

COMPANY LAW MATTERS

Sick Industrial Companies Act (SICA) – Secs. 19(A), 22 – Specific Relief Act – Secs. 37, 39 – Permanent / Mandatory Injunction and damages – Default in the payment of EMI's (Early Monthly Installments) – Forcible possession of one of the vehicle of brother of director (Plaintiff herein) of personal belongings including jewellery product worth Rs. 7 Lacs and forced to sign blank vehicle surrender form – Plaintiff suffering losses and damages – Serious financial troubles with plaintiff due to which plaintiff had moved Board for Industrial and Financial Reconstruction (BIFR)-Plaintiff company was declared a sick industrial company by BIFR – HELD – Plaintiff earning Rs. 10,000/- per day, having monthly income of Rs. 3 Lac per annum – EMI of each car was Rs. 18,356/- - No provision in the Act (SICA) under which bank, which had given loan on hypothecation of the vehicles, is required to go to BIFR and seek permission for repossession of vehicles hypothecated to it in case of default in payment of EMI – Plaintiff had in fact concealed its status of sick company from the defendant, obtained loan and after paying some installments stopped paying EMI – Breach of contract committed by the plaintiff deliberately and is malafide conduct – Plaintiff failed to prove that any force was used against him or his brother at the time of seizure of the car – Car was lying hypothecated with the defendant and it is settled law that in case of hypothecation the possession of hypothecated goods remains with the hypothecator but hypothecate has a right of repossession of the hypothecated property and for realization of amount – Plaintiff miserably failed to prove that he had suffered any damage at the hand of the defendant bank – Suit dismissed with heavy costs.

Citation : **Enchante Jewellery Vs. Citibank N.A. CS (OS) No. – 2091/2003**