

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6370 OF 2000@@
CC
[arising out of S.L.P.(C) No.9404 of 2000]

M/s. Uma Sankara Auto & General Finances ..Appellant(s)

vs.

Peddinti Ramakrishna ..Respondent(s)

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Special leave granted.

The challenge in this appeal is to the order in review passed by the High Court as a result whereof the earlier order dated 11th June, 1999 was recalled.

The respondent herein had filed a suit for a declaration that no amount was due from him to the appellant herein. It appears that the case of the appellant herein was that there was an agreement of hire purchase between the parties and when amount was outstanding possession of the vehicle was taken by the appellant. In the said suit of the respondent, an application was filed for appointing a Commissioner with a direction to seize the vehicle in question.

The said application was dismissed by the Civil Judge whereupon the respondent filed Civil Revision Petition No. 397 of 1999 in the High Court. By an interim order dated 16th February, 1999, the learned Judge directed release of the vehicle on the respondent herein furnishing bank guarantee for

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a sum of Rs.1,50,000/-. Subsequently, the revision petition was dismissed by order dated 11th June, 1999. In this order, it was recorded that the court below had observed that the seizure of the vehicle prima facie was not illegal and as there was an order directing not to transfer the said vehicle or to create any third party interest till the disposal of the suit, the Court did not think it proper to interfere in the same. The trial court was directed to dispose of the suit expeditiously.

Thereafter, a review application was filed and in the affidavit in support thereof the contention which was raised was that the counsel for the respondent was not present and the review petition was dismissed in his absence. The High Court allowed this review application by observing as follows:

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"Reasons given in the affidavit filed in support of the Review C.M.P. are accepted and the Review C.M.P. is allowed. The order dt.11.6.1999 passed in C.R.P. No. 397/99 is recalled."

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The order under appeal does not give any reason apart

from what is stated in the affidavit in support of the review petition for allowing the same. As already mentioned, the only ground given in the affidavit in support of the review petition is that the counsel for the revision petitioner was not present. This averment is not correct, inasmuch as in the order dated 11th June, 1999, while dismissing the revision petition, it was observed by the learned Judge as follows:

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"The learned counsel for the petitioner contends that in the absence of the ingredients of hire purchase and the title being vested with

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the plaintiff, the respondent has no right to seize the vehicle and cause alienation of the same and therefore the court below ought to have dismissed the I.A."

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It is clear from the aforesaid that the counsel for the respondent herein, namely, Mr. M. Sivananda Kumar, whose presence is also recorded, had argued the case and it is only thereafter the revision petition was dismissed. This being so, the question of the High Court exercising its review jurisdiction does not arise.

For the aforesaid reason, this appeal is allowed and the impugned order dated 19th April, 2000 allowing the Review Civil Misc. Petition No. 5857/2000 is set aside.

No costs.

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.....J.
(B.N. KIRPAL)

.....J.
(RUMA PAL)

New Delhi;
November 13, 2000.