 was also submitted to the Registration Officer, Kanpur, stating that the papers have been transferred in favour of Respondent No. 4. The formalities were being completed by the Registration Officer, Kanpur, for transfer of the papers in favour of the Respondent No. 4, but in the meantime the Respondent No. 3 wrote a letter dated 3.12.1999 that there is a dispute between the Respondent Nos. 3 and 4 and as such the papers be not transferred in the name of the Respondent No. 4. The Petitioner has written a letter dated 2.12.1999 according to which the Respondent No. 3 as per agreement dated 6.7.1999 has sold the vehicle to the Respondent No. 4 and all dues against the hire purchase of the vehicle in question in the name of the Respondent No. 3 has been transferred in the name of the Respondent No. 4 and now no dues exists in the name of Respondent No. 3 vide Annexure-C.A. 2 to the counter-affidavit. In paragraph 7 of the same it is alleged that the records of the case would reveal that the Respondent No. 4 has paid all dues of the vehicle to the Petitioner through a new hire purchase agreement with Respondent No. 5 and the dues of the Respondent No. 3 has also been cleared by the Respondent No. 4. Accordingly, the Petitioner recommended and wrote to the Registration Officer, Kanpur, for transfer of the papers in favour of the Respondent No. 4 vide Annexure-C.A. 2 to the counter-affidavit. Now the Petitioner and Respondent No. 3 are dishonestly harassing the Respondent No. 4 by not transferring the papers in favour of the Respondent No. 4. In paragraph 9 of the same it is stated that the impugned order dated 31.12.2001 is just and legal. It is

stated that Respondent No. 4 has paid all the dues to the Petitioner vide receipt dated 22.7.1999, and ownership of Respondent No. 3 has also come to an end. In paragraph 10 of the same it is stated that to the knowledge of the answering Respondent the Petitioner and Respondent No. 5 are two different companies having different entity. In paragraph 11 of the same it is alleged that there is no evidence that the dues of Respondent No. 3 have not been cleared by Respondent No. 4. In paragraph 14 of the same it is stated that all the dues have been cleared by the Respondent No. 4 through another Finance Company, i.e., the Respondent No. 5, vide receipt dated 22.7.1999 and as such the rights of the Petitioner and the Respondent No. 3 do not exists over the vehicle in question. In paragraph 16 it is stated that fresh registration book cannot be issued in favour of the Petitioner, since all dues to the Petitioner have already been paid on 22.7.1999 by the Respondent No. 4. The Petitioner has only been harassing the Respondent No. 4 and he has been forcibly keeping the vehicle, which belongs to Respondent No. 4. In this connection, the Respondent No. 1 has written a letter dated 30.5.2001 to the Superintendent of Police, Badaun, to the effect that the vehicle in question be taken from the custody of the Petitioner and be handed over to the Respondent No. 4 as the Petitioner has got no right to the same vide Annexure-C.A. 3 to the counter-affidavit.

6. A counter-affidavit has also been filed by the Respondent No. 4 and we have perused the same. In paragraph 3 of the same it is stated that Respondent No. 4 wanted to purchase the truck and for this purpose she obtained a loan of Rs. 3,88,000 vide Annexure-C.A. 1 to the counter-affidavit. The Respondent No. 4 after obtaining the loan from the Respondent No. 5 got the same deposited in the name of the Petitioner. The Respondent No. 4 also issued a receipt evidencing the fact that a sum of Rs. 3,88,000 was received from the Respondent No. 5 by way of draft vide Annexure-C.A. 2 to the counter-affidavit. On receiving the said amount the Petitioner issued a statement of account of Respondent No. 3 evidencing the balance to be nil vide Annexure-C.A. 3 to the counter-affidavit. The Petitioner wrote a letter to the registering authority on 1.12.1999, apprising the said authority that the truck in question has been purchased by Respondent No. 4 and it was requested by the said letter that the vehicle in question be transferred in favour of Respondent No. 4 and in place of the name of the Petitioner as hire purchaser the name of Respondent No. 5 be entered in the relevant records vide Annexure-C.A. 4 to the counter-affidavit. Along with the letter the Petitioner has also annexed the photocopy of the final payment and all the necessary documents for the purposes of transferring the said vehicle in the name of the Respondent No. 4. True copies of the form Nos. 29 and 30 containing the report of transfer of ownership of the truck in question have been annexed as Annexure-C.A. 5 to the writ petition. From these documents it is evident that before transferring the vehicle the consent of the Petitioner was also obtained. In paragraph 10 of the same it is stated that Petitioner and Respondent No. 5 are sister concerns and after the transactions both the firms started adopting dilatory

tactics and procrastinating the matter of handing over the possession of the truck in question. However, the Respondent No. 1 wrote a letter to the Managing Director of the Petitioner company stating that the payment of the dues has been made by Respondent No. 4 and hence a serious offence has been committed by the Petitioner in collusion with the Respondent No. 5. Despite this letter the Petitioner did not hand over the possession of the truck to Respondent No. 4 in collusion with the Respondent No. 5. On 20.3.2001, Form 34 was submitted by the Respondent No. 5 along with a letter of Vishnu Bhagwan Agarwal the Managing Partner of Respondent No. 5 who is also Managing Director of the Petitioner Company vide Annexure-C.A. 7 to the counter-affidavit. On 20.3.2001, the Petitioner wrote a letter to the Registering Authority stating that all dues in respect of the vehicle in question has been received and nothing was outstanding vide Annexure-C.A. 8 to the counter-affidavit. Subsequently, the vehicle was registered in the name of Respondent No. 4 vide Annexure-C.A. 9 to the counter-affidavit. The Petitioner has acted arbitrarily and with intention to cheat the Respondent No. 4.

7. From the above facts, it is evident that Respondent No. 3 had obtained a loan from the Petitioner company of Rs. 3,88,000 for purchasing the truck under a Higher Purchase Agreement. The Higher Purchase clause is entered in the registration certificate. The Respondent No. 3 failed to pay the instalments and Respondent No. 4 requested the Petitioner that she is ready to pay the dues of Respondent No. 3 if the loan is transferred in her name and if the truck is registered in her name. The Petitioner agreed, and a fresh loan was granted by the Respondent No. 5 to Respondent No. 4 and from the amount of the fresh loan the old loan in the name of Respondent No. 3 was adjusted. In the meantime the Petitioner had seized the truck. The Regional Transport Officer hence directed the Petitioner to release the truck in favour of the Respondent No. 4 vide Annexure-8 to the writ petition. That order was challenged by the Petitioner before the higher authority and ultimately the Respondent No. 2 passed the order dated 31.12.2001, holding that the Petitioner has no right to claim registration of the truck under the Higher Purchase Agreement clause.

8. Section 51(5) of the Motor Vehicles Act states :

Where the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement, satisfies the registering authority that he has taken possession of the vehicle (from the registered owner) owing to the default of the registered owner under the provisions of the said agreement and that the registered owner refuses to deliver the certificate of registration or has absconded, such authority may, after giving the registered owner an opportunity to make such representation as he may wish to make (by sending to him a notice by registered post acknowledgment due at his address entered in the certificate of registration) and notwith-standing that the certificate of registration is not produced before it, cancel the certificate and issue a

fresh certificate of registration in the name of the person with whom the registered owner has entered into the said agreement.

9. The above provisions provides if the borrower fails to pay the instalments under the Hire Purchase Agreement, and the Financier took possession of the vehicle and satisfied the Regional Transport Officer that the borrower failed to pay the dues, then the Regional Transport Officer may issue fresh registration certificate in favour of the Financier.

10. The factual position is that the loan of the Petitioner has been paid to it by Respondent No. 4. It may be that the Respondent No. 4 had paid the loan of the Petitioner after getting a different loan from Respondent No. 5, but the Petitioner and Respondent No. 5 are different legal entities, even though the managing partner of Respondent No. 5 is the Managing Director of the Petitioner company. It is well-settled that a Company is a distinct legal entity different from its Directors and shareholders vide Solomon v. Solomon and Co. Ltd. 1897 AC 22. The Petitioner''s loan has been repaid to it and hence, it has no right to retain the vehicle.

11. It may be noted that this writ petition has not been filed by M/s. Nav Instalments but by M/s. Nand Auto Higher Purchase Pvt. Ltd. The Petitioner itself wrote a letter dated 1.12.1999, vide Annexure-1 to the writ petition asking the Respondent No. 1 to register the vehicle in the name of Respondent No. 4 with the name of Respondent No. 5 as the Financier instead of the Petitioner. Hence, now the Petitioner has no right over the truck in question.

12. We, therefore, dispose of this petition with the direction that the truck in question shall be registered in the name of Respondent No. 4 and the name of Respondent No. 5 will be entered as the Financier u/s 51(1) of the Motor Vehicles Act.

13. The petition is dismissed but with the observation that the Respondent No. 5 will be entitled to take action u/s 51(5) of the Act in case of default of Respondent No. 4 under the provisions of the Higher Purchase Agreement.