HIGH COURT OF TRIPURA
AGARTALA

RFA No.11 of 2013

M/s. Rajarshi Motors Pvt. Ltd.,
a company incorporated under the Companies Act,
1956, having its office at Chandrapur,
Agartala, P.S. East Agartala,
District: West Tripura,
represented by its Managing Director,
Shri Swapan Kumar Paul

----Appellant(s)

Versus

1. Shri Ajit Kumar Saha,
son of late Atul Chandra Saha,
Radha Krishna Bakery,
East Pratapgarh, Agartala,
P.S. East Agartala, District: West Tripura

----Defendant-Respondent

2. M/s. Tata Motors Ltd.,
having its registered office at Mumbai House,
24, Homi Mody Street, Mumbai-400001
Represented by its Managing Director

----Proforma-Defendant-Respondent

For Appellant(s)	:	Mr. A.K. Bhowmik, Sr. Adv. Mr. Raju Datta, Adv.
For Respondent(s)	:	Mr. A. Nandi, Adv. Mr. S. Pandit, Adv.
Date of Hearing	:	02.04.2018
Date of delivery of Judgment and Order	:	29.06.2018
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE S. TALAPATRA

Judgment & Order

This appeal arises from judgment dated 30.03.2013 delivered in Money Suit No.06/2008 by the Civil Judge (Senior Division), Court No.2, West Tripura, Agartala. The suit was instituted by the appellant for realization of money amounting to Rs.8,44,455/- from the defendant, the respondent No.1 herein. The appellant is a company incorporated under Companies Act, 1956 and the dealer of M/s Tata Motors Limited, the respondent No.2. The respondent No.1 entered in the hire-purchase agreement on 13.05.2002, with the respondent No.2 and acquired a Mini bus, later on registered as TR01A-1232. The respondent No.1 thus became the hirer of the said vehicle till payment of all monthly instalments by liquidating the loan with interest and other dues and charges. On completion of repayment, it was also agreed that the vehicle would be transferred to the hirer. Out of the total price of the said vehicle being Rs.5,73,000/- the defendant-hirer paid a sum of Rs.1,60,000/- at the time of entering into the hire-purchase agreement. It was agreed that the defendant-hirer will pay Rs.1,17,469/- as installment for the first month and Rs.16,700/- every month for a period of more than 34 months along with service tax as payable, from time to time, under the law.

02. The defendant-hirer failed to pay the instalments in time. The defendant-hirer also demanded for change of the engine of the said vehicle. The plaintiff replaced the engine of the said vehicle by a new engine on 14.01.2004. The vehicle was again taken custody by the defendant-hirer. Despite persuasion by the plaintiff, the defendant did not pay the outstanding. He lodged one complaint for deficiency of service against the plaintiff in the District Consumer Dispute Redressal Forum, West Tripura, Agartala being CPA No.43/2004. When the said complaint was pending for adjudication, the respondent No.2, Tata Motors Limited transferred the ownership right of the said vehicle unilaterally to the plaintiff-appellant on 21.06.2006. Thus according to the plaintiff, he became the owner with all its power and character. As the defendant did not pay a sum of Rs.3,78,349/- the total outstanding came to Rs.4,67,687/- with service tax and interest and when the suit was instituted, the outstanding reached to Rs.8,44,455/- on 10.02.2008. The plaintiff has claimed that the said amount to be paid by the defendant-hirer with interest @ 10% per annum. According to the plaintiff, the cause of action arose on 13.05.2002 when the defendant-hirer and the respondent No.2, Tata Motors Limited entered into the hire-purchase agreement.

03. By filing the written statement, the defendant-hirer has categorically stated that a defective engine was

installed in the vehicle, as a result it could not ply on the road for commercial operations till the said engine was replaced by the plaintiff and this is one of the reasons for delay in payment of the monthly instalments. On 20.08.2002 the defendant-hirer sent an advocate notice claiming compensation for loss of business, harassment and mental agony. The engine that was fitted in the said vehicle was a reconditioned one. That was also creating interruption in the operation of the vehicle. According to the hirer-defendant, he paid all the instalments and the date and amount of money against such payment of his written statement has been provided under paragraph-12.

04. The respondent No.2 filed a separate written statement where it is stated that the ownership of the said vehicle was transferred to the plaintiff without keeping any right or authority with the respondent No.2. Thus the hire-purchase agreement dated 13.05.2002 entered between the proforma-defendant as the owner and and the defendant (respondent No.1) as the hirer was dissolved [see para-16 of the written statement filed by the respondent No.2 on 02.01.2010].

05. The trial court framed the following issues for determination of the suit:

(i) Whether the suit is maintainable;

(ii) Whether the suit is barred by limitation;

(iii) Whether the plaintiff is entitled to recover a sum of Rs.3,78,349/- on account of balance of instalment with

service tax and Rs.3,89,338/- towards over due interest from defendant No.1;

(iv) Whether the plaintiff is entitled to recover from the defendant No.1 a sum of Rs.8,44,455/- as on 10.02.2008 including interest @ 10% per annum on Rs.7,67,637/-;

(v) Whether the plaintiff is entitled to recover from the defendant No.1 a further interest @ 10% per annum on Rs.8,44,455/- w.e.f. 11.02.2008 till realization;

(vi) Whether the plaintiff is entitled to receive any other relief as the Ld. Court deem fit.

06. It has been observed in the judgment dated 20.04.2013 delivered in the suit being MS 06/2008 by the Civil Judge, Senior Division, Court No.2, West Agartala as follows:

> **"But it is an admitted fact that on his failure to repay the entire loan money, the principal-defendant surrendered the vehicle in question to the proforma-Defendant with a request to sell the said vehicle in the market at the risk of the principal-defendant and to recover the cost and dues and in case the entire cost and dues are not permissible to recover from the sake proceeds of the vehicle, the principal-defendant would pay the remaining portion of cost and dues on demand from the side of the proforma-Defendant.**
>
> **Accordingly, on 21.06.06 after getting the re-possession of the said vehicle, the proforma-Defendant transferred the same to the plaintiff by way of sale with all rights and liabilities on receipt of Rs.1,50,000/- as consideration money from the plaintiff."**

The said judgment is under challenged in this appeal by the plaintiff.

07. It has been further observed that Section 17 of the Hire-Purchase Act, 1972 provides that where the owner seized the goods left under a hire purchase agreement, the value of the goods liable to be recovered by the owner on the date of that seizure is the best price that can be reasonably obtained for the goods by the owner on that date.

08. Finally, it has been observed that the plaintiff did not disclose all the material facts and by way of suppression of those facts the plaintiff has intended to set up their case. In the result, the suit was dismissed as the plaintiff has, accordingly to the trial court utterly failed to prove his right and demand.

09. Mr. A.K. Bhowmik, learned senior counsel assisted by Mr. R. Datta, learned counsel has appeared for the plaintiff-appellant and Mr. A. Nandi, learned counsel has appeared for the defendant-hirer and Mr. S. Pandit, learned counsel has appeared for the Tata Motors Private Limited, the respondent No.2. Mr. Bhowmik, learned senior counsel having referred to the hire-purchase agreement [Exbt.1 series] has robustly argued that the payment for the said hire was specified by 35 instalments, almost of equal amount. It is the part of the agreement that the guarantor and the defendant-hirer promised to make payment to the Tata Engineering and Locomotive Company Limited, now Tata Motors Limited, a sum of Rs.7,85,369/-. But as stated the said payment was not made. On the contrary, having taken the possession of the vehicle, the plaintiff-appellant sold out the same. According to the defendant-hirer, it could have garnered more price. Further, the defendant-hirer has claimed that due notice under form No.29 was issued by him. But later on, an account was produced by the plaintiff

showing the various components of the demand on 13.04.2005. The defendant-appellant disputed the said account.

10. Mr. A.K. Bhowmik, learned senior counsel appearing for the plaintiff-appellant has submitted that the defendant-hirer cannot resile from the terms and conditions from the hire-purchase agreement and unless and until the consideration price with service tax and interest are paid to the plaintiff-appellant, the defendant-hirer's obligation to pay off the outstanding cannot be treated as performed and it will remain enforceable.

11. Mr. A. Nandi, learned counsel appearing for the defendant-hirer has submitted that the plaintiff-appellant is not entitled to realize any money from the defendant-hirer and the suit as instituted by them is frivolous one. It should have be dismissed with exemplary cost.

12. Having scrutinized the records, a few questions emerge for determination in this appeal:

(i) Whether the plaintiff-appellant has any right to terminate the hire-purchase agreement for default of payment or authorized to act for breach of express conditions?

(ii) Whether the plaintiff-appellant can unilaterally be substituted as the owner of the vehicle, when the

vehicle is still under the hire-purchase agreement?

(iii) Whether for the change in the situation and purchase by the plaintiff-appellant, the right of the ownership can pass to the plaintiff-appellant, when the defendant-hirer did not expresses agree to such transfer?

13. In **Venkata Chinnaya Rau Garu vs. Venkataramaya Garu** [1881 ILR 4 MAD 137] it has beenclearly held that a person not a party to a contract cannot sue. In **State of Tripura vs. Bhowmik & Company** [AIR 2004 gau 21] Gauhati High Court had observed that if there being no agreement there was no breach of contract.

14. Mr. Nandi, learned counsel has also submitted that the transfer of ownership keeping the defendant-hirer in dark is entirely unconscionable and unlawful as the defendant-hirer had substantive right over such transfer inasmuch as at that point of time the hire-purchase contract was not terminated and he had paid a substantial amount as the price. According to Mr. Nandi, learned counsel the said vehicle was surrendered to the plaintiff-appellant considering him as the dealer of Tata Motors Limited, not recognizing his status as the owner inasmuch as at no point of time the defendant-hirer was not communicated that the plaintiff-appellant has purchased the said vehicle. By the

demand notice dated 26.03.2007 [part of Exbt.1], for the first time, it was communicated that the Tata Motors Limited transferred the ownership of the said vehicle with all rights to the plaintiff-appellant with effect from 21.06.2006 and thus the plaintiff-appellant has become the owner within the ambit of the hire-purchase agreement. But notwithstanding the request from the plaintiff-appellant, the defendant since has not repaid the outstanding and not complied the said notice of demand, the suit was instituted in consequence thereof. Section-3 of the Hire-Purchase Act, 1972 provides that every hire-purchase agreement shall be- (a) in writing, and (b) signed by all the parties thereto. It further provides that hire-purchase agreement shall be void if in respect thereof any of the requirements specified in sub-section (1) has not been complied with.

15. There is no dispute that the plaintiff has claimed the status on the basis of the hire-purchase agreement dated 13.05.2002 as entered not between the plaintiff and the defendant but between the defendant-hirer and the Tata Motors Limited on 13.05.2002. Since the plaintiff was not signatory on the said hire-purchase agreement, he cannot sue the defendant-hirer by dint of the hire-purchase agreement. The plaintiff had right to sue the defendant-hirer being authorized by the Tata Motors Limited but not as the purchaser of the said vehicle. No such authorization is plead or proved.

16. As such, this court does not have any hesitation to hold that there was no valid hire-purchase agreement between the plaintiff-appellant and the respondent-hirer, the respondent No.1 herein and as such the appellant could not have instituted the suit claiming the money on the basis of the said hire-purchase agreement dated 13.05.2002. Moreover, Section-18 of the Hire-Purchase Act, 1972 provides that the rights of owner to terminate hire-purchase agreement for default in payment of hire or unauthorized act or breach of express conditions (1) Where a hirer makes more than one default in the payment of hire as provided in the hire-purchase agreement then, subject to the provisions of section 21 and after giving the hirer notice in writing of not less than- (i) one week, in a case where the hire is payable at weekly or lesser intervals; and (ii) two weeks, in any other case. The owner shall be entitled to terminate the agreement by giving the hirer notice of termination in writing. The owner shall be entitled to terminate the agreement where a hirer does any act, with regards to the goods to which the agreement relates, which is inconsistent with any of the terms of the agreement or breaks an express condition which provides that, on the breach thereof, the owner may terminate the agreement.

17. The definition of the owner has been provided under Section 2(f) of the said Act in the following manner:

> **"owner means the person who lets or has let, delivers or has delivered possession of goods, to a hirer under a hire-purchase agreement and includes a person to whom the owner's property in the goods or any of the owner's rights or liabilities under the agreement has passed by assignment or by operation of law."**

18. In Section 2(c) of the Hire-Purchase Act, the Hire-Purchase Agreement has been defined as an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of the agreement and includes an agreement under which- (i) possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical instalments, and (ii) the property in the goods is to pass to such person on the payment of the last of such instalments, and (iii) such person has a right to terminate the agreement at any time before the property so passes. The hire-purchase price means the total sum payable by the hirer under the hire-purchase agreement in order to complete the purchase of, or the acquisition of property in, the goods to which the agreement relates; and includes any sum so payable by the hirer under the hire-purchase agreement by way of a deposit or other initial payment, or credited or to be credited to him under such agreement on account of any such deposit or payment, whether that sum is to be or has been paid to the owner or to any other person or is to be or has been discharged by payment of money or by transfer or delivery of goods or by any other means; but does not

include any sum payable as a penalty or as compensation or damages for a breach of the agreement.

19. The Madras High Court in **K.A. Kannappa Chetti vs. State of Tamil Nadu and Ors.** reported in **(1973) 2 MAD LJ 212 (231)** has interpreted the hire-purchase agreement as the things under such agreement are purchased with the attributes of hire and not hire with the attributes of a purchase. The nature and legal effect of the hire-purchase agreements is not the same in all cases and may be different in different circumstances. Thus the Court is duty bound in each case to determine the correct legal relationship between the parties by going through the document as a whole and reaching the real intention of the parties, untrammeled by the choice of phraseology in the document. In the case of a lender and a borrower for the purpose of purchasing a motor vehicle the hire-purchase agreement between the lender and the customer is of the nature of a transaction of loan.

20. Section 2 (d) of the Hire-purchase Act, 1972 cannot be interpreted by including any sum payable as penalty or compensation or damages for breach of the hire-purchase agreement.

21. The assignment as appeared in Section-2(f) is in respect of the hirer nor to a third party and as such the plaintiff-appellant did not have any right to act on the hire-purchase agreement and hence the plaintiff-appellant

cannot be held to have substituted as the owner of the vehicle by superseding the contingent right of the defendant-respondent. The plaintiff-appellant cannot acquire any right of the ownership and he cannot also assert any right under the Hire-purchase agreement dated 13.05.2002. Unless the right of the owner or the financer was available to the plaintiff-appellant, he cannot exercise the power under Section 18 of the Hire-purchase Act, 1972. Thus, the plaintiff-appellant had no *locus standi* to institute the suit based on the said Hire-purchase Agreement dated 13.05.2002. The defendant-respondent No.1 in his written statement has categorically asserted as follows:

> **"That the suit is filed by the plaintiff don't have any locus-standi because the plaintiff neither the financer nor any agreement was made between plaintiff and defendant (sic). So the plaintiff filed (sic) this suit is blessed any hence liable to be dismissed in lamina at the time of delivery of the chassis and engine, the said Rajarshree Motors Ltd. has accepted the full amount of sale price of the chassis and engine with full and final satisfaction. So, the Rajarshree Motor Ltd. can not claim amount which is fallen due because no agreement was made between plaintiff and defendant (sic)."**

22. This objection has been resonated in the issue No.3. While deciding that issue No.3 the trial court has observed that:

> **"The plaintiff neither in his plaint nor in his oral evidence mentioned anything to the effect that there was a clause or not in the deed of hire purchase agreement dated 13.05.2002 giving a right to the proforma-Defendant to transfer his all rights and duties in respect of the vehicle in question to any third party like the present plaintiff. Moreover, when the vehicle in question was handed over to the proforma-Defendant by the principal-defendant for the purpose of sale and to recover all the cost and dues under that agreement from the sale proceeds of the said vehicle, it was the legal duty of the proforma-Defendant to sell the Mini bus in question at its best price by an auction sale but surprisingly the proforma-Defendant sold out the vehicle to the present plaintiff at a consideration of Rs.1,50,000/- only without giving any notice of auction sale whereas the present plaintiff had acted as an agent**

> **of the proforma-Defendant at the time of execution of the said hire purchase agreement and the plaintiff put his signature on the deed of hire purchase agreement as a witness."**

23. This finding though not happily worded, does not suffer from any infirmity. Moreover, it appears from the records that before any such act, the owner-proforma-defendant in the suit did not comply the provisions of Section-18. For purpose of reference, Section-18 of the Hire-purchase Act, 1972 is extracted hereunder:

> **"Rights of owner to terminate hire-purchase agreement for default in payment of hire or unauthorised act or breach of express conditions.—**
> **(1) Where a hirer makes more than one default in the payment of hire as provided in the hire-purchase agreement then, subject to the provisions of section 21 and after giving the hirer notice in writing of not less than—**
> **(i) one week, in a case where the hire is payable at weekly or lesser intervals; and**
> **(ii) two weeks, in any other case,**
> **the owner shall be entitled to terminate the agreement by giving the hirer notice of termination in writing:**
> **Provided that if the hirer pays or tenders to the owner the hire in arrears together with such interest thereon as may be payable under the terms of the agreement before the expiry of the said period of one week or, as the case may be, two weeks, the owner shall not be entitled to terminate the agreement.**
> **(2) Where a hirer—**
> **(a) does any act with regard to the goods to which the agreement relates which is inconsistent with any of the terms of the agreement; or**
> **(b) breaks an express condition which provides that, on the breach thereof, the owner may terminate the agreement,**
> **the owner shall subject to the provisions of section 22, be entitled to terminate the agreement by giving the hirer notice of termination in writing."**

24. It is made clear that if it appears that any clause of the Hire-purchase Agreement has been breached, the owner has the authority to terminate the agreement by giving hirer notice of termination in writing subject to the provision of Section-22 of the Hire-purchase Act, 1972.

Section-22 of the Hire-purchase Act, 1972 provides as under:

> **"Relief against termination for unauthorised act or breach of express condition.—Where a hire-purchase agreement has been terminated in accordance with the provisions of clause**
> **(a) or clause (b) of sub-section (2) of section 18, no suit or application by the owner against the hirer for the recovery of the goods shall lie unless and until the owner has served on the hirer a notice in writing,—**
> **(a) specifying the particular breach or act complained of; and**
> **(b) if the breach or act is capable of remedy, requiring the hirer to remedy it, and the hirer fails, within a period of thirty days from the date of the service of the notice, to remedy the breach or act if it is capable of remedy."**

25. The owner admittedly has not given such notice in writing and as such termination and subsequent sale of the vehicle to the plaintiff-appellant was in breach of the Hire-purchase Agreement and hence the defendant-respondent No.1 cannot be obligated to perform in terms of the Hire-purchase Agreement dated 13.05.2002 by the plaintiff.

Having observed thus, this appeal is dismissed.

The impugned judgment is affirmed.

Draw the decree accordingly.

Send down the LCRs thereafter.

JUDGE

Moumita