

(2007) 02 CAL CK 0034

Calcutta High Court

Case No: Writ Petition No. 26974 (W) of 2006

Contai Co-operative Bank Ltd.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision:** Feb. 28, 2007**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 51, 51(5)

**Citation:** AIR 2008 Cal 46**Hon'ble Judges:** Jayanta Kumar Biswas, J**Bench:** Single Bench**Advocate:** S.B. Bhunia and Ashim Kumar Roy, for the Appellant; Debashish Kar, for the Respondent

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### Judgement

@JUDGMENTTAG-ORDER

Jayanta Kumar Biswas, J.

The petitioner is a Co-operative society registered under the West Bengal Co-Operative Societies Act, 1983. It is aggrieved by the order of the Registering Authority, M.V. Department, Paschim Medinipur dated November 20, 2006, relevant portion whereof is : "In connection with the above mentioned subject, this to inform you that as the R.O. of the vehicle has raised strong objection against transfer of ownership and as you have not produced any order of any Hon"ble Court regarding transfer of property, so you are directed to submit the order of the Hon"ble Court to this authority in support of transfer of ownership of this vehicle."

2. The vehicle in question was purchased by the fourth respondent (Sri Gour Chandra Roy) with the fund of the society lent to the fourth respondent. The parties entered into a hypothecation agreement in terms whereof on the fourth respondent's failure to repay the loan the society was to acquire the right to take possession of the vehicle. There is no dispute that the fourth respondent failed and neglected to repay the loan in terms of the schedule of repayment. There is no

dispute either that after giving requisite notice to the fourth respondent the society took possession of the vehicle in exercise of its right available under the hypothecation agreement. If the fourth respondent was aggrieved, he was at liberty to raise a dispute before the registrar of co-operative societies in terms of provisions in Section 95 of the West Bengal Co-operative Societies Act, 1983. He, however, did not raise any dispute.

3. After taking possession of the vehicle the society submitted requisite application, complying with all formalities and paying all charges, seeking registration of the vehicle in its name. Its application was to be considered by the registering authority in terms of provisions in Section 51 of the Motor Vehicles Act, 1988. On receipt of application from the society the registering authority gave notice to the fourth respondent. In response to that notice the fourth respondent submitted an objection dated October 20, 2006.

4. His objections were : (1) though the vehicle remained registered in his name he had not been informed about the auction sale thereof; (2) since he had not received any notice of auction, he did not know at what price the vehicle had been sold; (3) he did not get accounts of his fixed deposit maintained with the society; (4) he was yet to get his accounts settled with the bank; and (5) till his accounts with the bank were settled the vehicle should not be registered in the name of the society.

5. Thereafter the registering authority made the impugned order. Counsel for the registering authority finds little to say in justification of the decision. Even after service of as many as three notices, the fourth respondent has chosen not to appear and contest this case. Affidavit of service has been filed showing that notice of the case was served on him both by registered post with acknowledgment due and by hand. It seems to me that he is not interested in contesting the case.

6. Counsel for the society submits that the vehicle was never sold in auction, since for that it was to be registered in the name of the society first. He says that the grounds of objection raised by the fourth respondent were no grounds to decline registration of the vehicle by the registering authority in the name of the society that had taken possession of the vehicle in exercise of its right available under the hypothecation agreement. In my view, counsel for the petitioner is absolutely right.

7. The registering authority should not have referred the society to the Court of law. He, it seems to me, declined to exercise his power without any valid reason. He generated this unnecessary litigation by his refusal to exercise powers vested in him. In terms of provisions in Section 51(5) of the Motor Vehicles Act, 1988 once the society produced the necessary documents and the vehicle in support of its case that it had taken possession thereof in exercise of its right available under the hypothecation agreement, he was under the statutory obligation to register it in the name of the society.

8. It is apparent that the grounds of objections taken by the fourth respondent were no lawful grounds to refuse to register the vehicle by the registering authority in the name of the society. On the facts of the case the registering authority acted improperly by directing the society to obtain an order from the Court. An order from the court was not a requirement in terms of provisions in Section 51(5). In my view, the impugned order should be set aside and the registering authority should be directed to register the vehicle in the name of the society.

9. For these reasons, I set aside the impugned order dated November 20, 2006 and allow the writ petition to this extent, I order that within seven working days from the date of communication of this order the registering authority shall register the vehicle in the name of the society (the co-operative bank that has taken out the present writ petition). There shall be no order for costs in the case.

Urgent certified xerox copy of this order shall be supplied to the parties, if applied for, within three days from the date of receipt of the file by the section concerned.