

Default on EMIs, lose your car

HC Lets Financiers Seize Vehicles If Customers Fail To Pay Up

Kolkata: The Calcutta HC on Tuesday allowed financiers to seize vehicles if customers do not pay EMIs. A division bench gave this judgment while hearing 21 appeals filed by GE Capital Transportation Financial Services Ltd against customers who stopped paying instalments and then obtained injunctions from a lower court against the vehicles being seized.

The HC gave the customers seven days to restart paying instalments, failing which GE can repossess the vehicles, but 'without adopting unlawful means like assault'. Two customers were even fined by the court for "mala fide applications seeking arbitration".

GE was apparently on the verge of closing down its operations in West Bengal after a large number of customers—who had got lorries financed—started defaulting on their payments. All the defaulters were granted relief by a lower court in the form of injunctions, forbidding GE from repossessing the lorries. Finally,



The Calcutta HC has held that an owner's right to a vehicle is lost if he defaults on EMIs and the financiers aren't guilty of flouting right to property if they repossess the vehicles

GE counsel Phiroze Edulji moved the HC against the injunctions.

The HC held that repossession of vehicles by financiers cannot be treated as a violation of Right to Property—a fundamental right allowed in the Constitution. The right is lost on

committing default, the judges observed. They referred to how the Supreme Court had expressed anxiety at the lack of any law that defines what a financier can do if a customer defaults on paying instalments for a movable property like a vehicle, though a law exists for immovable property like flats or houses.

According to the judges, just as no court would assist a 'trespasser' to protect property that he has not paid for, no customer in this case can seek unconditional injunction to protect the right of possession of a vehicle he has not paid for. Particularly when there is nothing wrong with the contract, and the financier is not charging a higher interest rate than permitted by law. This means that a customer who has any dispute with a financier can only move court if he pays instalments on time. The court pointed out that even the Motor Vehicles Act has no law prohibiting repossession of vehicles in case of default.