

(2010) 09 NCDRC CK 0001

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION****Case No:** None

L And T FINANCE LTD

APPELLANT

Vs

Vithal @ Vithoba

RESPONDENT

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**Date of Decision:** Sept. 20, 2010**Citation:** 2010 4 CPJ 402**Hon'ble Judges:** R.K.Batta , Vinay Kumar J.**Final Decision:** Revision dismissed.

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**Judgement**

1. THE revision has been filed against concurrent findings of two Fora below.

2. HEARD Counsel for the petitioner who submitted before us that the vehicle in question was repossessed and sold in terms of Clause 11(1) of the hypothecation agreement consequent on default in making the payment of instalments which were due. In this connection, our attention was drawn to the letter dated 3.10.2009 asking the complainant to pay the entire amount due, failing which, the tractor in question would be sold. The complainant failed to pay the instalments due and as such the tractor was sold for a sum of Rs. 2,15,000. It is urged that the Fora below erred in ordering payment of Rs. 1,57,100 after deducting 15% of the value of the vehicle which amounts to material irregularity. Clause 11(1) of the hypothecation agreement reads as under:

"11.1 Events of Default If one or more of the events specified in clause hereunder and hereinafter called "Events of Default" occur. LENDER may by notice in writing to the BORROWER forthwith call the said loan together with all interest, compensation and other moneys payable by the BORROWER pursuant to the Agreement and to

enforce the security created in terms of this Agreement. Further, notwithstanding any other rights that LENDER shall be entitled at all times to take charge and or possession or seize recover, appoint receiver and/or Manager and/or remove the said Equipment and/or without the intervention of Court shall sell by, public auction or by Private contract at the best available prices according to the prevailing market condition, dispatch or consign for realisation or deal with the same to realise its claims in respect of the said loan and balances due and payable hereunder without being bound or being liable for any losses that the BORROWER may suffer due to such action of LENDER and without prejudice to the Lender's other rights and remedies as stated herein or otherwise in Law entitled to. In case the net sales proceeds, after deducting all costs, charges and expenses incurred by LENDER are not sufficient to meet in full the dues of the BORROWER hereunder, the BORROWER shall make good and pay such deficiency to the LENDER."

3. ACCORDING to the petitioner a sum of Rs. 1,76,780 was due as a result of which, the tractor in question was repossessed on 18.9.2009: Admittedly, the repossessed of the vehicle was effected by the petitioner without giving any notice. The repossession of the tractor was forcibly done by the petitioner. The Apex Court in ICICI Bank Ltd. v Prakash Kaur and Others, III (2007) SLT 1=I (2007) CCR 538 (SC)=138 (2007) DLT 248 (SC)=I (2007) DLT (CrI.) 865 (SC)=(2007) 2 SCC 741 and ICICI Bank Ltd. v. Shanti Devi Sharma and Others, IV (2008) SLT 685=III (2008) BC 453 (SC)=II (2008) CCR 394 (SC)=III (2008) DLT (CrI.) 9 (SC)=(2008) 7 SCC 532, has deprecated the practice of forcible possession of the vehicle without serving notice of repossession. The matter was considered threadbare by this Commission in Citycorp Maruti Finance Ltd. v. S. Vijayalaxmi, III (2007) CPJ 161 (NC). Repossession of a vehicle forcibly without serving any notice is violation of principles of natural justice. After repossession of the vehicle the petitioner did not get the valuation of the tractor done by any expert nor sold the tractor by public auction or calling sealed tenders. The tractor was sold to a private party for Rs. 2,15,000. In fact, Clause 11(1) referred to above speaks of sale by public auction or by private contract at best available prices according to the prevailing marketing conditions. The petitioner has not taken adequate measures to ensure that the tractor in question was sold at the best available price according to prevailing market conditions nor has produced any data to justify that the tractor was sold at the best available price. In this set of facts, the Fora below had applied the principle of depreciation at the rate of 5% per year and deducting the same determined the value of the tractor as Rs. 3,33,887. The loan amount due as on the date of seizure of the tractor was Rs. 1,76,780 after deducting the same from Rs. 3,33,887, the Fora below have directed the petitioner to pay a

sum of Rs. 1,57,100 to the complainant. In this set of facts and circumstances, we are of the opinion that the orders of the Fora below do not call for interference in exercise of revisional jurisdiction as the orders of the Fora below are just, fair and equitable. In this view of the matter, we are inclined to interfere with the orders of the Fora below. The revision is accordingly dismissed with no order as to cost. Revision dismissed.