

Default on EMI, lose car

TIMES NEWS NETWORK

Kolkata: Calcutta High Court on Tuesday allowed financiers to seize vehicles if customers do not pay EMIs. A division Bench gave the judgment while hearing appeals filed by GE Capital Transportation Financial Services against customers who had stopped paying instalments and then obtained injunctions from a lower court against vehicles being seized. The high court gave customers seven days to restart paying installments, failing which it said that GE can repossess the vehicles — but “without adopting unlawful means like assault”. P 5

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Free to seize cars for EMI default: HC

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Kolkata: In a judgment that is bound to have far reaching consequences, Calcutta High Court on Tuesday allowed financiers to seize vehicles if customers do not pay EMIs.

A division bench of Justice Bhaskar Bhattacharya and Justice Tapan Kumar Dutt 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 high court on Tuesday 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 vehicles. Finally, GE counsel Phiroze Edulji moved high court, seeking scrapping of the injunctions.



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After hearing all sides, 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 pay-

ing instalments for a movable property like a vehicle. A law exists though, for immovable property like flats or houses. An illegal occupant is treated as a ‘trespasser’ and evicted. In spite of the apex court’s recommendations, no law has been framed as yet.

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 effectively means that a customer who has any dispute with a financier can only move court if he continues to pay his instalments on time.

The court pointed out that even the Motor Vehicles Act has no law prohibiting repossession of vehicles by financiers in the case of default. Under the law, any possession is considered illegal unless ‘ripened’ into a ‘settled possession’.

Both bankers and officials of non-banking financial companies hailed the order. “We are yet to see the copy of it but it will certainly go a long way in preventing customers from defaulting on payment,” one of them said.