

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.1860 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MOHMED IQBAL MOHMEDBHAI SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1860 of 2002
MR PRASHANT G DESAI for Petitioner No. 1
MR MR MENGDEY A.G.P. for Respondent Nos.1-2
NOTICE SERVED for Respondent No. 3
MR MITESH R AMIN for Respondent No. 4

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 29/06/2002

ORAL JUDGEMENT

Rule. Mr.Mengdey, learned A.G.P. appearing on behalf of Respondent Nos.1 and 2 waives service. Mr.M.R.Amin, learned advocate appearing on behalf of Respondent No.4 waives service.

2. The brief facts are that one Chandubhai Ratanbhai

Sangada purchased vehicle bearing No.GJ-17-C-9352 after taking loan from M/s.Tata Finance Limited i.e. Respondent No.4. As the loan was not being repaid in the installments as determined between the said two parties, Respondent No.4 recovered the vehicle from said Shri Chandubhai i.e. Respondent No.3. Pursuant thereto, on 7th February, 2001 the vehicle was advertised for sale on "AS IS WHERE IS" basis along with other vehicles. The petitioner purchased the aforesaid vehicle for a sum of Rs.2,23,000/= plus applicable Sales Tax from Respondent No.4 and on 8th March, 2001 Respondent No.4 issued a letter to the said effect. Respondent No.4 also issued a communication to M/s.Cargo Motors Limited, Vadodara for handing over delivery of the said vehicle to the petitioner. It is pertinent to note that Form Nos.26, 28, 30 and 35 duly signed by Respondent No.3 i.e. Shri Chandubhai were given to Respondent No.4 and after appending the signatures Respondent No.4 handed over the said forms to the petitioner for presenting the same before the Regional Transport Authority for obtaining registration in his favour. There is no dispute as to fact that in the said forms an endorsement to the effect that hypothecation in favour of the Respondent No.3 Shri Chandubhai has been cancelled. The petitioner approached the Regional Transport Authority at Godhra on 19th March, 2001 seeking registration after making the required payment as prescribed in the rules. The say of the petitioner is that the Respondent No.2 - authority is not transferring the vehicle in the name of the petitioner and the reason assigned is that Respondent No.3 has filed Civil Suit No.44 of 2001 against Respondent No.4 and Respondent No.2 in the Civil Court, Godhra.

3. Heard Mr.P.G.Desai, learned advocate appearing on behalf of the petitioner, Mr.Mengdey, learned A.G.P. representing Respondent Nos.1 and 2 and Mr.M.R.Amin, learned advocate appearing on behalf of Respondent No.4. Though served, none appears on behalf of Respondent No.3.

4. The affidavit-in-reply filed on behalf of Respondent No.4 reiterates the facts regarding Respondent No.3 having obtained loan from Respondent No.4 and failing to make payment thereof, resulting in the vehicle being taken over by Respondent No.4 against its outstanding dues. The say of Respondent No.4 is to the effect that the Civil Suit filed by Respondent No.3 is only a frivolous litigation in as much as the contract between Respondent No.3 and Respondent No.4 has already come to an end. Be that as it may, it is a fact that on the day when the petitioner purchased the vehicle from Respondent No.4, so far as the petitioner is concerned it

was in noway connected or concerned with the preceding transaction between Respondent No.3 and Respondent No.4. Once Respondent No.4 who is the seller of the vehicle has put its signatures on the prescribed forms necessary for transfer of the vehicle, there is no reason why Respondent No.2 - authority should refuse to register the said vehicle in favour of the petitioner. It is not even case of Respondent No.2, or for that matter of any one else, that any competent Court has directed Respondent No.2 authority not to transfer the said vehicle in favour of the petitioner. In these circumstances, merely because the Civil Suit is pending in relation to the transaction emanating from a contract between Respondent No.3 and Respondent No.4 it would be no ground for Respondent No.2 - authority to refuse the claim for registration of the vehicle. Respondent No.2 - authority is an independent authority constituted and empowered under the Motor Vehicles Act and the Rules and should not be seen to be taking sides in relation to a private dispute emanating from a contract, assuming any such valid dispute is pending.

5. In light of what is stated hereinbefore, this petition requires to be allowed. Respondent No.2 authority is directed to register the vehicle bearing No.GJ-17-C-9352 in the name of the petitioner and issue a Registration Book to the petitioner forthwith.

6. The petition is allowed accordingly. Rule made absolute. There shall be no order as to costs.

(D.A.Mehta, J)

'Bhavesh'