
RAYMOND FERNANDO

v.

BANK OF CEYLON

SUPREME COURT
DHEERARATNE, J.
WIJETUNGA J. AND
BANDARANAYAKE, J.
SC (APPEAL) No. 143/97
CA(APPEALS)
NOS. 312/89; 313/89, 314(89) and 315/89
DC (COLOMBO) NOS. 2667/ SPL and
AND 2668/SPL
21ST JULY, 1999

Hire purchase agreement - Termination of agreement - Requisite notice - Conflict between terms of agreement and the provisions of the Consumer Credit Act, No. 29 of 1982.

The plaintiff - appellant ("the appellant") had entered into a hire purchase agreement on 27.2.1986 with the defendant - respondent ("the respondent") in respect of a vehicle. The respondent informed the appellant in terms of the agreement that unless the appellant paid a sum of Rs. 33,000/- being arrears of rent within 7 days, the respondent will take steps to recover the arrears of rent. The respondent failed to pay the said sum. Thereafter the respondent seized the vehicle and arranged to sell it. The appellant instituted an action in the District Court against the respondent for a declaration that the seizure of the vehicle was illegal.

Held :

The hire-purchase agreement had not been duly terminated in terms of section 18 of the Consumer Credit Act which required two weeks notice of termination of agreement to be given and that section 18 of the Act prevailed over clause 11 of the agreement which stipulated 7 days' notice.

Per Bandaranayake, J.

"It is thus clear that none can contract outside the provisions of the Act"

APPEAL from the judgement of the Court of Appeal.

S. T. Gunawardena for appellant

Saleem Marsoof, P. C.. ASG with Uditha Egalahewa, S. C. for respondent.

Cur. adv. vult.

October 22, 1999

SHIRANI BANDARANAYAKE, J.

The plaintiff-appellant (appellant) entered into a hire purchase agreement on 27.02.1986 (P1) with the defendant-respondent (respondent) in respect of vehicle No. 26 Sri 8378. The respondent by letter dated 13.08.1986 (P2), requested the appellant to pay on or before 20.08.1986 a sum of Rs. 33,000/- which was due from him, by way of monthly rental and arrears. He was also informed that, in the event of any default, the respondent would be compelled to take steps to recover the said sum of money. The appellant failed to pay the said sum as requested. The respondent thereafter, without any further intimation, seized the said vehicle on 30.08.1986 and sent a letter to the appellant stating that unless a sum of Rs. 125,573/20, together with garage charges at Rs. 40/- per day, from the date of seizure, was paid within 14 days from the date thereof, the said vehicle would be sold. The appellant instituted action against the respondent on 12.09.1986 seeking a declaration that the seizure of the said vehicle was illegal and a declaration that the respondent is not entitled to sell or transfer the said vehicle. The appellant also sought an order to deliver the said vehicle to him with damages at Rs. 500/- per day from 31.08.1986 (P5).

The learned District Judge held that the Hire Purchase Agreement had not been duly terminated in terms of section 18 of the Consumer Credit Act (The Act). Since the trial judge made no order in favour of the appellant in respect of damages claimed by him, he appealed against that judgement to the

Court of Appeal. The Court of Appeal held that section 18 of the Act is only directory and non-compliance of that section by the respondent does not make the termination of the agreement invalid. The only question which arises in this appeal is whether section 18 is applicable to the agreement entered into between the parties, or not.

Section 18 of the Act reads as follows :

"18. (1) Where a hirer makes more than one default in the payment of hire as provided in a hire-purchase agreement then, subject to the provisions of section 21 and after giving the hirer notice in writing of not less

than -

(a) one week, in a case where the hire is payable at weekly or lesser intervals; and

(b) 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 arrear 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 two weeks, as the case may be, the owner shall not be entitled to terminate the agreement.

(2) If a hirer -

(a) does any act with regard to the goods to which the hire-purchase agreement relates which is inconsistent with any of the terms of the agreement; or

- (b) breaks any express condition of the agreement which provides that on the breach thereof the owner may terminate the agreement,

the owner shall be entitled to terminate the agreement by giving the hirer not less than 30 day's notice in writing specifying the particulars breach or act which entitles him to terminate the agreement:

Provided, however, that in case where the breach or act specified in the notice is capable of being remedied by the hirer, it shall be the duty of the owner to require the hirer by such notice to remedy the breach or act complained of, before the expiry of the said period of thirty days, the owner shall not be entitled to terminate the agreement."

Admittedly, the respondent gave only one week's notice of the termination of the agreement, not two weeks notice as required by section 18. Learned Additional Solicitor General submitted that the notice of 7 days was given in terms of clause 11 of the agreement P1. He contended that in the event of any inconsistency between the stipulations in clause 11 of the agreement and provisions of section 18, the former must prevail over the latter for several reasons. Firstly, he contended that the object of the Act was not to remove common law or contractual rights of parties. Secondly, he contended that the object of the Act was to make supplementary provision for areas in a hire-purchase transaction where the common law or the contract failed to make provision. Thirdly, he contended that wherever the Act made provision which intended to override any contractual stipulation, words "notwithstanding anything to the contrary contained in the hire-purchase agreement" or words of similar import were used; our attention was drawn to sections 7(3), 9 and 10(5).

Learned Additional Solicitor General also submitted that section 25 of the Hire Purchase Act of the United Kingdom which corresponds to section 18 of the Sri Lankan Act, specifically provided that the provisions of that section "shall take effect notwithstanding anything to the contrary contained in the hire-purchase agreement."

If the learned Additional Solicitor General is correct, the Consumer Credit Act is a mere guide containing a series of pious resolutions bereft of any force of law. The long title to the Act reads "An Act to **define and regulate** the duties of parties to hire-purchase agreements and to provide for matters connected therewith or incidental thereto." Although "notwithstanding provisions" have been specified in some sections through perhaps an abundance of caution, section 2 of the Act is specific and pervasive when it states,

"The provisions of this Act shall apply in relation to all hire - purchase agreements entered into in Sri Lanka after the coming into operation of this Act."

It is thus clear that none can contract outside the provisions of the Act.

For the above reasons, the appeal is allowed. We set aside the judgement of the Court of Appeal and affirm the judgment of the District Court. In all the circumstances we make no order for costs.

DHEERARATNE, J. - I agree.

WIJETUNGA, J. - I agree.

Appeal allowed.