2026:AHC:221690-DB

Reserved
A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 36407 of 2026

Sadab Ahmad

…..Petitioner

Versus

State of UP and others

…..Respondents

Counsel for the Petitioner	:	Anas Khan, Daniyal Niyazi, Muhammad Hamza Usman, Syed Ahmed Faizan
Counsel for the Respondents	:	Amit Shukla, C.S.C.

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE INDRAJEET SHUKLA, J.

(Delivered by Hon'ble J.J. Munir, J.)

1. The petitioner, Sadab Ahmad, is a self-employed man. He purchased a goods carrier vehicle, bearing registration no. UP-50CT-2208, a TATA Vehicle, Model No. 3718, manufactured in the year 2018, from M/s. Amit Autowheels Pvt. Ltd., Teenpani, Haldwani, Uttarakhand, which was initially registered on 15.11.2018. The petitioner purchased the vehicle on 20.12.2023 from the aforesaid dealership. The previous owner of the vehicle was one Dalsingar Yadav. The vehicle was registered with the Registering Authority under the Motor Vehicles Act at Azamgarh on 21.12.2023, when it was assigned its present registration number. The petitioner purchased the vehicle raising finance from the HDB Financial Services Limited on 19.12.2023, leading to the opening of loan account no. 42286510 in the petitioner's name. The petitioner contracted to repay the loan in monthly installments

of Rs.64,059/- each and the total repayment schedule was spread across 45 installments of the same worth. The petitioner says that he purchased the vehicle to earn his livelihood, which, from the nature of the vehicle, is obvious. According to the petitioner, he regularly complied with the terms and conditions of the aforesaid loan and out of the total 45 installments, the petitioner has already paid 31 installments. He asserts the fact on the strength of a statement of account relating to his loan account issued by the respondent, HDB Financial Services Limited (for short, 'the Finance Company') dated 10.08.2026. It is asserted that the loan account was regular.

2. On 09.08.2026, as the petitioner was driving his vehicle and had reached Chandauli, he was intercepted by some men, acting on behalf of the Finance Company. The intercepting men threatened the petitioner at gunpoint and forcibly took possession of the vehicle and also forced him to sign the repossession inventory. After taking possession of the vehicle, it was parked at a parking yard, situate at Chandauli, U.P., bearing Parking Code 15552, as per the information furnished to the petitioner. It is the petitioner's case that the vehicle was taken into possession without lawful justification or authority, particularly when there was no default in repayment of the petitioner's loan. The petitioner submitted a representation before the Regional Business Head of the Finance Company, requesting that his vehicle be released and handed back to him. It was also requested that the petitioner be supplied with the complete statement or details of his loan account, on the basis of which his vehicle had been seized.

3. The petitioner handed over a written information on 29.08.2026 at Police Station Ramnagar, District Varanasi, reporting the illegal seizure of his vehicle at gunpoint. A representation was also made to the District Magistrate, Azamgarh, bringing to his notice the forcible and illegal seizure of the petitioner's vehicle and requesting, as the petitioner says,

appropriate intervention of the said Magistrate to secure release of his vehicle. It is then said in paragraph no. 13 of the writ petition that when he approached the Finance Company, whom he has curiously described in the said paragraph as 'the concerned persons', for release of his vehicle, he was informed that the vehicle had been seized not on account of any default on the petitioner's own loan account, but on ground that the petitioner had stood guarantor in regard to the vehicle loan of another person. It is mostly about the payment of his own loan dues until time that his vehicle was seized or repossessed, as it is called, and more than that, about the violent and unlawful manner of seizing the vehicle at gunpoint that the petitioner makes it his cause in the present petition.

4. The petitioner seeks the issue of a *mandamus* to the respondents to forthwith release and handover his vehicle, of which forcible possession was taken.

5. A counter affidavit has been filed on behalf of the Finance Company by their Area Manager, who is posted at Deoria, and the stand taken is that the petitioner's brother, Shoaib Ahmad, *vide* Group/ Link Loan Account No. 31553150, which was linked to the petitioner's loan account no. 42286510, has secured a loan-cum-hypothecation facility in the sum of Rs.15,95,053/- for the purchase of a commercial vehicle, bearing registration no. UP-50BT-5169. The said loan, after being sanctioned, was disbursed on 25.02.2023. The loan availed by the petitioner's brother Shoaib Ahmad, which will hereinafter be called, 'the other loan', was repayable in 35 equated monthly installments (EMI), each worth Rs.60,298/-. The petitioner's brother is said to have committed severe default in the payment of his EMIs and about 18 post dated cheques of his bounced. The Area Manager of the Finance Company says that according to the foreclosure report dated 10.09.2026, there was a total outstanding in the sum of Rs.9,92,422/- in the other loan account. Despite various

reminders issued to the petitioner's brother Shoaib Ahmad, when he did not come forward to settle his dues, on 26.10.2024, the Finance Company recalled the loan facility, demanding the total outstanding of Rs.9,67,299/-.

6. On 12.09.2025, a notice under Section 25(1) of the Payment and Settlement Systems Act, 2007 (for short, 'the Act of 2007') was also issued to settle the post dated cheques, which bounced due to insufficient balance. Even after the said notice was issued to the petitioner's brother Shoaib Ahmad, he made no effort to pay of his outstanding. The Finance Company initiated arbitral proceedings before an Arbitrator, a Member of the Council for National and International Commercial Arbitrator. After following the entire procedure on 14.01.2026, the Finance Company say, that a final award was passed by the Arbitrator. It is their case that Shoaib Ahmad, despite knowledge of a notice issued under the Act of 2007 and the Arbitrator's award, neither produced the vehicle that he had bought out of the money advanced nor disclosed the location or the situation thereof. The Finance Company also say that till date, they have no information about the vehicle purchased by the petitioner's brother through the other loan account, which stood on the security of the petitioner's loan account.

7. About the petitioner, the Finance Company say that he had secured a loan from them also *vide* Group/ Link Loan Account No. 42286510, securing it through his brother's loan account no. 31553150. The petitioner's loan too was a loan-cum-hypothecation facility for the purchase of a commercial vehicle, bearing registration no. UP-50CT-2208, for a total sum of Rs.20,32,888/-. It is averred that the loan was disbursed to the petitioner on 19.12.2023. It is the Finance Company's case that in order to enhance the loan eligibility limit, the Group/ Link Loan Account was opened by the petitioner and his brother, creating a lien for each other. The petitioner's loan was repayable in 45

equated monthly installments (EMI), each worth Rs.64,059/-. The respondent Finance Company say that the petitioner defaulted in payment of regular EMIs and 30 post dated cheques bounced. A foreclosure report dated 10.09.2026, that was submitted, showed an outstanding against the petitioner in the sum of Rs.9,90,373.61. The Finance Company further say that, considering the petitioner's conduct, on 12.09.2024, his loan facility was terminated and the petitioner was directed to deposit the entire outstandings of Rs.19,47,577/-.

8. A notice under Section 25(1) of the Act of 2007 was issued by the Finance Company on 24.01.2026 to the petitioner, which was issued to clear the bounced cheques worth Rs.9,60,885/-. It is said that these cheques bounced on account of the bank's report of the 'dormant account'. Another notice was served upon the petitioner on 23.04.2026 followed by still another dated 23.07.2026, and the petitioner and his brother were also served with a default intimation in respect of both loan accounts. The Finance Company, in their counter affidavit, have averred that the link loan account facility to enhance the limit of the loan is permitted to family members, who are borrowers and provided the loan facility, with each of their accounts being kept as a secured account for the other.

9. In paragraph no. 16 of the counter affidavit filed on behalf of the Finance Company, it is averred that on 08.08.2026, they issued an authorization letter to the repossession agency, 'Poonia Associates Private Limited', for repossession of the petitioner's vehicle, bearing registration no. UP-50CT-2208. A copy of the letter is on record in the return filed on behalf of the Finance Company. It is next averred that according to Clauses 14, 15 and 20 of the loan-cum-hypothecation agreement, the Finance Company is authorized to repossess the vehicle. In the present case, the vehicle of the petitioner's brother Shoaib Ahmad is untraceable, and, therefore, for securing the loan, acting in

accordance with the clauses in the loan agreement, the petitioner's vehicle, abovesaid, was repossessed in accordance with the procedure of law. The legal position, that the act of the Finance Company in repossessing the petitioner's vehicle was in accordance with law, banks upon the authority of the Supreme Court, to which allusion would presently be made. It is asserted that the right of the Finance Company to repossess a vehicle in terms of the contract, does not amount to deficiency in service or unfair trade practice.

10. When this petition came up for admission, this Court, noticing the fact that the vehicle had *prima facie* been unlawfully repossessed by the Finance Company, sought instructions from the respondents, and till the next date of listing, restrained the respondents from transferring the petitioner's vehicle in favour of any third party. It was on the basis of the said order that the parties exchanged affidavits. When the petition next came up for admission on 21.09.2026, this Court noticing that the affidavits have been exchanged, admitted the petition to hearing and proceeded to hear the matter, reserving judgment.

11. Heard Mr. Gulshad Ali, learned Advocate holding brief of Mr. Syed Ahmed Faizan, learned Counsel for the petitioner, Mr. Awadhesh Chandra Srivastava, learned Standing Counsel for respondent nos.1 and 2, and Mr. Amit Shukla, learned Counsel for respondent no.3.

12. Clauses 13 and 14 of the loan agreement, executed between the petitioner and the Finance Company with his brother Shoaib Ahmad as the co-borrower, read:

> "13. EVENTS OF DEFAULT
>
> The Borrower and/or the Guarantor(s) expressly, irrevocably, jointly and severally agree with HDBFS that in the event of default:
>
> > 13.1 the Borrower or the Guarantor(s) or any or more of them (in case of the Guarantor(s) being more than one person) fails to pay any sum due from it or him herein; or,

13.2 the Borrower or any of the Guarantor(s)/s fail/s duly to perform any obligation or commits any breach of any of the terms, representations, warranties, covenants and conditions herein contained or has made any misrepresentations to HDBFS; or,

13.3 the Borrower or any of the Guarantor(s) (in case of either of them being a corporation or partnership firm), takes any action or other steps are taken or legal proceedings are started for winding up, dissolution or reorganization or for the appointment of a receiver, trustee or similar officer on its assets particularly on the Hypothecated Asset; or,

13.4 the Borrower or the Guarantor(s) (in case of either of them being an individual and in case of the Guarantor(s), (if more than one, any of them) dies or takes any steps or any steps are taken with a view to his being made insolvent in any jurisdiction or with a view to the appointment of a receiver, trustee or similar officer of any of his assets; or,

13.5 the Borrower fails to pay any insurance premium for the Hypothecated Asset or cheque bounce charges in terms and conditions hereof; or,

13.6 the Hypothecated Asset is confiscated, attached, taken into custody by any authority or subject to any execution proceeding; or,

13.7 the Hypothecated Asset is distraint, endangered or badly damaged due to accident or any other reason whatever causing the same to be a total loss in the opinion of HDBFS or caused bodily injury to any person due to any accident or otherwise; or,

13.8 the Borrower fails to pay any tax impost, duty or other imposition or comply with any other formalities required for the Hypothecated Asset under law from time to time; or,

13.9 the Hypothecated Asset is stolen or untraceable for a period of 30 days for any reason whatever; or,

13.10 any of the choques delivered or to be delivered by the Borrower to HDBFS in terms and conditions hereof is not encashed for any reason whatsoever on presentations; or,

13.11 any instructions given by the Borrower for stop payment of Post-Dated Cheques revoke ECS Instruction, given as per clause 3, for any reason whatsoever, or,

13.12 the Borrower fails to supply a certified true copy of the registration certificate within the time frames specified in clause 5 & clause 8.

13.13 the Hypothecated Asset being destroyed for any reason whatever.

13.14 the Borrower failing to file the particulars of the Asset in the prescribed form of HDBFS and as provided in the Schedule-to this Agreement; or,

13.15 any information given by the Borrower and/or the Guarantor(s)(s) in his loan application to HDBFS for financial assistance is found to be misleading or incorrect in any material respect or any representation or any warranty referred in Clause 8 is found to be incorrect.

13.16 the Asset has boon used or alleged to have been used for any illegal purposes or activity; or,

13.17 Any circumstances arises which gives reasonable grounds in the opinion of HDBFS that is likely to prejudice or endanger the Hypothecated Vehicle:

Then in any such case at any time thereafter, without prejudice to the rights and remedies of HDBFS, HDBFS may (but shall not be bound to do so), without the specific intervention of a court or any court order, by written notices to the Borrower and the Guarantor(s) declare the loan to be immediately due and payable, whereupon the same shall become payable

together with accrued interest thereon, the charges as set out in the schedule hereunder written and any other sums then owned by the Borrower herein.

13.18 the Asset/s or Hypothecated Assets have been used or alleged to have been used outside the territory and jurisdiction of India till the full repayment of Loan.

On the question whether any of the above events/circumstances has/have occurred/ happened, the decision of HDBFS shall be final conclusive and binding on the Borrower and/or the Guarantor(s).

14. Process of Repossession, Release, Sale of the Asset

(i) HDBFS shall intimate the Borrower(s) of the occurrence of any of the events mentioned in Clause 13.1 to 13.17 of this Agreement.

(ii) Any notice issued by HDBFS to the Borrower(s) shall be deemed to have been received by the Borrower(s) on the expiry of 4 days from the date of despatch of the said notice provided that such notice is sent by registered speed post and is addressed to the address of the Borrower(s) as mentioned in this Agreement or to any other address which the Borrower(s) may have duly communicated to HDBFS as the alternative and / or altered postal address for receipt of communications.

(iii) If HDBFS has reasonable cause to believe that the Borrower may handover possession to a third party or has damaged, destroyed, hide or relocated the Vehicle to avoid repossession of the Vehicle, then HDBFS may at its own discretion waive the notice period for repossessing the Vehicle.

(iv) Any change in the address of the Borrower(s) shall be notified to HDBFS in writing. Any notice/letter/ other communications/ documents sent by HDBFS to the Borrower(s) shall be posted/sent at the address as stated in this Agreement or the alterative/altered address notified by the Borrower(s) and shall be deemed to have received by the Borrower(s) in the manner mentioned in the proceeding Clause hereof notwithstanding such notice/ letter/ other communications/ documents being subsequently returned by the postal authorities for any reason whatsoever.

(v) In the event the Borrower(s) fails and/or neglects and/or refuses to make payment of the entire 'Outstanding' as communicated or rectify and/or remedy the default as stated in the aforesaid notice within a period of 7 days from receipt thereof HDBFS shall be entitled to take repossession of the said Asset(s)/ Vehicle(s) forthwith from wheresoever the same may be situated and for this purpose enter into any premises of the Borrower(s) or at such other places where the said asset(s)/ vehicle(s) may be lying and to remove or take possession of the asset(s)/ vehicle(s) without being liable or responsible to any person for trespass or otherwise, or take resource to any of the other rights of HDBFS as mentioned in this agreement without being required to give any further or other notice / intimation / communication of any nature whatsoever and thereafter to sell and/or cause to be sold or otherwise dispose of all or any part of the said Asset(s) Vehicle(s) or any fittings thereof in such manner as described more fully and particularly in Clause 14.2 hereto or exercise its other rights as mentioned in this agreement.

(vi) HDBFS shall be entitled to take repossession of the said Asset(s) vehicle(s) through its representative(s) duly authorized in that behalf or by any authorized representative(s) and/or agent(s) as it may appoint for the said purpose.

(a) After taking possession, the authorized officer(s)/ authorized agent(s) shall make or cause to be made an inventory of the Asset(s)/ Vehicle(s) and deliver or cause to be delivered, a copy of such inventory to the borrower or to any person entitled to receive the same on behalf of the borrower.

(b) The authorized officer(s)/ authorized agent(s) shall keep the Asset(s)/ Vehicle(s) taken possession either in his own custody or in the custody of any person authorized or appointed by him, who shall take as much care of the Asset(s)/ Vehicle(s) in his custody as an owner of ordinary prudence would, under the similar circumstances, take of such property.

Provided that if such Asset(s)/ Vehicle(s) is subject to speedy or natural decay, or the expense of keeping such Asset(s)/ Vehicle(s) in custody is likely to exceed its value, the authorized officer(s)/ authorized agent(s) may sell it at once.

(c) The authorized officer(s)/ authorized agent(s) shall take steps for preservation and protection of the said Asset(s)/Vehicle(s) and insure them, if necessary, till they are sold or otherwise disposed of.

(vii) After taking possession of the asset(s)/ vehicle(s) as aforesaid HDBFS will cause to send a pre-sale notice to the Borrower(s) calling upon the Borrower(s) to pay the entire dues specified in the notice as per tho agreement, within 7 days of receipt of the notice, failing, which the asset(s)/ vehicle(s) will be sold as provided herein.

(viii) If the Borrower(s) fails to comply with the pre-sale notice within the Stipulated time and does not pay the entire outstanding dues the asset(s)/ vehicle(s) will be sold in the manner provided herein and/or in a manner as closely resembling the same as possible.

(ix) In case the Borrower(s), for any reason, does not receive any notice of pre-sale within 7 days of repossession, the Borrower(s) is required to enquire about the status of the asset(s)/ vehicle(s) from HBDFS and also the total amount outstanding in tho account of the said agreement and make payment thereof within 14 days of such repossession.

(x) In the event the Borrower(s) has any grievance with regard to any action initiated by the representative(s) authorized by HDBFS and/or the agent(s) appointed for the purpose of taking repossession of the said asset(s)/ vehicle(s) such grievance may be lodged with the Grievance Cell, Recovery at the Registered Office of HDBFS at New No. 128/4F (Old Door No. 53A), 4th Floor, M. N. Office Complex, Greams Road, Chennai-600 006 within a period of not later than 7 days of the occurrence of such grievance.

(xi) The Grievance Cell, Recovery shall dispose of the grievances within a period of 15 days from the date of receipt of such complaint and communicate its decision to the Borrower.

(xii) In the event the Borrower(s) makes payment of the entire 'Amount Outstanding' as communicated in the pre-sale notice mentioned herein above within the stipulated period. HDBFS shall return back possession of the said asset(s)/ vehicle(s) and also issue a no-dues certificate to the Borrower(s).

(xiii) In the event tho Borrower(s) fails and/or neglects and/or refuses to make payment of the entire 'Amount Outstanding' as communicated in the aforesaid mentioned pre-sale notice within the stipulated HDBFS shall be entitled to sell and/or otherwise dispose of the asset(s)/ vehicle(s) by adopting the following methods and/ or such procedure as may resemble the method specified below to the extant possible:-

14.2 Procedure of sale of asset(s)

(1) The authorized officer(s)/ authorized agent(s) may sell the asset(s)/ vehicle(s) taken possession in one or more lots by adopting any of the following methods to secure maximum sale price for the asset(s) / vehicle(s), to be so sold:-

(a) Obtaining quotation from interested parties dealing in such assets in the usual course of its business or otherwise interested in buying such assets; or

(b) Inviting tenders from the public; or

(c) holding public auction; or

(d) by private treaty.

(2) The Borrower(s) will be entitled to refer to HDBFS within 15 days of repossession of the vehicle(s) any prospective buyer(s) who are interested in purchasing the said vehicle along with their quotation. No reference shall be entertained after conclusion of the sale.

(3) HDBFS will ensure that, after considering all the quotations Including the quotations of prospective buyers, referred by the Borrower(s) as per the preceding clause hereof, the said vehicle(s) is sol to the highest bidder.

(4) The highest bidder will be asked to deposit the entire quoted amount with HDBFS within a stipulated time failing which his bid will be cancelled.

(5) On completion of the sale and realization of the sale proceeds, the net sale proceeds shall be first adjusted towards the dues under this agreement and thereafter towards the outstanding dues of the Borrower(s) under any other agreement with HDBFS as per Clause 14(iv) of this agreement and if any balance is left the same shall be refunded to the Borrower(s) within 30 days of receipt of the sale proceeds.

(6) The Borrower(s) has made over to HDBFS pre-signed transfer form in order to enable HDBFS to transfer the title in the said Asset(s)/ Vehicle(s) in favour of the purchaser pursuant to the sale carried out in the aforesaid manner. The Borrower(s) has no objection to such pre-signed transfer form being utilized by HDBFS even if the Borrower(s) had not participated in the sale and such sale took place by reason of the defaults committed by the Borrower(s).

(7) Any form 35 and/or No objection issued by HDBFS in the name of Borrower(s) for the purpose of transfer of the said vehicle in the name of the purchaser and for deletion of the lein of HDBFS shall not be constructed as if HDBFS has issued a no-duos letter to the Borrower(s) regarding payment of the amount outstanding under this agreement. If the sale proceeds of tho said vehicle(s) is not sufficient to cover the outstanding dues, the Borrower(s) shall, as mentioned above, be liable to pay the balance outstanding to HDBFS.

All parties agree, acknowledge and confirm that all disputes, differences, claims and counterclaims arising out of and in connection with the repossession taken in respect of the Asset(s)/ Vehicle(s) and/or the sale thereof in accordance with the procedure prescribed hereinabove and all actions taken by HDBFS in terms of this agreement shall only be adjustable in accordance with the Arbitration Clause forming part of this agreement. All parties agree, acknowledge and confirm that they shall not initiate any proceeding before any judicial or quasi-judicial or administrative authority including, inter-alla, the bodies constituted under the Consumer Protection Act; the Motor Vehicle Act; the Criminal Procedure Code or other Forums for Adjudication of disputes in connection with this Agreement."

13. It is no doubt true that in the event of the borrower or the guarantor, or any one or more of them, fail to pay any sum of money due from him, the Finance Company shall be at liberty to intimate him of the occurrence of default or any other event, should it happen, envisaged under Clause 13.1 to 13.17 of the agreement. A notice sent by the Finance Company to the

borrower to pay the entire outstanding and/ or rectify the default within a period of seven days of its receipt, upon default would entitle the Finance Company to repossess the vehicle forthwith, wherever it may be located, and for this purpose, the Finance Company or its authorized agents may enter the borrower's premises or other place, where the vehicle is parked and take it into their possession. There are the detailed clauses in the loan agreement, which describe the Finance Company's rights, but the question is, if these rights can be exercised by the Finance Company themselves as a party to the contract, an utterly private party to the *lis*, that the breach of this contract may give rise to.

14. Howsoever well documented and invincible the claim of the Finance Company about the borrower's default, entitling them under the contract, inclusive of Clause 14(v) and (vi), can the Finance Company be permitted to exercise a private right to seize the vehicle by force in the borrower's possession, after gaining a forcible entry to his premises, or wherever the vehicle is parked. If it is squarely answered in the affirmative, reading Clause 14(v) and (vi) literally, it would be virtually arming a private party with the coercive authority of the State, invariably exercisable by a Judge, an Arbitrator or some quasi-judicial Authority with the aid of its own agency and re-enforced by the Police. If this kind of a power does flow from Clause 14 of the loan agreement to the Finance Company, it would virtually turn the contract between parties into a legislation, actual or delegated, without there being any statutory vigour in fact to it. No doubt, it is true, as often said, that in a contract, parties legislate for themselves, but that principle cannot imaginably be carried to the extent, where the terms of the contract are actually imbued with legislative force empowering parties to enforce terms, deciding for themselves and executing it too, as if they were judicial or quasi-judicial *fora*, deciding a *lis* and then executing the decision.

15. To our understanding, given the fact that the Finance Company has a right to repossess a vehicle in the happening of any of the contingencies contemplated under Clause 13 of the contract, it is imperative that they would have to enforce the terms of the contract to repossess the vehicle through some forum, whether judicial or one like that of an Arbitrator.

16. In this case what we notice is that there is an arbitration clause, that is part and parcel of the agreement, being Clause 31. We notice that Clause 31(a) and (b), provide that in the event of a dispute or disagreement between parties in connection with the contract, the matter shall be referred to the arbitration of a sole Arbitrator to be appointed by the Finance Company. The venue of arbitration has been stipulated, by Clause 31 of an apparently standard form of contract, to be Chennai with language of the proceedings being English.

17. In the return, that has been filed on behalf of the Finance Company, we notice that against the petitioner's brother, who is said to have availed a group/ link loan account facility with the petitioner, and committed default in the repayment of his EMI, after recall of the loan facility and service of notice, the matter was submitted to the arbitration of Mr. Sanjay Aggarwal, who passed an interim order on 25.10.2025, authorizing a receiver to take custody of the vehicle and file a report on the next scheduled date of arbitration i.e. 15.11.2025. The Arbitrator subsequently proceeded to pass an *ex parte* award dated 14.01.2026 against Shoaib Ahmad and the petitioner for a sum of Rs.7,35,882/- with interest at the rate of 18% per *annum*, payable jointly and severally against Shoaib Ahmad and the petitioner. The award further directs the respondents, i.e. Shoaib Ahmad and the petitioner, in case they were still in possession of the vehicle, to hand it over to the Finance Company and if it had already been repossessed, authorizing the Finance Company to dispose it of

after giving due notice to the Finance Company and the petitioner. The sale proceeds were directed to be adjusted against the award. The award further directs that in the event the Finance Company has not repossessed Shoaib Ahmad's vehicle till date of the award, then any authorized representative of the Finance Company would be at liberty to repossess the vehicle, bearing registration no. UP-50BT-5169 from any person, who may be in possession of the aforesaid vehicle, with necessary police aid from the Officer In-charge of the police station, in whose jurisdiction the said vehicle is found. The vehicle, if seized in this manner, was directed to be sold and the proceeds applied towards satisfaction of the award. In case of a shortfall, the Finance Company was authorized to recover the same from the petitioner's brother Shoaib Ahmad and the petitioner in accordance with law.

18. We find from the return filed on behalf of the Finance Company, in particular the award made by the Arbitrator, that no arbitration proceedings were resorted to against the petitioner nor interim orders to repossess the vehicle through a receiver or a final award, which included a direction to repossess the petitioner's vehicle, secured. The only proceedings that were taken were against the petitioner's brother Shoaib Ahmad, and the petitioner's case is that his default was marginal up to time that his vehicle was seized unlawfully at gunpoint by the Finance Company's agent. The course of action taken in case of the petitioner's brother, who seems really in default, was a resort to arbitration proceedings in accordance with the terms of the contract to enforce not only the Finance Company's claim and recover it, but repossess the vehicle as well. Apparently, the Finance Company resorted to arbitration proceedings because the petitioner's brother's vehicle was beyond the reach of their hired-recovery agents. The Arbitrator's interim orders, directing the vehicle to be seized through a receiver, also did not fructify

and it is for this reason that the award in the final directions also takes care of the contingency, where the vehicle was still in the borrower's possession.

19. What is most important is that the Arbitrator, while making his award, directed that repossession, if required to be effected, could be done by the Finance Company regarding the petitioner's brother's vehicle through any authorized representative of theirs' with necessary police aid from the Officer In-charge of the police station, where the vehicle may be found. Thus, the award of the Arbitrator finally made also did not give freehand to the Finance Company to hire private goons and seize the vehicle without the presence of the State's Authority, that is to say, the Police. It is in the first place, the order of a Court or an Arbitral Tribunal, enforcing a party's claim in a particular manner, that makes it legitimate, and then the presence of an impartial State Authority to maintain peace, law and order, which makes all the difference between the private act of a party to do justice for itself and the process of law being invoked by a party to gain its lawful right, may be under a contract.

20. The learned Counsel for the respondent has drawn our attention to a relatively early Bench decision of this Court in **Anil Kumar Rastogi v. State of U.P. and others, 2006 (4) ADJ 177 (All) (DB)** holding that the finance company has the right to seize the vehicle in accordance with the contract, which cannot be redrafted by the Court for parties and that a writ petition against a private finance company is not maintainable. Suffice it to say that much water has flown since then in terms of what the Courts have held about private acts of finance companies, forcibly recovering possession of vehicles held on hire-purchase from the possession of hirers without the aid of a legal forum. Also, the Reserve Bank has issued circulars traceable to statutory sources, regulating the actions of finance companies in the matter.

21. The next authority, upon which learned Counsel for the Finance Company has placed reliance, is **Charanjit Singh Chadha and others v. Sudhir Mehra, (2001) 7 SCC 417**, where our attention has been drawn to the holding of the Supreme Court, that reads:

> "**7.** In *Damodar Valley Corpn.* v. *State of Bihar* [AIR 1961 SC 440] this Court took the view that a mere contract of hiring, without more, is a species of the contract of bailment, which does not create a title in the bailee, but the law of hire purchase has undergone considerable development during the last half a century or more and has introduced a number of variations, thus leading to categories and it becomes a question of some nicety as to which category a particular contract between the parties comes under. Ordinarily, a contract of hire purchase confers no title on the hirer, but a mere option to purchase on fulfilment of certain conditions. But a contract of hire purchase may also provide for the agreement to purchase the thing hired by deferred payments subject to the condition that title to the thing shall not pass until all the instalments have been paid. There may be other variations of a contract of hire purchase depending upon the terms agreed between the parties. When rights in third parties have been created by acts of parties or by operation of law, the question may arise as to what exactly were the rights and obligations of the parties to the original contract.
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> **10.** The agreement executed by the parties in this case also is to the effect that the hirer would not become the owner of the property until he pays the entire instalments. A copy of the agreement is produced as Annexure P-1 wherein the appellants are referred to as the first party and the respondent as the second party and it is specifically stated that the first party would be the absolute owner of the vehicle and the respondent second party agreed to pay all the instalments punctually. Clause 7 of the agreement says that the hirer may, at any time before the final payment under the hire-purchase agreement falls due and after giving the owners not less than fourteen days' notice in writing of his intention to do so and redelivering the vehicle to the owners at their office, terminate the hire-purchase agreement. Clause 8(*viii*) gives a right to the owner to repossess the vehicle in case of default by the hirer. Clause 9(*ii*) gives the owner an irrevocable licence to enter any building, premises or place where the vehicle may be or is supposed to be for the purpose of inspection, repossession or attempt to repossess the vehicle and the owner of the vehicle will not be liable for any civil or criminal action at the instance of the hirer. It is also made clear that the hirer would be liable for all the expenses of the owner in obtaining repossession or attempting to obtain repossession of the vehicle.
>
> **11.** The whole case put forward by the respondent complainant is to be appreciated in view of the stringent terms incorporated in the agreement. If the hirer himself has committed default by not paying the instalments and under the agreement the appellants have taken repossession of the vehicle, the respondent cannot have any grievance. The respondent cannot be permitted to say that the owner of the vehicle has committed theft of the vehicle or criminal breach of trust or cheating or criminal conspiracy as alleged in the complaint. When the agreement specifically says that the owner has got a right to repossess the vehicle, there cannot be any basis for alleging that the appellants have committed criminal breach of trust or cheating.
>
> **16.** In *K.A. Mathai* v. *Kora Bibbikutty* [(1996) 7 SCC 212 : 1996 SCC (Cri) 281] the bus was obtained by the complainant on a hire-purchase agreement. The complainant paid only part of the consideration and defaulted in paying the instalments and the vehicle was taken possession of by the financier and at that time, both the first accused who had driven away the bus from the possession of the complainant and the second accused were present in the bus. They were prosecuted for the offence punishable under Section 379 read with Section 114

> IPC. This Court holding that the bus was taken away at the instance of the financier and the accused had not committed any offence observed as under: (SCC pp. 212-13, para 3)
>
> > "Though we do not have the advantage of reading the hire-purchase agreement, but as normally drawn it would have contained the clause that in the event of the failure to make payment of instalment/s the financier had the right to resume possession of the vehicle. Since the financier's agreement with A-2 contained that clause of resumption of possession, that has to be read, if not specifically provided in the agreement, as part of the sale agreement between A-2 and the complainant. It is, in these circumstances, the financier took possession of the bus from the complainant with the aid of the appellants. It cannot thus be said that the appellants, in any way, had committed the offence of theft and that too, with the requisite mens rea and requisite dishonest intention.""

22. We may dare say that the authority of the Supreme Court in **Charanjit Singh Chadha** (*supra*) was a decision rendered in a completely different context. It did not *per se* decide the question, if the financier, in terms of the contract, had a right to regain possession of the financed vehicle through private musclemen and violent means without assistance of any legal *fora* for the purpose. What was decided was in the context of a criminal prosecution that if indeed a finance company did resort to taking away a vehicle they financed, where the borrower was in arrears, by their private act, they would not be liable for the offences punishable under Sections 406, 420 and 120-B IPC, for which they were prosecuted by the borrower. It was emphasized that the offence under Section 379 IPC could also not be held to have been committed because anything that was done, lacked the necessary *mens rea* or dishonest intention. In our view, therefore, the authority of the Supreme Court in **Charanjit Singh Chadha** does not come to the respondent Finance Company's rescue.

23. Emphatic reliance was then placed by the learned Counsel for the Finance Company upon the authority of the Supreme Court in **Magma Fincorp Ltd. v. Rajesh Kumar Tiwari, (2020) 10 SCC 399**. The relevant remarks of the Supreme Court in **Rajesh Kumar Tiwari** (*supra*) read:

> "**81.** Whether the transaction between a financier and a purchaser/hirer is a hire purchase transaction, or a loan transaction, might be determined from the terms of the agreement, considered in the light of surrounding circumstances. However,

even a loan transaction, secured by right of seizure of a financed vehicle, confers licence to the financier to seize the vehicle.

82. In this case, the agreement executed by and between the financier and the complainant is a hire-purchase agreement as will appear from the terms and conditions thereof. In any event, the fora under the Consumer Protection Act, have not arrived at any specific finding to the contrary. There is no discussion of the nature of the agreement between the financier and the complainant. Be that as it may, the agreement clearly permits the financier to take possession of the vehicle, upon default in payment of instalments.

83. In *Icici Bank Ltd.* v. *Prakash Kaur* [*Icici Bank Ltd.* v. *Prakash Kaur*, (2007) 2 SCC 711] cited on behalf of the complainant, this Court deprecated the practice of hiring recovery agents, who were musclemen to take possession of vehicles in cases, where the borrower might have committed default in payment of instalments. This Court held : (SCC p. 714, para 16)

> "*16.* Before we part with this matter, we wish to make it clear that we do not appreciate the procedure adopted by the Bank in removing the vehicle from the possession of the writ petitioner. The practice of hiring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to procedure recognised by law to take possession of vehicles in cases where the borrower may have committed default in payment of the instalments instead of taking resort to strong-arm tactics."

84. The judgment was rendered in the facts and circumstances of the case where it was alleged that possession of a truck had been taken, by engaging goons and musclemen as recovery agents. The disputes were settled before this Court in view of the submission of the counsel that the truck could be returned upon payment of a sum of Rs 50,000.

85. In *Citicorp Maruti Finance Ltd.* v. *S. Vijayalaxmi* [*Citicorp Maruti Finance Ltd.* v. *S. Vijayalaxmi*, (2012) 1 SCC 1 : (2012) 1 SCC (Civ) 1] cited by the complainant, this Court held that the fora under the Consumer Protection Act, 1986 were right in holding that the vehicles had been illegally and wrongfully recovered by use of force from the loanees. The judgment was rendered in the facts and circumstance of the case and this Court deprecated the use of force. In this case, there was no allegation in the complaint of use of force. Significantly, in *Citicorp Maruti Finance Ltd.* [*Citicorp Maruti Finance Ltd.* v. *S. Vijayalaxmi*, (2012) 1 SCC 1 : (2012) 1 SCC (Civ) 1] , Kabir, J. held : (SCC p. 9, para 27)

> "*27.* Till such time as the ownership is not transferred to the purchaser, the hirer normally continues to be the owner of the goods, but that does not entitle him on the strength of the agreement to take back the possession of the vehicle by use of force. The guidelines which had been laid down by Reserve Bank of India as well as the appellant Bank itself, it fact, support and make a virtue of such conduct. If any action is taken for recovery in violation of such guidelines or the principles as laid down by this Court, such an action cannot be struck down."

86. This Court held that the financier continues to be the owner of the goods. There is an obvious typographical error in para 27 of the judgment where hirer has been erroneously typed in place of lender/financier.

87. The question raised by the financier in this appeal, that is, whether the financier is the real owner of the vehicle, which is the subject of a hire-purchase agreement, has to be answered in the affirmative in view of the law enunciated by this Court in *Charanjit Singh Chadha* [*Charanjit Singh Chadha* v. *Sudhir Mehra*, (2001) 7 SCC 417 : 2001 SCC (Cri) 1557] , *K.L. Johar & Co.* [*K.L. Johar & Co.* v. *CTO*, AIR 1965 SC 1082] and *Anup Sarmah* [*Anup Sarmah* v. *Bhola Nath Sharma*, (2013) 1 SCC 400 : (2013) 1 SCC (Civ) 513 : (2013) 1 SCC (Cri) 518] . The financier being the owner of the vehicle which is the subject of a hire-purchase agreement, there can be no impediment to the financier taking possession of the vehicle when the hirer does not make payment of instalments/hire charges in terms of the hire-

> purchase agreement. However, such repossession cannot be taken by recourse to physical violence, assault and/or criminal intimidation. Nor can such possession be taken by engaging gangsters, goons and musclemen as so-called recovery agents."

24. As we read the holding of their Lordships in **Rajesh Kumar Tiwari**, we do not find anything there that would support the Finance Company's right to seize a vehicle by employment of force or on the stealth merely because there is a clause in the agreement authorizing the Finance Company to seize the vehicle in possession of the borrower, who holds it under a hire-purchase agreement. As we have already remarked earlier, the right of the finance company engrafted into a hire-purchase agreement to seize the chattel, the vehicle here, purchased on hire-purchase, gives an enforceable right no doubt to the finance company, but that enforcement has to be done through a process known to law. It cannot be done by force employing goons, styled as agents. As would appear from the remarks in paragraph no. 87 of the report in **Rajesh Kumar Tiwari**, their Lordships held that the question before them was whether the finance company is the real owner of the vehicle, that is subject matter of a hire-purchase agreement, which was answered in the affirmative. It was also held that the finance company being the owner of the vehicle, subject to a hire-purchase agreement, there was no impediment for the finance company to take possession of the vehicle when the hirer defaults, but the principle is clearly qualified in the same paragraph to say that possession cannot be taken by the finance company by recourse to physical violence, assault or criminal intimidation. It cannot be taken by engaging gangsters, goons and musclemen, styled as recovery agents.

25. We have not, in the least, doubted the right of the Finance Company, subject to proof of default on the petitioner's part, to take possession of the vehicle. All that we say is that the vehicle could not be taken possession of by employment of recovery agents, who would waylay the hirer or his driver and seize it at gunpoint, as the case here. The authority in **Rajesh Kumar Tiwari**,

therefore, far from helping the Finance Company, supports the petitioner's case.

26. The fact that the petitioner's vehicle was seized at gunpoint, that is by employment of criminal force, is evident from what the petitioner has pleaded in paragraph nos. 7 and 10 of the writ petition, which read:

> "**7.** That the petitioner having maintained his own loan account regularly and there being no pending EMI, on or about 09.08.2026, certain persons allegedly acting on behalf of the respondent-financing company intercepted the petitioner's vehicle at Chandauli and, by allegedly threatening the petitioner by showing a firearm, forcibly took possession and taken sign on repossessed inventory of the aforesaid vehicle.
>
> **10.** That it is also pertinent to mention here that after illegal seizure of the vehicle and forcibly took possession and taken sign on repossessed inventory dated 09.08.2026 the petitioner are repeatedly approaches and visited the concerned bank for release for her vehicle but despite several visit bank authorities delaying the matter and did not take any affection."

27. Paragraph nos. 7 and 10 have been answered by the respondent Finance Company in paragraph nos. 21 and 24 of their counter affidavit, which is quoted below:

> "**21.** That the averments made in para 6 and 7 of the writ petition are misconceived and the petitioner has concealed the material facts that as on the date of repossession of vehicle the loan account was terminated and as per statement of account dated 10.09.2026 the petitioner was under liability to pay total outstanding to the sum of Rs.9,90,373.61/-. It is also prayed the said averment may also be verified from the SOA, Loan Termination Notice and the foreclosure report.
>
> **24.** That the averments made in para 10 of the writ petition is not admitted and denied. The vehicle was duly repossessed in accordance with the provisions of the loan-cum-hypotecation agreement."

28. A conjoint reading of the petitioner's case about the forceful seizure of his vehicle at gunpoint and the respondent Finance Company's stand in the matter shows that the allegation of a forceful seizure has not been specifically denied at all. Rather, there is no denial of the fact that the vehicle was indeed seized at gunpoint, as alleged by the petitioner. Elsewhere, in paragraph no. 16 of their counter affidavit, the Finance Company say that on 08.08.2026, they issued an authorization letter to the repossession agency, 'Poonia Associates Pvt. Ltd.', for repossession of the petitioner's vehicle. Reading these pleadings together, the fact is unmistakably acknowledged by the Finance

Company that the petitioner's vehicle was indeed seized on 09.08.2026, after being intercepted at Chandauli at gunpoint and he was made to sign the inventory of repossession by the Finance Company's recovery agent, M/s. Poonia Associates Pvt. Ltd.

29. It is not that the petitioner stayed quite and did not contact the respondent Finance Company. He submitted a representation dated 19.08.2026, addressed to the Regional Business Head of the said Company, requesting that the vehicle be immediately released and handed over to the petitioner, and, further that the petitioner be supplied with a complete statement of his loan account. He also requested that the basis on which his vehicle had been seized be also made known to him. The petitioner also moved an application on 29.08.2026 at Police Station Ramnagar, District Varanasi, reporting the illegal seizure of his vehicle at gunpoint, though on its basis, as it appears, no first information was registered.

30. The petitioner then went and made a representation dated 27.08.2026 to that mysterious and omnipotent authority, who dwells in the mind of every citizen of free India, called the District Magistrate. The legacy of the District Magistrate, as the all powerful man in the district comes from the days of the Britishraj and is a colonial legacy, which no effort seems to be made by citizens of free India to shed. Clearly under the law, the District Magistrate could have hardly done anything in the matter, except in the imagination and fascination of the petitioner's mind.

31. If at all anyone could have acted, it was the Civil Judge of competent jurisdiction in the district, who could act on the petitioner's suit and pass suitable interim orders. It is also indeed strange that Judges of the civil judicature are regarded as possessors of weak or no authority to bring succour to a litigant, who suffers a civil wrong at the hands of another. The result of all these misconceptions and false perceptions is that a man

wronged, like the petitioner, who has a purely civil cause of action, and may be more, like in the present case, chooses to approach every unrelated authority of the Government for the vindication of a civil wrong, like the District Magistrate or a commission, like the Human Rights Commission, and very often political functionaries, but never the Judge, who exercises civil jurisdiction in the area, where the wrong is committed.

32. So far as the present matter is concerned, it not only discloses a purely civil cause of action, but has the complexion of a public law element to it because an offence that was committed by seizing the vehicle at gunpoint through an organized agency of recovery agents, did not move the Police into action, when they ought have. It is true that an offence of theft might not have been committed, but criminal force was applied and assault indeed committed *prima facie* and without prejudice to any party's right, when the vehicle was seized at gunpoint by the goons of a recovery agency, there is that angle to it also, which the Police ought have investigated if the gun, that was used to forcefully seize the vehicle from the petitioner, was a licensed weapon or an unlicensed firearm, which would invite the registration of a crime under the Arms Act. This happened because the Police seems to be confounded by the subtleties of judicial pronouncements which say that the Finance Company has a right to repossess in terms of the contract and the principle later on made vivid that the right to repossess cannot be exercised privately by hiring goons, escaped their attention or not understood at all.

33. In **ICICI Bank Ltd. v. Prakash Kaur and others, (2007) 2 SCC 711**, where facts were similar to the ones involved here, the bank compromised the matter before the Supreme Court after a Division Bench of this Court directed the Police to register an FIR against the recovery agents and whoever was involved.

Notwithstanding the event before the Supreme Court, that was founded more on compromise, Altamas Kabir, J. remarked:

> "16. Before we part with this matter, we wish to make it clear that we do not appreciate the procedure adopted by the Bank in removing the vehicle from the possession of the writ petitioner. The practice of hiring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to procedure recognised by law to take possession of vehicles in cases where the borrower may have committed default in payment of the instalments instead of taking resort to strong-arm tactics."

34. In his concurring opinion, Dr. AR. Lakshmanan, J. held:

> "21. Considering the difficulties of the customers as well as banks, the concept to be developed is to create distinct and separate department for recovery. This should be manned by persons who will not resort to violence or force when they are in the process of recovery of the dues.
>
> 22. While the fraudulent defaulters can be dealt with by taking the police help for such action, it is only when law is taken into the hands by the so-called recovery agents, who are appointed on contract basis, the issue gets aggravated. A separate wing, wherein appropriate training is given in accordance with RBI guidelines would facilitate the bank in its recovery process and also would provide more responsibilities to the persons so engaged.
>
> 23. Yet another suggestion would be that of loans whether they are personal loans or credit cards or housing loan with less than Rs 10 lakhs exposure, can be referred to Lok Adalat which can be specially created for resolving the issues between the banks and the borrowers. In fact, the Lok Adalat should be used as an effective machinery to resolve the issues and concentrate with reference to keeping the fine balance between the banks and borrowers.
>
> 24. If the agency system is inescapable, then the agency must be coupled with a licence issued after conducting examination. Appropriate training should be given to the agents who should have requisite qualification and maturity to handle delicate and sensitive situation. Merely because the agency system is convenient to the banks, and has been approved by RBI, it should not lead to lawlessness and conduct resulting in challenge to the rule of law.
>
> 25. While performance of the banks is always co-related with reference to its growth, its assets utilisation and finally profit in the balance sheet, that and that alone cannot be relied upon, with reference to a country like India, where there is enormous disparity in respect of various sections of the society. These are all positive steps that would bring in the overall balance in the working of all these institutions.
>
> 26. Whether it is a bank, which concentrates on higher segment of banking or it is a bank which concentrates upon middle class, lower middle class and such other segment of the Indian public who look to and require the banking comfort, it is not mere question of lending the money that matters, but also the consequences thereafter. The social responsibility is larger than the banks' profit and growth ratio alone.
>
> 27. Keeping in mind the social responsibility, it is absolutely necessary to appoint a Special Committee which will look into the disparity in working conditions, at least up to the managerial level and make such recommendations to RBI and the Union of India for all remedial actions.
>
> 28. In conclusion, we say that we are governed by the rule of law in the country. The recovery of loans or seizure of vehicles could be done only through legal means. The banks cannot employ goondas to take possession by force."

(emphasis by Court)

35. The issue again surfaced before the Supreme Court in **Citicorp Maruti Finance Ltd. v. S. Vijayalaxmi, (2012) 1 SCC 1**. The decision in **S. Vijayalaxmi** (*supra*), which has the authority of three Hon'ble Judges, carries the following remarks:

> "**26.** Since during the pendency of the special leave petitions before this Court, the appellant had complied with the orders of the District Forum and the National Commission had already set aside the punitive damages imposed by the State Commission, the reliefs prayed for on behalf of the appellant had been rendered ineffective and the submissions were, therefore, channelled towards the question of whether the fora below were right in holding that the vehicles had been illegally and/or wrongfully recovered by use of force from the loanees. The aforesaid question has since been settled by several decisions of this Court and in particular in the decision rendered in *ICICI Bank Ltd.* v. *Prakash Kaur* [(2007) 2 SCC 711] . It is not, therefore, necessary for us to go into the said question all over again and we reiterate the earlier view taken that even in case of mortgaged goods subject to hire-purchase agreements, the recovery process has to be in accordance with law and the recovery process referred to in the agreements also contemplates such recovery to be effected by due process of law and not by use of force."

(emphasis by Court)

36. The question, that is involved here, squarely fell for consideration of the Supreme Court in the very recent decision of their Lordships in **Hari Dutta Sharma v. State of U.P., 2026 SCC OnLine SC 1905**. The question involved in **Hari Dutta Sharma** (*supra*), in the words of their Lordships, as it figures in the report, reads:

> "**3.** A loan may create a debt, and a debt may confer upon the financier a right to recover what is due; but the manner in which that right is exercised is not without significance. The present appeal brings before this Court the contest between the right to recover a secured debt and the right of the borrower to have that recovery undertaken within the bounds of law."

37. The facts in **Hari Dutta Sharma** would show that alleging a default in the repayment of loan advanced by the finance company to purchase a commercial vehicle by the petitioner, the finance company, after recalling the loan, asked the borrower to surrender the hypothecated asset, or so to speak, the vehicle. On 09.04.2023, while the vehicle was parked at a consigner's godown, that was under the vigil of his CCTV Camera at Ayodhya, four unidentified persons broke open the vehicle's steering lock and drove it away. The vehicle was repossessed without issue of

notice to the borrower. The borrower reported the matter to the Police and also lodged a complaint with the Superintendent of Police, Ayodhya. He received a legal notice from the company disclosing that since the borrower had failed to repay the loan on schedule, possession of the vehicle had been taken and the same had been sold off to a third party on 31.08.2023. A residue of the loan, that remained outstanding after application of sale-proceeds, was demanded of the borrower. The borrower's writ petition was dismissed by this Court as time barred and it was also remarked that he had defaulted in repayment of his loan installments. It was in the context of these facts that in **Hari Dutta Sharma**, the Supreme Court observed:

> "**15.** It is well-settled in law that a financier's right to take possession of the financed vehicle in the first instance, is a matter of contract, where an agreement confers such a right, there is no legal impediment to its exercise unless the contract is unconscionable or opposed to public policy [*Orix Auto Finance (India) Ltd.* v. *Jagmander Singh*, (2006) 2 SCC 598 and *Sundaram Finance Limited* v. *T. Thankam*, (2015) 14 SCC 444]. Such clauses of self-help repossession are not, in themselves, an evil to be eradicated: they are what make it commercially feasible for institutions to extend credit, against the security of the very asset financed, to borrowers of modest means, truck operators and small transporters among them, who possess no conventional collateral and would otherwise remain outside the reach of institutional finance. But precisely because this right operates as an alternative to recovery through courts or tribunals, outside the supervision of a court at the first instance, it must be construed with great circumspection; left unchecked, it is capable of being read as an unbridled licence to seize property by stealth, by force or in the dead of night, converting a facility meant to promote financial inclusion into an instrument of oppression against the very class it was designed to serve.
>
> **16.** Section 35-A of the Banking Regulation Act, 1949, empowers the Reserve Bank of India (RBI) to issue directions to the banking companies. The said power can be exercised in four contingencies, namely: (i) public interest; (ii) interest of banking policy; (iii) interests of depositors; and (iv) interests of the banking companies. The directions issued under Section 35-A possess a statutory force and are binding on the banking companies [*Internet and Mobile Association of India* v. *Reserve Bank of India* (2020) 10 SCC 274 : (2020) 11 Comp Cas-OL 17].
>
> **17.** The RBI, on 05.05.2003, with an object to protect the rights of citizens dealing with the Non-Banking Financial Company (NBFC)/Banks and to curb the arbitrary action on the part of such institution in resorting to alternate modes of recovery without approaching the courts or tribunals, issued Guidelines on 'Fair Practices Code for Lenders'. The said guidelines were issued on the basis of recommendations made by Working Group on Lenders' Liability Laws constituted by the Government of India. The banks/financial institutions were advised to adopt the said Guidelines and frame the Fair Practices Code duly approved by their Board of Directors. Paragraph (v)(c) of the said Guidelines provides that in the matters of recovery of loans, the lenders should not resort to undue harassment *viz.*, persistently bothering the borrowers at odd hours, use of muscle power for recovery of loans etc.

18. Another set of Guidelines were issued on 21.11.2005, by the RBI which covered a wide area pertaining the rights of the customers, right to privacy and confidentiality, practice of debt collections, redressal of grievances and monetary systems to be implemented by Banks. Thereafter, on 28.09.2006, the Guidelines on Fair Practices Code for NBFCs were issued, wherein, it was reiterated that NBFCs should not resort to undue harassment *viz.* persistently bothering the borrowers at odd hours and use of muscle power for the recovery of loans, etc.

19. A two-Judge Bench of this Court had occasion to consider the 2003 Guidelines in *ICICI Bank Ltd.* v. *Prakash Kaur,* (2007) 2 SCC 711: (2007) 136 Comp Cas 327 where registration of First Information Report against the recovery agents of ICICI Bank Ltd. for forcibly taking possession of a vehicle fell for consideration. This Court emphasised that the rights of financial institutions in employing alternate means of recovery other than the due process of law either through courts or tribunals has to be viewed from the angle of common man no less than that of financial institutions. It was observed that once a loan is taken and there is a default, the witch-hunt begins and the bank is an aggressor whereas the public is the victim. It was also noted that financial institutions employ recovery agents to trace the defaulter and recover the amounts of loans and a person's self-respect and stature in the society is immaterial to such an agent. This Court held in terms which bear reiteration that ours is a country governed by rule of law and recovery of loans or seizures of vehicles could only be made through the legal means and the banks cannot employ ‘goondas’ to take possession of the vehicles by force. The court enumerated the suggestions to be followed by the financial institutions/banks for recovery of the amount and seizure of the vehicle and noted that even though the RBI had issued the Guidelines on 21.11.2005 which remains only on paper and is not being followed.

20. Following *Prakash Kaur* (supra), and having regard to the rising volume of disputes and litigations arising from conduct of recovery agents and to the reputational risk such conduct visits upon the banking sector as a whole, the RBI, issued successive Master Circulars, Guidelines and Clarifications, on 24.04.2008, 24.04.2009, 01.07.2009, 01.07.2010, 01.07.2011, 26.03.2012, 02.07.2012, 18.02.2013, 01.07.2013, 01.07.2014 and 01.07.2015, to all NBFCs and the Scheduled Commercial Banks. These instruments taken together address the following aspects: (i) formulation and display of Fair Practices Code duly approved by the Board of Directors, (ii) right of customers and their right to privacy and confidentiality, (iii) practice of collection of debts, (iv) methods of recovery to be followed by recovery agents and their training, (v) provisions to be contained in the repossession clauses, (vi) the need of creating a grievance redressal system in relation to complaints against the banks and its recovery agents; and (vii) utilisation of credit counsellors.

21. A careful reading of the Master Circulars, the Guidelines and the clarifications issued by the RBI, discloses the following position which we consider necessary to set out for the guidance of financial institutions and of the Courts dealing with similar controversies in future:

(i) Lenders shall not, in the recovery of loans, resort to undue harassment of borrowers, whether by persistently bothering them at odd hours or by the deployment of muscle power.

(ii) Seizure of a vehicle can only be effected through lawful means; banks and financial institutions cannot employ ‘goondas’ to take possession by force.

(iii) Banks must maintain a due diligence process, conforming to RBI Guidelines on outsourcing of financial services, for the engagement of recovery agents.

(iv) A repossession clause incorporated in a loan contract must be legally valid and must conform, in letter and in spirit, to the provisions of the Indian Contract Act, 1872.

(v) Recovery agents engaged by banks and financial institutions must strictly adhere to the applicable Guidelines and instructions, including the Banking Codes and Standards Board of India (BCSBI) Code.

(vi) Complaints received regarding violation of the Guidelines, or the adoption of abusive recovery practices, are to be viewed seriously by the RBI.

(vii) The RBI may impose, and in cases of persistent breach extend, a ban upon a bank engaging recovery agents within a particular jurisdiction or function.

(viii) A repossession clause may contain: (a) the notice period before possession is taken; (b) the circumstances in which such notice may be waived; (c) the procedure for taking possession; (d) a final opportunity to the borrower to repay before sale or auction; (e) the procedure for restoring possession to the borrower; and (f) the procedure for sale or auction.

(ix) Banks are encouraged to maintain a mechanism of credit counsellors to extend sympathetic consideration to deserving borrowers, and NBFC-Microfinance Institutions are required to display the Fair Practices Code, in the vernacular language, at their branch premises, with a corresponding declaration of accountability for staff conduct and grievance redressal incorporated into the loan agreement itself.

(x) Recovery is ordinarily to be made at a central designated place; recourse to the borrower's residence or place of work is permissible only where he fails to appear at the designated place on two or more occasions, and field staff must possess the minimum qualifications and training prescribed by the Fair Practices Code."

38. Their Lordships in **Hari Dutta Sharma** construed the clauses of the contract involved there, which are very similar to those that are there in the present case. After considering the various clauses of the agreement involved in **Hari Dutta Sharma** in the context of the Reserve Bank Master Circulars and guidelines issued from time to time, it was held:

"**24.** Thus, Article 11 places the borrower entirely at the mercy of financier's unilateral discretion, both as to whether notice will be given at all and as to the manner and timing of the sale. On a careful scrutiny of Article 11 of the Loan Agreement read with Guidelines issued by the RBI, we are of the view that Article 11 is neither in consonance with the Guidelines issued by the RBI nor the provisions of the Indian Contract Act, 1872 for the reasons which follow.

25. *Firstly*, the stipulation that the borrower's rights over the asset stand determined "ipso facto without any notice" upon the mere occurrence of an Event of Default is directly at variance with the requirement that a repossession clause must provide for a notice period before possession is taken. *Secondly*, the authorisation to recovery agents to "enter any place or places" in search of the asset is itself contrary to the RBI's Guidelines and offends the requirement of a fair, lawful procedure for taking possession. *Thirdly*, the clause nowhere prescribes a procedure for taking possession or for sale and auction of the asset, leaving both wholly to the discretion of the Company. And *fourthly*, the power reserved to the Company to waive the notice altogether, at its own discretion, on its own assessment of jeopardy to its interest, converts what ought to be a floor of minimum protection into an illusory promise, defeasible at the will of the very party against whom it is meant to protect the borrower. A contractual term which permits one party unilaterally to dispense with the procedural safeguards designed to protect the other cannot be regarded as being in conformity with either the RBI

Guidelines or the general contractual requirement of fairness; to that extent, Article 11 does not meet the standard the law requires of a valid repossession clause.

26. Turning to the facts, the action taken against the appellant is shown to be in contravention both RBI Guidelines, which carry statutory force, and of the very terms of Article 11 on which the Company relies. No seven-day notice, as contemplated by Article 11(a)(i), was in fact issued to the appellant prior to repossession; the right of repossession, being conditional upon such notice, never accrued to the Company in the first place. The appellant's specific and unrebutted case is that possession was taken at about 1:00 a.m. on 09.04.2023 by breaking open the steering lock of the vehicle, a mode of taking possession that is, by no stretch, peaceful, and one which bears every mark of the very 'goondaism' that this Court, in *Prakash Kaur* (supra), and the RBI, in its successive Guidelines, have condemned in unambiguous terms. The possession memorandum does not even bear the appellant's signature which reinforces the conclusion that the vehicle was taken by the Company's recovery agents without following the due process of law. The High Court failed to advert to this aspect of the matter, which had a direct and material bearing on the controversy before it.

27. As regards the finding of the High Court that the writ petition was liable to be dismissed on the ground of delay, we find that this finding was arrived at without reference to the material on record. The appellant had lodged a First Information Report on the very day of the incident, 09.04.2023, and thereafter filed a complaint under Section 156(3) of the Criminal Procedure Code, 1973 on 08.11.2023, in the bona fide belief that his vehicle had been stolen. He continued, moreover, to receive traffic challans on 18.01.2024, 18.11.2024 and 18.02.2025 in respect of a vehicle the Company claims to have sold as far back as 31.08.2023, a circumstance which, at the very least, called for explanation and ought to have weighed with the High Court. In these circumstances, we are unable to sustain the finding that the writ petition was liable to be thrown out on the ground of delay alone, without an examination of its merits and in the absence of any demonstrated prejudice to the Company.

28. Financial institutions, particularly those operating under the regulatory umbrella of the RBI, hold their repossession clauses on the implicit condition that they will be exercised within the four corners of the procedural safeguards, the RBI has, over two decades, painstakingly, built, notice, an opportunity to cure, a fair mode of taking possession, and a transparent mode of sale. Where a financier steps outside that framework, breaks open a lock in the dead of night, takes possession without notice and without a signed memorandum, and thereafter treats the borrower merely as a source of residual liability, it forfeits the protection that the contract and the law would otherwise have afforded it, and exposes itself to the consequences in law of an unauthorised and arbitrary seizure. It is the balance discussed earlier in this judgment, between the legitimate need of the financier for an efficient recovery mechanism and the equally legitimate entitlement of the borrower to be treated fairly, with notice and due process, before he is deprived of the very asset by which he earns his bread, that the Company failed to observe on the facts before us."

39. The Supreme Court in **Hari Dutta Sharma**, allowed the appeal, set aside the judgment of this Court and without disturbing the sale of the vehicle held in favour of the third party, issued the following directions:

"**32.** We, therefore, issue following directions:

(i) The company shall close both the loan accounts of the appellant.

(ii) The Company shall refund the sum of Rs. 4,50,000/- (Rupees Four Lakh Fifty Thousand only) that is the sale price for which the vehicle of the appellant

> was sold. The said amount shall carry interest at the rate of 6% per annum from the date of sale till the payment is made to the appellant.
>
> (iii) The appellant is held entitled to a sum of Rs. 10,00,000/- (Rupees Ten Lakhs only) as compensation in lieu of mental agony caused to him and loss of his livelihood for a considerable period.
>
> **33.** In the result, the appeal is allowed with costs which are quantified at Rs. 50,000/- (Rupees Fifty Thousand only)."

40. At this stage, we must revert back to the facts of the present case. The petitioner has pleaded in paragraph no.6 of the writ petition that he has regularly complied with the terms and conditions of the loan agreement and out of the total of 45 installments, he has already paid 31. The last of his installments, he paid on 07.08.2026. He has annexed a statement of account issued by the respondent Finance Company dated 10.08.2026 to the writ petition. The statement of account indeed shows deposit of installments of Rs.64,059/- regularly, though the statement does show that the cheques did bounce from time to time, but with bouncing charges, the installments were paid by the petitioner until 07.08.2026. The total cheques, that bounced, were thirteen, as the statement of account shows, but the payment was made good, as it *prima facie* appears. This Court must hasten to add that we express no final opinion regarding the discharge of liability by the petitioner, but do take into account his conduct for the purpose of relief that we intend to grant here, balancing equities. The opinion is tentative because we intend to leave parties to their remedies in regard to the respondent Finance Company's claim and the petitioner's defence, that have to be adjudicated by a competent forum on receiving evidence, like the Civil Court or the Arbitrator, for which there is provision in the loan agreement.

41. We also must notice the fact that broadly it was the petitioner's brother Shoaib Ahmad, who is said to have availed a loan to finance the purchase of a similar commercial vehicle and committed persistent default, and, further, that to secure repossession of the vehicle and enforce recovery, arbitration

proceedings were commenced against the said Shoaib Ahmad. The Arbitrator was also moved to pass interim orders under Section 17 of the Arbitration and Conciliation Act, 1996, which the Arbitrator did pass authorizing a receiver to take possession of Shoaib Ahmad's vehicle, a fact that we have already noticed hereinbefore. No proceedings before a Court or the Arbitrator were commenced against the petitioner, even if the respondent Finance Company allege default in repayment of his monthly installments. There is no earthly reason for the Finance Company to commit the misadventure of privately seizing the petitioner's vehicle through their recovery agents at gunpoint, instead of instituting arbitration proceedings and securing appropriate interim orders from the Arbitrator, as done in Shoaib Ahmad's case. The latter course would be lawful and the present one utterly unlawful. It is also not in dispute that the petitioner's vehicle has not yet been sold off and is in the custody of the respondent Finance Company. This Court granted an interim order, while entertaining the writ petition, restraining transfer of the vehicle in favour of any third party. All this would make difference to the relief that the petitioner, in our opinion, ought be granted.

42. In the circumstances, this writ petition succeeds and is **allowed** with costs in the sum of **Rs.10,000/-**. A *mandamus* is issued to the respondent Finance Company to ensure that the petitioner's vehicle, bearing registration no. UP-50CT-2208, is forthwith delivered to the petitioner, without imposing any pre-condition for the release. The respondent Finance Company will furnish an up-to-date statement of account to the petitioner after considering the statement of account that the petitioner has produced before this Court. The Finance Company will re-structure the loan granting fresh installments to the petitioner, which would carry usual interest, but no penal or extraordinary interest. A fresh agreement will be signed by the petitioner, committing himself to repay the outstandings in equated monthly

installments (EMI) as the respondent Finance Company fixes according to the restructured loan for the balance. In the event of default by the petitioner in repayment according to the schedule fixed upon restructuring of the loan, the respondent Finance Company will take steps strictly in accordance with law by moving the Civil Court or the Arbitrator. It is made clear that the first installment due under the restructured loan, will commence after a moratorium of two months from the date of delivery of possession of his vehicle to the petitioner.

(Indrajeet Shukla,J.) (J.J. Munir,J.)

October 26, 2026
Anoop

Digitally signed by :-
ANOOP KUMAR SINGH
High Court of Judicature at Allahabad