

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 27th DAY OF JANUARY 2003

BEFORE

THE HON'BLE MR.JUSTICE N.K.PATIL

C.R.P. / NO.5088 OF 2001(MISC)

BETWEEN:

M/S SAPTHAGIRI AUTO &
GENERAL FINANCES,
A REGISTERED PARTNERSHIP
FIRM, REP BY ITS PARTNER
SRI VENKATESULU,
S/O G.NARAYANASWAMY,
R/O NO.18, SBI COLONY
GANDHINAGAR, BELLARY

PETITIONER

(By Sri K RAGHAVENDRA RAO, ADVOCATE)

AND :

1. D CHANDRASHEKAR S/O R DEVAIAH
MAJOR, LORRY OWNER, MUNIRABAD,
KOPPAL TALUK AND DISTRICT,
NOW AT 1ST WARD,
NETAJINAGAR, T.B.DAM,
HOSPET TALUK.
2. ABDUL MUBRAK S/O
ABDUL RASHEED SAB
MAJOR, MERCHANT,
R/O MUNIRABAD DAM,
MUNIRABAD, KOPPAL
3. S NEELAKANTA REDDY
S/O S.SAMBASHIVA REDDY

MAJOR, LORRY OWNER,
R/O PATEL NAGAR,
HOSPET

RESPONDENTS

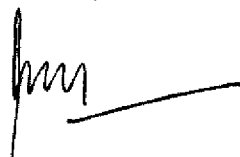
THIS CRP IS FILED U/S.115 CPC AGAINST THE ORDER DATED 17.1.2001 PASSED ON IA NO.II IN MISC. NO.32/1999 ON THE FILE OF THE CIVIL JUDGE (SR.DN.), HOSPET, DISMISSING I.A.NO.II FILED U/S 151 CPC SEEKING INTERIM CUSTODY OF THE VEHICLE.

THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

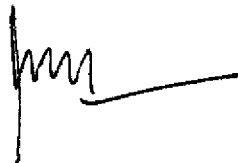
ORDER

The learned counsel for the petitioner has filed a memo requesting that notice to respondent No.1 may be dispensed with. Memo is placed on record. Notice to respondent No.1 is dispensed with.

2. This revision petition is directed against the order dated 17.1.2001 in Misc.No.32/99 on the file of the Civil Judge (Sr.Dn.), Hospet, on I.A.II.



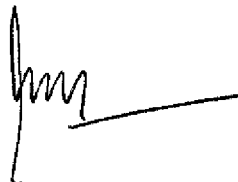
3. The petitioner had provided a lorry bearing Registration No.KA35/2235 to respondent No.1 under a hire purchase scheme. Respondent No.2 had filed O.S.No.36/1999 on the file of the Civil Judge (Sr.Dn.), Hospet, against respondent No.1 and in the said suit, he got the aforesaid vehicle attached before judgment. In view of the fact that the petitioner is the owner of the vehicle in question and respondent No.1 has only provided the said vehicle under the hire purchase agreement, the petitioner filed Misc.No.32/99 claiming right over the said vehicle and in the said petition, he filed an application -I.A.II to give interim custody of the vehicle pending disposal of the said petition. The said application came up for consideration before the trial Court on 17.1.2001. The trial Court, after hearing both the parties and after considering the material on record, has rejected the said application only on the ground that the application has been filed under a wrong provision and that there is a specific provision contained in Order 38 Rule 8 CPC regarding



rejecting I.A.II is that the same has not been filed under the relevant provision and that there is a specific provision contained in Order 38 Rule 8 CPC regarding adjudication of claim in respect of the property attached before the judgment. The said reasoning given by the trial Court is not justifiable in view of the law laid down by this Court and the Apex Court on this aspect in series of matters that if the provision has been wrongly mentioned, it does not take away the right of the petitioner.

7. Having regard to the facts and circumstances of the case as stated above and taking into consideration the totality of the case, I do not find any justification to sustain the order passed by the trial Court.

8. For the foregoing reasons, the revision petition is allowed. The order passed on I.A.II in Misc.No.32/99 by the Civil Judge (Sr.Dn.), Hospat, is set aside. The matter is remitted back to the trial Court. The trial Court is



directed to re-consider I.A.II filed by the petitioner and dispose of the same in accordance with law, after giving opportunity to the petitioner and the respondents, as expeditiously as possible.

Sd/-
Judge

bkv