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CIVIL DESIGN CONSTRUCTION NIG. LTD. V. SCOA NIGERIA LIMITED¹: An
Exposition of the Doctrine of Repossession under the Hire-
Purchase Act, 1990.

BY
HAFSAT LYABO SA'ADU*

Introduction

The Hire-purchase Act of 1990 was enacted to regulate the hire-purchase transactions in Nigeria. In the simplest terms, hire-purchase can be denned as "the bailment of goods in pursuance of an agreement under which the bailee buys the goods and under which the property in the goods will or may pass to the bailee and hire-purchase agreement shall be construed accordingly; and where by virtue of two or more agreements, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and either the bailee may buy the goods, or the property therein will pass to the bailee the agreements shall be treated for the purposes of this Act as a single agreement made at the time when the last of the agreement was made"²

Hire-Purchase comprises of agreement for the delivery of goods under which the recipient pays a small deposit to the owner of goods while promising to pay certain sum as installments each month in consideration of being granted possession and use of the goods and an option to purchase them after a stipulated period and having paid a stipulated total sum.

At common law, the owner's right of re-possession is absolute for the hirer's right under an agreement is entirely and exclusively dependent upon the terms of his agreemtns.³ This invariably put him in a very weak and precarious position for in the absence of any stipulation to the contrary, the owner may re-possess the goods extra-judicially and without a court order, on

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¹ (2007) 5 M. J.S.C.P.142

² S. 20, (1) of the Hire-Purchase Act, Laws of the Federation of Nigeria Vol. IX Chapter 169, 1990.

³ K.lk Igweike, Hire Purchase (2nd Edition) Malthouse Press Ltd., Lagos, 1999 p.76

any breach whatsoever by the hirer to pay an installment or to do so punctually.⁴

The terms of agreement work great harshness against the hirer and it leaves him with little claim where the owner exercises this right.⁵

The Hire-Purchase Act of 1999 seeks to protect the hirer against the rigours and harshness of the common law rules. Under the Act, the right of the owner to recover possession of the good is determined by the proportion of the total hire-purchase price paid or tendered by the hirer.⁶

Section 9(1) of the Act provides as follows:

Where goods have been let under a hire-purchase agreement and the relevant proportion of the hire-purchase price has been paid (whether in pursuance of a judgment or otherwise) or tendered by or on behalf of the hirer or any guarantor, the owner shall not enforce any right to recover possession of the goods from the hirer otherwise by an action and except as provided by subsection (5) of this section.

- (2) If an owner recovers possession of goods in contravention of sub-section of this section, the hire-purchase agreement is not previously determined, shall determine and
- a) The hirer shall be released from all liability under the agreement and shall be entitled to recover from the owner in an action for money had and received all sums paid by the hirer under the agreement or under any security given by him in respect of the agreement and
 - b) Any guarantor shall be entitled to recover from the owner in an

⁴ Ibid

⁵ Now, Section 3 of the Hire-Purchase Act prevents the common law right of the owner to retake possession.

⁶ V I Tinsley on hire

action for money had and received all sum paid by him under the contract of guarantee or any security given by him in respect of that contract.

If the action to be taken by the owner is by valid action in a court of law, he cannot recover possession by himself.⁷

Against this background, this paper intends to look at the efforts of the Supreme Court of Nigeria in the case under review to harmonize the position of the Common Law vis-à-vis that of the Hire-Purchase Act in regard to the power of an owner to recover possession only through the provision of the law. But it is important to take the facts of the particular case into consideration and the intents of the parties to the agreement and the transaction as in the above case.

Delivering the lead judgment, Walter Samuel Nkanu Onnoghen, JSC said:

Even under the Common Law, if it were to apply to the facts of this case, which I do not concede, the respondent cannot seize or repossess the rig without recourse to the court. It is therefore not the case that if the common law applies the respondent can repossess the rig by seizure or otherwise than as provided by law⁸, particularly as it is in evidence before the court that appellant has paid up to 60% of the purchase price of the rig in question which fact has not been denied by the respondent.

Facts of the case

The Plaintiff/Appellant at first bought one Ingersoll Cyclone Water Well Rig with Registration No. LA 2632 WD from the Respondent under a Hire Purchase Agreement for the sum of ₦431,842.00. The Appellant eventually paid in full, thus becoming the owner of the well rig. The second transaction between the parties involved another rig with Registration No. LA 8509 WD which the Appellant also bought under a Hire Purchase Agreement for the sum of ₦513,482.00. In respect of this transaction,

⁷ Section 10 of the Hire Purchase Act, 1990

⁸ At pp. 158-159. The emphasis are mine.

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the Appellant paid the sum of £f 100,000.00 in two installments of £450,000.00 each, the balance remaining unpaid at the time of the dispute between the parties. The facts of the above two transactions are not disputed by the parties.

There is finally a third transaction involving scrappers, the facts of which are violently disputed by the parties. It is the Appellant's case that it purchase two road scrappers on 26/1/84 and 10/2/84 respectively, for the sum of which the parties later agreed that the sums paid on the two scrappers be merged and credited to the Appellant on account of the purchase by the Appellant, on hire purchase terms of one new rig "two service rigs." The Respondents later expressed its inability to implement the said agreement, which caused the Appellant to instruct the Respondent to sell the two scrappers and make a refund to it of the purchase price.

On the other hand, the Respondent contends that each scrapper was sold for N177,162.00 and that the sum of N159,903.00 paid by the Appellant on each scrapper was a deposit against the said purchase price and that the Appellant owed the balance of N34,518.00 on both scrappers. The Respondents further alleged that Appellant bought two other scrappers for which no deposit was made but rather that the Appellant allegedly deposited its rig No. LA 2632 WD as security against the payment due on the said scrappers. The Respondent claimed to have delivered the four scrappers to Sokoto Agricultural Development Project (SADP) on behalf of and with instructions from the Appellant. The Appellant denied these allegations.

The Appellant eventually instituted an action in the High Court of Lagos State, claiming, inter alia a declaration that the seizure of its rigs Nos. LA 2632 WD and LA 8509 WD was wrongful; an award of the current market value of rig. No. LA. 2635 WD and the sum of ^414,480.00 being money had and received by the Defendant on rig No. LA 8509 WD before the wrongful seizure plus damages at the rate of 142,000.00 per day from the date of the wrongful seizure, i.e. 29th May, 1984 until payment of the said damages. The Appellants also sought a declaration that the delivery of the Plaintiffs 2 (Nos) Fiat /All-Is Motor Scrappers Model 360B to the Sokoto Agriculture Deployment Project (SADP) by the Defendant was wrongful and without the authority of the Plaintiff

and an order directing the Defendant to make a refund of a sum of N319,806.00 (Three Hundred and Nineteen Thousand, Eight Hundred and Six Naira), being money had and received for the two scrappers sometime in 1984 which the Defendants have failed and/or neglected to deliver to the plaintiff and or converted to their use.

The Respondents admitted that rig No. LA 2632 WD belonged to the Appellant but contended that the Appellant sent the said rig to it for repairs in mid February 1984 and use the same as security for outstanding liability for an alleged credit purchase of two additional scrappers which the Appellant allegedly instructed the Respondent to deliver, in addition to the earlier two scrappers, to the Sokoto Agricultural Development Project. The Respondent also counter claimed against the Appellant, inter alia, the sum of 14100,000.00 being outstanding installments.

The Trial Court found in favour of the Appellant except for the claim of ^100,000.00 (two instalmental payments) outstanding which it awarded to the Respondent. The Respondent appealed to the Court of Appeal while the Appellant cross appealed against the said decision of the trial Court, resulting in the judgment now on appeal before the Supreme Court.

Issues for Determination

Some of the issues for determination as concerns us in this paper are:-

Issue No. 1 whether in the circumstances of this case, and in particular having regard to the issue of estoppel "and the presumptions of the law that arose in this case, was the court of Appeal right in holding that the Common Law as opposed to the Hire Purchase Act, (Cap 169 L.F.N.) governs the transaction relating to the motor rig registered as LA 8509 WD. Issue No. 2 whether with regard to the plaintiffs 2 scrappers and the reliefs sought for their conversion / detain what reliefs should the Court of Appeal have awarded in the circumstances of this case? In the circumstances of this case, what is the correct measure of damages for the seizure of the plaintiffs rigs?

For clarity of purpose, the summary of the argument of the parties and the decision of the court on each issue will be separated in this paper and treated as in the case.

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Applicable law

The thrust of the Appellant's argument with respect to the right of the Court of Appeal to hold that the Common Law as opposed to the Hire Purchase Act governed the transaction relating to the Motor rig registered as LA 8509 WD was that it was the claim of the Respondent that the hire purchase agreement was governed by the Common Law but the Appellant stated that it was governed by the provisions of the Hire-Purchase Act, Cap 169 particularly as the rig NO. LA 8509 WD is a mechanically propelled vehicle intended or adopted for use on roads and duly registered as a motor vehicle; He stated further that the Court of Appeal was in error when it reversed that holding by holding that the said transaction was governed by Common Law.

The Appellant Counsel submitted in alternative that granted without conceding that it is the common law that applies to the transaction the result would still be the same as the Respondent cannot recover the rig after the Appellant had paid 50% or 60% of the purchase price without recourse to the court.

On whether the rig indispute fall within the contemplation of motor vehicle. The learned Counsel to the Appellant referred the court to Page 921 of the record where the Court of Appeal found "that the rig No. LA 8509 WD was generally treated as if it was a motor vehicle." He reiterate further that the Respondent is estopped from denying that the said rig is a motor vehicle having registered it as a motor vehicle with the Motor Licencing Authority, insured same, obtaining a road worthiness certificate for same having previously treated exhibit P as an agreement under the Act and Rig No. LA 2632 WD as a motor vehicle.

In response to the above, the learned Counsel to the Respondent submitted that it is the case of the Respondent that the rig was voluntarily surrendered to the Respondent by the Appellant, that even if the version of the Appellant that the rig was seized by the Respondent is accepted, the seizure is not unlawful considering the application of the provisions of the Hire-Purchase Act 1990. He referred the Court to Sections 1(a), 9 (1) 5 and 20 (1) of the Hire Purchase Act. On whether rig LA 8509 WD is a motor vehicle under the Hire Purchase Act, he submitted that rig No. LA 8509 WD is not a motor vehicle within the Act, that the fact that exhibit D2 does not stipulate that the Respondent would not repossess as provided

under section 9 (1) of the Hire Purchase Act upon payment of 3/5th of the purchase price by the Appellant confirms the intention of the parties to take the transaction outside the purview of the Hire purchase Act, that it is the intention of the parties that the transaction be governed by the Common Law and it is not indispute that the Appellant defaulted in the payment of instalments which determined the agreement relying on *Atered V. Amao*⁹

Reliefs /Damages

The Appellants learned Counsel argued that the delivery and sale of Appellant's two scrappers to S.A.D.P was wrongful as the Appellant never authorized same and that what constitute problem is the amount to award as damages; that having found the claim of the Appellant succeeded in this respect, the trial court ought to have ordered an inquiry as to damages as claimed instead of making an alternative order to the award of 1*319,806.00 which was not what the Appellant claimed that the Appellant made a cumulative and consecutive claim grounded in conversion. Learned Counsel stated further that the Court of Appeal erred in limiting the award of &319,806.00 under the impression that Appellant had specifically asked for the sum. He added that the Appellant asked for much more than 14319,806.00 and also asked for the refund of N319,806.00 purchase price plus an order of Inquiry into the current value of the scrappers and the award of resultant current value as damages less the M319,806.00 purchase price.

Learned Counsel submitted further that it is not the defence of the Respondent that it sold the scrappers for the Appellant but it delivered same to SADP on the instruction of the Appellant.

Referring to the case of *Stitch v. A.G. of the Federation*¹⁰ learned Counsel submitted that the measure of damages for conversion is generally "the value of the chattel at the date of conversion together with any consequential damages flowing from the conversion" and that on the authority of *MaGregor and Damages*¹¹ the Appellant is entitled to recover in addition to M319,806.00 the amount by which the market value of the goods have risen between conversion and

⁹ (1957) WWLR 176

¹⁰ (1986) 12 S.C. 373 At 422-423

¹¹ 14th Ed. Pghs 1056 1087

judgment and that the Appellants is entitled to the replacement values of the two scrappers subsequent to the date of the judgment of this Court.

The two issues formulated by the learned Counsel for Respondent do not include Appellants issues 2. However, does it mean that in law the Appellant is entitled to the claims as couched?

Holdings

The Supreme Court noted that a Walter Well Rig is a motor vehicle within the contemplation of the Hire Purchase Act. Referring to Section 20(1) of the Hire Purchase Act defines "Motor Vehicle" as a mechanically propelled vehicle intended or adopted for use on roads or for use for agricultural purpose. However, the court noted further that having regard to the facts and circumstances of this case it is being registered by the motor licencing authority, being insured given certificate of road worthiness and driven by a driver it is in fact a motor vehicle within the contemplation of Section 20 (C) of the Hire-purchase Act. On whether at Common Law an owner can always seize or reposes property on hire purchase without recourse to court, the court held that even under the common law, if it were to apply to the facts of this case, the Respondent cannot seize or repossesses the rig without recourse to the court. It is therefore not the case that if the common law applies the Respondent can repossess the rig by seizure or otherwise than as provided by law, particularly as it is in evidence before the Court that the Appellant has paid up to 375th of the purchase price of the rig in question which fact has not been denied by the Respondent.

On effect of the Hire Purchase contract when the Appellant had paid 375th of the hire purchase price. The court held that under Section 9 (2) of the Hire purchase Act, the Respondent cannot enforce repossession of the rig in issue when the Appellant paid 3/5* of the Hire Purchase price. The Court held further that the effects of non-compliance with the requirements of Section 9(2) are as follows:

- (i) The owner cannot enforce hire purchase agreement. He is there by disabled from instituting action to recover any monies under the hire purchase agreement,

whether in respect of hire rent or by way of damages for breach of contract.

- (ii) The owner cannot enforce any guarantee relating to the hire purchase agreement.
- (iii) The owner is rendered incapable of enforcing any right to recover the goods from the hirer. This clearly means that the hirer gets a statutory bonus; he keeps and uses the goods without paying for them¹²
- (iv) Securities given by either the hirer or the guarantor in respect of money payable under the Hire Purchase agreement are unenforceable by the owner and any deposit paid as such security by the hirer or guarantor is recoverable.

Regarding the value of goods claimed but not returned in an action for detinue, the Court held that the value of the goods claimed but not returned ought to be assessed as at that date of the judgment or verdict. Thus, the plaintiff suing in detinue is entitled to claim, in the absence of a return of the property, the market value at the time of the judgment is a the risk of the Defendant.¹³

Having stated the facts and decision of the case we shall now turn to a consideration of some issues raised in the judgment.

Recovery under the Act

As already noted, the Common Law leaves the hirer with little claim where the owner exercises his right of repossession in cases of default in the payment of installment by the hirer. But Section 3 of the Act now prevents the common law right of the owner to retake possession. In the same vein, it was the practice then that the owner could repossess the goods at will and if the goods were resold, the hire was denied the proceeds of sale especially where the proceeds overwhelmingly exceeds the balance of the purchase price, this was remedied by Section 9 (1) of the Act. This section allows the owner to recover possession only from the hirer. Section 20 (1) of the Act defines the hirer" as including "a person to whom the hire's rights or liabilities under the agreement have passed by assignment or by operation of law". Therefore, any recovery

¹² Eastern Distributors Ltd. V. Gold ring (1957) All E.R. 525 at 533.

¹³ Rosenthal V. Alderton & S. Limited (1946) DC.B. 374 at 377.

through a third party who does not fall within the above definition is void. In view of above provisions of the law and with reference to this case, the lower court found that the delivery of the plaintiffs 2 (No.) fiat Allis Motor scrapper model 360B to the Sokoto Agricultural Development Project (SADP) by the Defendant was wrongful and without the authority of the plaintiff.¹⁴

In his own contribution, Ikechi Francis Ogbuagu, JSC, said: Again, it is not the case of Respondent that it sold the scrapers on behalf of the Appellant, but that it delivered the same, to SADP on the instructions of the Appellant, which have been found by the court below and myself, to be a lie.¹⁵ He reiterated further in the judgment as follows:

As regards the said rigs that have been found to have been wrongly seized by the respondent, a case of Detinue has been made out by the Appellant. It is surprising to me that the trial court, in the fact of this fact, with respect, made U-turn so to say, by holding that the ownership of the first rig No. LA 2632 WD, had reverted to the Respondent and relied on exhibit D3. It even stated at page 439 of Records, that "the method of recovering this rig from the plaintiff might be crude and barbaric" that the Respondent has a right to possession of the rig which it eventually recovered. This decision in my respectful but humble view, is perverse in the extreme. Of course, self-help in any guise and by any person high or low), Government or its functionaries agents. The Supreme Court found the Respondent liable for both

Detinue and conversion. Hence, the Court order that the Respondent be made to pay the market value of the goods and other consequential loss.¹⁶

The above exposition has depicted the correct position of the Act as far as the power of re-possession is concerned in the hire purchase agreement. The only method stipulated by

¹⁴ See P. 173

¹⁵ PP, 195-196. The emphasis are mine

¹⁶ 193-194. The emphasis are mine. See further *Ellochim (Nig.) Ltd. & Ore. V. Mbadiwe* (1986) 1 NWLR (Pt. 14) 47 at 65 (1986) 1 SC 99 at 130, (1986) 1 ALL NLR (Pt. 1) 1 at 11

the Act is through the operation of the law and no other means other than that which allows fair dealing.

Relevant Proportion and Recovery by Action

Section 9(1) places restriction on the right of the owner to recover the property otherwise than by action, especially, where 'relevant proportion' of the hire-purchase price has been paid.

Section 9(4) of the Act further provides that 'relevant proportion' means

(a) In the case of goods other than motor-vehicles, one-half, and

(b) In the case of motor-vehicles, three-fifths

Similarly, Section 9(2) (a) states that if an owner recovers possession of goods in contravention of the above provision, for example, by physical seizure of the goods, the legal effect is that the hire-purchase agreement automatically determines and both the hirer and his guarantor are relieved of any liability under the agreement and will be entitled to recover from the owner in an action for money had and received all sums paid by him under the agreement or any security given by him under the agreement. In *Tabansi Agencies Ltd V Incar Motor (Nig) Ltd*¹⁷ the plaintiff had paid more than half the total hire-purchase price of the goods (relevant proportion), when the owner, the defendant, re-possessed them without their consent. The court held that the re-possession was unlawful and as a result the agreement became determined by virtue of the provision of the said Section 9(2).

This principle of law tallies with the decision of the Supreme Court in this case where Sylvester Umaru Onu, J.Sc, was quick to point out as follows:

...Also noted by me, is the fact that in the case of rig No. LA8509 WD, the Appellant had paid 3/5 or 60% (sixty percent) of the Hire- purchase price and by virtue of Section 9(2) (a) of the Act, the Respondent could not have legally or lawfully repossess the said rig. I so hold.¹⁸*

¹⁷ (1974) CC HCJ 923 at 928.

¹⁸ p.197

Wrongful Repossession by the owner

The courts have always been strict in interpreting Section 9 of the Act with respect to the consequences of wrongful recovery by the owner. Section 9 (2) provides.

If an owner recovers possession of goods in contravention of Sub-section of this Section, the hire- purchase agreement, if not previously determined, shall be determined and (a) the hirer shall be released from all liability under the agreement and shall be entitled to recover from the owner in an action for money had and received all sums paid by the hirer under the agreement; or under any security given by him in respect of the agreement and any guarantor shall be entitled to recover from the owner in an action for money had and received all sums paid by him under the contract of guarantee or any security given by him in respect of that contract.

In *Adesanya V Balogun and Ors*¹⁹ the hirer had paid £1, 647; 16d of £1, 823; 7d. The owner nevertheless seized the hired vehicle without an order and the hirer sued for damages and breach of contract. It was held that the owners seizure of the vehicle was contrary to Section 9 (1) of the Act and therefore wrongful; the hirer being released from all liabilities and entitled to recover the £1, 647; 16d already paid.

In line with the above position of the law on wrongful repossession, the Supreme Court said:

Since the lower Court have, ...found concurrently that the delivery and sale of the Appellant's scrappers by the Respondent to SADP was without the authority of the Appellant and therefore wrongful ... it is further ordered that the necessary inquiries

¹⁹(1973)11CCHCJP. 21

into the market value of the said scrappers shall be as at the date of the judgments of the High court.²⁰

Detinue or Conversion

In the case of *Stitch V. A.G. Federation*²¹ Uwais JSC (as he then was) stated the position of damages in respect of detinue or conversion as follows:

*The action for conversion is a purely personal action and results in a judgment for pecuniary damages only. The judgment is for a single sum of which measure is generally the value of the chattel at the date of conversion together with any consequential damages flowing from conversion and not too remote to be recoverable in law.*²²

However, Detinue or conversion are remedies for breach for someone who has suffered an injury under the law of tort.²³ But in relation to Hire Purchase agreement, the tort of detinue is where the hirer has goods, which belong to the owner in his possession and refuses to allow the owner to repossess it. In the alternative, the owner may sue the hirer for "conversion", and obtain damages for loss, especially if the hirer has destroyed the goods as in the instant case. The tort of conversion consists in dealing with another's property in such a way as to deny the true owner's right.²⁴ In the case of *The Aprad*,²⁵ a case based on short delivery of a consignment of wheat, it was held that where there is an available market the measure of damages is the value of the goods ascertained by the market price of identically similar goods. But where there is no available market the value must be otherwise ascertained and the price of re-sale is not evidence of their value.

Coming back to the issue at hand, the Supreme Court held further as follows:

...that to constitute conversion, there must be a positive wrongful act of dealing with the goods in a manner inconsistent with the owner's right, and an intention in so doing, to deny the owner's rights or to assert a right inconsistent

²⁰ p.161

²¹ Op.cit

²² p.165 and p.181

²³ D.M.M. Scott, "O" Level English Law, Butterworth & Co. (Publishers) Ltd. London, 1972, P. 172.

²⁴ Ibid

²⁵ (1934) All E.R. Rep. 326

with them. The inconsistency, is the gist of the action. There need not be any positive intention to challenge the true owners rights.²⁶ I hold that in the case of scrappers, a case of Conversion, was clearly established by the Appellant against the Respondent. The normal measure of damages, is the market value of the goods and there may be an addition for consequential loss if not remote.²⁷

A critical assessment of the above decision shows that the parties deviate from the provisions of Hire-Purchase Act in that Section 14(1) of the Act allows the owner to make a request in writing to the hirer to surrender the goods but from the evidence, the respondent claimed to have delivered the goods (scrappers) to Sokoto Agricultural Development Project on behalf of the Appellant on an alleged instruction of the Appellant which the Appellant denied. This means that there was no written document instructing the Respondent to deliver same to SADP which negates Section 14(1) of the Act. Section 14(2) provides that no written demand is necessary where the owner's claim is in damages for conversion only.

On the tort of detainee the court reiterates:

*As regards the said rigs that have been found to have been wrongly seized by the respondent, a case of detainee has been made out by the Appellant.*²⁸

The Supreme Court held as a result of the above finding as follows:

*Thus, a plaintiff suing in detainee is entitled to claim, in the absence of a return of the property, the market price at the time of the judgment. A rise in the market price between detention and judgment is at the risk of the Defendant.*²⁹

It is deductible from the above decision of the court that the

Respondent will continue to be liable until the property is returned to the Appellant or its market price is assessed and paid as held by the Court.

²⁶ Emphasis are mine

²⁷ P. 195

²⁸ P. 147 See further *Rosenthal v. Alderson & Sons Limited* (1946) I.K.B. 374

²⁹ AT 377. -

Conclusion

So far in this review, we have tried to look at the doctrine of repossession and what it entails as far as Hire Purchase Act, concerned. The case under review is an indepth exposition of doctrine of repossession under the common law and the Act signifies a kind of development in this area of law.

We have examined this doctrine of repossession in detail and have been able to justify the position of the Supreme Court in interpreting the intention of the parties in view of the facts of the case and in line with the provisions of the Act particularly Section 8, 9 and 10 which strictly place restriction on recovery of goods other than by no mean an action in the Court of law.

It is our conclusion that Hire Purchase Act 1990 be reformed in a way that will match the current trend of development in the business world.

The act should be specific as to the financial liabilities and payments required of a hirer before the issue of repossession and the standard modality for repossession of goods to the owner like a kind of formal application to a court before embarking on repossession by self-efforts. The relevant proportion principle on right of repossession by the owner lies should be made clear, simple and not too ambiguous to interpretation.

Section 5 of the Act empowers the Minister of Industries and Commerce to regulate the terms of hire purchase agreements, credit sale agreements, this should be done from time to time in view of the current economic situation of the country and the economic demands of the parties.