

High court hauls up car loan defaulters

Jayanta Gupta | TNN

Kolkata: Those who default on loan repayments have employed various techniques to keep financial institutions at bay, but this one takes the cake. Sanatan Dalui of Hooghly's Chanditala and others who procured vehicles after obtaining loans from Tata Motors Finance Ltd, tried to use the law to prevent re-possession till they were taken to Calcutta high court.

On Friday, the bench of Justice Subhro Kamal Mukherjee and Justice Md Abdul Ghani hauled up the defaulters for coming to court with "unclean hands" and struck down lower court injunctions against repossession of vehicles.

In May, 2009, Dalui — who had defaulted on EMI payments — filed a suit against the finance company, claiming that he was the rightful owner of the vehicle (WB 15A 5891) and should be allowed to use it. The trial judge, on May 28, 2009, granted an interim injunction, restraining the company from repossessing the vehicle but on condition that Dalui made regular repayments as per the agreement.

Instead of making any payment, Dalui made an application before the trial judge, praying for withdrawal of the suit. On July 10, 2009, the judge dismissed the matter on grounds of non-prose-

cution. Dalui was, however, granted no leave to file a similar suit, seeking the same relief.

On July 13, 2009, Dalui moved a similar suit in the City Civil Court of Calcutta. He again claimed to be the rightful owner of the vehicle and sought permission to use it without disturbance. The high court has noted that nowhere in this suit was it mentioned that Dalui had moved a similar one earlier and then withdrawn it. As in the earlier case, the trial judge restrained the company from repossessing the vehicle on condition that Dalui would 'pay the amount in instalments'.

The financial institution moved the high court against the injunction order. The high court directed it to bring to the notice of the lower court that Dalui had suppressed the matter concerning a similar suit moved earlier. The trial judge was also directed by the high court to dispose of the matter under Sections 5 and 8 of the Arbitration and Conciliation Act. The trial judge provided no relief to the company and continued with her order of injunction. The company finally moved another appeal before the high court.

After hearing the appeal, the court observed, "We are of the considered opinion that this plaintiff, who came to the court with unclean hands, is not entitled to any order of injunction in this matter. The orders passed by the learned trial judge, restraining the defendant from seizing the vehicle, are therefore, vacated. The applications for injunction filed by the plaintiff are rejected."

