

Kerala High Court

T.C. George vs District Collector on 16 September, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 22458 of 2009(B)

1. T.C. GEORGE, S/O. CHACKO, AGED 50 YEARS
... Petitioner

Vs

1. DISTRICT COLLECTOR,
... Respondent

2. THE AUTHORISED OFFICER,

For Petitioner :SRI.JOHNSON P.JOHN

For Respondent :SRI.G.HARIHARAN

The Hon'ble MR. Justice C.K.ABDUL REHIM

Dated :16/09/2009

O R D E R

C.K.ABDUL REHIM, J

W.P.(C) No.22458 Of 2009

Dated this the 16th day of September, 2009

J U D G M E N T

1. Petitioner availed a loan to the tune of Rs.4,19,000/- from the second respondent Bank for purchasing a Goods Vehicle. The loan amount was agreed to be repaid in 97 equal monthly instalments of Rs.11,520/- each. But after effecting payment of some installments, the petitioner defaulted and the Bank had taken possession of the vehicle pursuant to proceedings initiated under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act). Ext.P3 is the notice issued demanding payment of Rs.68,778.76, the balance outstanding with respect to the installments defaulted up to February 2009. Thereafter the petitioner effected payments to the tune of Rs.85,000/- as evidenced by Ext.P4

receipts. But inspite of such payment the vehicle was taken possession by the Bank. Contention of the petitioner is that, since the W.P.(C) No.22458 Of 2009 defaulted instalments had already been cleared payment of the vehicle has to be released to him. Hence direction is sought for with respect to release of the vehicle.

2. In the statement filed on behalf of the second respondent it is contended that the loan amount is Rs.4,49,000/- and the payment of Rs.85,000/- was made only after taking possession of the vehicle. The arrears remaining unpaid in the loan account is Rs.60,938.76 and the petitioner is liable to pay additional finance charges to the tune of Rs.21,286.84. Hence it is contended that the vehicle could not be released without clearing the above said arrears.

3. The petitioner disputed liability for payment of the additional financial charges. According to him, at present there is default in payment of only four equal monthly instalments, which he is ready and willing to pay within a reasonable time. He further submits that the entire balance can be paid thereafter within a short period. Therefore the W.P.(C) No.22458 Of 2009 petitioner seeks directions for permitting payment of the defaulted installments and for taking possession of the vehicle with immediate effect.

4. Having considered the rival contentions, I am inclined to dispose of the writ petition directing the petitioner to make payment of an amount of Rs.45,000/- on or before 15.10.2009. The second respondent Bank is directed to release the vehicle to the petitioner on payment of the above said amount, retaining the hypothication and on the petitioner making an additional undertaking in the form of a Bond agreeing not to transfer possession of the vehicle till the entire loan amount is cleared. With respect to the balance amount, the respondent Bank is directed to furnish a calculation statement to the petitioner, correctness of which can be disputed by the petitioner. However, the petitioner shall clear the entire balance amount within a period of two months from the date of release of the vehicle.

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5. It is made clear that on the event of any failure on the part of the petitioner to comply with any of the conditions stipulated above, the benefit granted under this Judgment will stand automatically recalled, and the Bank will be at liberty to take further steps as contemplated in the SARFAESI Act. It is also made clear that the benefit under this Judgment is granted subject to the condition that the petitioner is precluded from raising any subsequent challenge against the proceedings before this court or before any other forum.

C.K.ABDUL REHIM JUDGE app/-