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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RSA 65/2008

RAJU SONI

..... Appellant

Through: Mr. Alok Kumar, Adv. with
Ms. Manisha Agarwal, Adv.

versus

MUTHOOT LEASING & FINANCE LTD. & ANR.

..... Respondents

Through Ms. Ritu Sobti, Adv.

CORAM:**HON'BLE MS. JUSTICE ARUNA SURESH****ORDER**% **22.09.2009****RSA 65/2008 and CM APPL.3615/2008 (stay)**

Respondent M/s. Muthoot Leasing & Finance Ltd. had filed a suit for recovery of Rs.1,65,788/- against the appellant and Mr. Ravinder Pratap Singh under the provision of Order 37 CPC.

The trial court served summon for appearance against the appellants in accordance with the provisions contained under Order 37 CPC. The appellants were served with the summons for appearance by way of publication in the 'Statesman' dated 10.7.2004. Despite service of summons for appearance,

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appellant No.2 Mr. Ravinder Pratap Singh did not put in appearance nor has filed this appeal. He is arrayed as respondent No.2 in this appeal. Respondent No.1 i.e. appellant Raju Soni filed his appearance after delay of 119 days along with application under Section 5 of the Limitation Act for condonation of delay. The said application of the appellant was dismissed vide order dated 9.5.2005. The said order of the dismissal was never challenged by defendant No.1. Thus, it has attained finality. With the result, there was no appearance on behalf of the either of the defendants to the suit.

The trial court considered the written arguments filed by the defendants while decreeing the suit of the respondent vide its judgment and decree dated 22.12.2007. The appellate court finding no merits in the appeal was pleased to dismiss the same. The appellate court took into consideration the submissions of the learned counsel for the appellant about the installments having been paid, his plea that without his permission, the decree holder could not have re-possessed the vehicles and sell them and also other pleas like condonation of delay in putting in appearance, etc., while dismissing the appeal.

The appellate court, therefore, rightly held that under the circumstances, it could not be said that the trial court mechanically dealt with the case and passed the impugned judgment and decree. I find myself in agreement with the findings of the appellate court in the impugned judgment and decree.

Learned counsel for the appellant has referred to various judgments to support his submissions that substantial question of law is required to be formulated in this appeal as the trial court acted in a mechanical manner while decreeing the suit. However, he had not much to say on the findings of the appellate court. He has relied upon:-

1. ***'Ramkarandas vs. Bhagwandas Dwarkadas, AIR 1965 SC 1144;***
2. ***'C.O.A.I. vs. Union of India, AIR 2003 SC 899;***
3. ***'Krishna Devi vs. Raj Kumar, AIR 1986 Raj. 72;***
4. ***'Rameshwar vs. Tarasing, AIR 1958 Raj 269;*** and
5. ***'Business Bankers vs. K.Anandan, AIR 2005 Ker 128.***

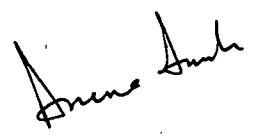
None of these judgments are of any help to the appellant. In ***Ramkarandas's case (Supra)*** it was observed that sub rule

(2) of Rule 2 of Order 37 contemplates that the Court will accept the statements in the plaint as correct and on those statements pass such decree as the plaintiff may in law be entitled to. However, where the plaint does not disclose any cause of action, court cannot pass a decree in favour of the plaintiff. If otherwise, not so, the words "allegations in the plaint shall be deemed to be admitted" in sub-rule (2) of R.2 of Order 37 CPC were unnecessary. The court under the circumstances is required to keep in mind the law. It is only if the law requires the court to exercise discretion on the facts deemed to be admitted, it will have to do so. In the present case, no such question of law was required to be kept in mind by the court. The suit was for recovery of money and plaint did disclose cause of action as the appellant and the other judgment debtor had got financed two vehicles on higher purchase basis from the respondent.

'C.O.A.I's case (supra) under the circumstances, is of no consequence as I do not find it a fit case where the court should interfere in the second appeal. **'Krishan Devi's** case and **'Rameshwar's case (supra)** do not have bearing on the facts

and circumstances of the present case. Similarly, ***Business Bankers's case (supra)*** is also of no help to the appellant.

Hence, I conclude that no substantial question of law is required to be formulated in this appeal. The appeal being without any merit is hereby dismissed.


ARUNA SURESH, J.

SEPTEMBER 22, 2009
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