

IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA No. 30/2004

Judgment delivered on: 12.08.2010

M/s Pragati Paper Mill Ltd. Appellant
Through: Mr. Pramod Kr. Sharma, Advocate
Versus
M/s British Motor Car Co. Ltd. & Ors. Respondents
Through: Mr. Aadesh Ganesh, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

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1. By this appeal filed under section 96 of Civil Procedure Code, 1908 the appellant seeks to challenge the judgment and decree dated 22.09.2003 passed by the Ld. Additional District Judge whereby the suit for recovery of Rs.15,65,999/- filed by the appellant was dismissed.

2. Brief facts relevant for deciding the present appeal are that the appellant purchased a car "Opel Astra" of registration no. DL 8C F 3535 from the respondent no.1 on 18.9.99 for a sum of Rs. 7, 55,000/- after availing a discount of Rs. 1, 59,875/- . The said car was initially sold by the respondents to one Ms. Rewa but was surrendered by her as the cheque issued by her towards the sale price of the car got dishonoured. However, the registration of the said car at the time it was purchased by the appellant was in the name of Ms. Rewa but after the said car was purchased by the appellant all papers regarding the transfer of the registration including form no.29 and 30 signed by Ms. Rewa were handed over to the appellant by the respondents. However till after two and a half years of the said purchase the appellant did not get the registration of the car transferred in his name, and thereafter filed a suit bearing no. 660/2002 against the respondents alleging responsibility of the said transfer on them and claiming damages to the tune of Rs. 15, 65, 999 /- . The said suit was decreed in favour of the respondents and against the appellant

vide judgment and decree dated 22.9.2003 and feeling aggrieved with the same the appellant has preferred the present appeal.

3 . The short issue arising in the present appeal is as to whether it was the liability of the transferee to approach the registering authority for the transfer of ownership of the purchased vehicle in his name or of the transferor in whose name the ownership of the vehicle existed or the dealer through whom the sale of the vehicle has taken place. Neither in the suit nor in the appeal the petitioner has impleaded the transferor of the vehicle Ms. Rewa in whose favour the ownership of the vehicle was transferred in the registering authority of the transport department but since the cheque issued by the said Ms Rewa towards sale price was dishonoured therefore the said "Opel Astra" Car was not delivered to the original buyer Ms. Rewa. It is not in dispute that so far the present appellant is concerned, he had paid the full consideration amount as was demanded from him by the respondent Nos. 1 & 2 and the said "Opel Astra" car bearing

Registration No. DL-8C-F-3535 was also delivered to the appellant. The appellant has claimed an amount of Rs.15,65,999/- i.e. an amount of Rs.7,55,000/- towards the price of the car, Rs.2,15,175/- by way of interest, Rs.2,00,000/- towards mental harassment and damages, Rs.1,95,824/- towards extra amount of income tax paid by the appellant. The case of the appellant as set up before the Trial Court as well as before this court is that it was the obligation of the respondent Nos. 1 & 2 to get the ownership of the car transferred in the name of the appellant and not of the actual transferor with whom the appellant had no dealings whatsoever. Counsel for the appellant laid much stress on the letter of the respondents wherein they confirmed the fact that transfer of the ownership of the said car is under process with the registering authority for which form Nos. 29 and 30 were submitted by them. The contention of the counsel for the appellant is that the said document duly proved on record clearly shows that the responsibility was taken by the respondent Nos. 1 & 2 to get the ownership of the said vehicle transferred in the name of the

appellant and even all the transfer documents were taken by them from Ms. Rewa and the same were directly submitted by them with the concerned registering authority. Counsel for the respondent Nos. 1 & 2, on the other hand, has taken a stand that the appellant had purchased the second hand car at a discounted rate of Rs. 7,55,000/- and the appellant was fully aware of the fact that the said car was registered in the name of the original purchaser Ms. Rewa. Counsel further submits that the necessary transfer documents were delivered to the appellant at the time of delivering the possession of the car and therefore it was for the appellant itself to have applied for the transfer of the ownership of the said vehicle in the records of the registering authority. Counsel for the respondent further submits that in the evidence adduced by the respondent, it was clearly proved on record that the necessary form Nos. 29 and 30 duly signed and executed by Ms. Rewa were delivered to the appellant. Counsel further submits that the appellant had never approached the respondents complaining any inaction on their part to secure the transfer of

ownership in the name of the appellant till the said car of the appellant met with a major accident after a gap of 2-1/2 years from the date of purchase. Counsel thus submits that once having delivered the possession of the car along with the necessary transfer documents it was no more an obligation on the part of the respondent No. 1 & 2 to keep chasing as to whether the transfer of the ownership in fact has taken place or not. Counsel further submits that had the appellant found any difficulty in securing the transfer then certainly they would have rendered the necessary assistance in the matter. Counsel thus submits that there is no illegality in the order passed by the Ld. Trial Court dismissing the suit of the appellant.

4 . I have heard learned counsel for the parties.

5 . Section 39 of the Motor Vehicles Act, 1988 prohibits any person to drive any motor vehicle unless the vehicle is registered. Section 40 further provides that every owner of a motor vehicle shall cause the vehicle to be registered by a registering authority in whose jurisdiction he has residence or place of business. Section 41 provides the procedure as to

how registration can be made and Section 50 deals with the transfer of ownership. To decide the controversy in hand it is relevant to reproduce Section 50 of the Act as under:-

50. Transfer of ownership.

(1) Where the ownership of any motor vehicle registered under this Chapter is transferred,

(a) the transferor shall,-

(i) in the case of a vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee; and

(ii) in the case of a vehicle registered outside the State, within forty-five days of the transfer, forward to the registering authority referred to in sub-clause (i)-

(A) the no objection certificate obtained under section 48; or

(B) in a case where no such certificate has been obtained,-

(I) the receipt obtained under sub-section (2) of section 48; or

(II) the postal acknowledgment received by the transferee if he has sent an application in this behalf by registered post acknowledgment due to the registering authority referred to in section 48,

together with a declaration that he has not received any communication from such authority refusing to grant such certificate or requiring him to comply with any direction subject to which such certificate may be granted;

(b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he

has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration.

(2) Where-

(a) the person in whose name a motor vehicle stands registered dies, or

(b) a motor vehicle has been purchased or acquired at a public auction conducted by, or on behalf of, Government,

the person succeeding to the possession of the vehicle or, as the case may be, who has purchased or acquired the motor vehicle, shall make an application for the purpose of transferring the ownership of the vehicle in his name, to the registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, in such manner, accompanied with such fee, and within such period as may be prescribed by the Central Government.

(3) If the transferor or the transferee fails to report to the registering authority the fact of transfer within the period specified in clause (a) or clause (b) of subsection (1), as the case may be, or if the person who is required to make an application under subsection (2) (hereafter in this section referred to as the other person) fails to make such application within the period prescribed, the registering authority may, having regard to the circumstances of the case, require the transferor or the transferee, or the other person, as the case may be, to pay, in lieu of any action that may be taken against him under section 177 such amount not exceeding one hundred rupees as may be prescribed under subsection (5):

Provided that action under section 177 shall be taken against the transferor or the transferee or the other person, as the case may be, where he fails to pay the said amount.

(4) Where a person has paid the amount under sub-section (3), no action shall be taken against him under section 177.

(5) For the purposes of sub-section (3), a State Government may prescribe different amounts having regard to the period of delay on the part of the transferor or the transferee in reporting the fact of transfer of ownership of the motor vehicle or of the other person in making the application under sub-section (2).

(6) On receipt of a report under sub-section (1), or an application under subsection (2), the registering authority may cause the transfer of ownership to be entered in the certificate of registration.

(7) A registering authority making any such entry shall communicate the transfer of ownership to the transferor and to the original registering authority, if it is not the original registering authority.

6 . The aforesaid provision of the Motor Vehicles Act clearly shows that no vehicle can be driven on road unless the same is registered in the name of the owner. In the present case, the initial ownership of the said Opel Astra vehicle was in the name of Ms. Rewa but she was never in the picture as the said car was purchased by the appellant from the authorized dealer i.e. respondent Nos. 1 & 2 in whose favour alone the appellant had issued the cheque towards sale price of the vehicle. As per the defence of the respondent Nos. 1 & 2, their case is that all the transferred documents duly signed by Ms

Rewa were handed over to the appellant and it was for the appellant to have acted to get the ownership of the said vehicle transferred in its name. On the other hand, the plea of the appellant is that the obligation was on the part of respondent Nos. 1 & 2 to get the ownership of the said vehicle transferred in the name of the appellant. Except one letter of the respondent Nos. 1 and 2 wherein they have confirmed that the said form Nos. 29 and 30 were submitted to the registering authority, there is no other evidence led by the appellant to show if any steps were taken by the appellant to pursue the respondent Nos. 1 & 2 to get the said vehicle registered in the name of the appellant. It is an undisputed fact that without the registration of the vehicle being transferred in the name of the appellant, the said vehicle was being driven on the road in contravention of the provisions of Section 39 of the Motor Vehicles Act. As per Section 50 of the said Act, it is the responsibility of the transferee also to report about the transfer within 30 days of the purchase of the vehicle and action U/s 50 (3) and 50 (5) r/w S. 177 can be taken against the transferor or

transferee for not reporting to the registering authority about the fact of the transfer within the given time. As already discussed above, the transferor is not in the picture in the present case and therefore it was the sole responsibility of the transferee to have reported the transfer of the said vehicle within the mandatory period of 30 days and in case the transferred documents were available with respondent Nos. 1 and 2 then transferee should have properly followed up with the respondent Nos. 1 & 2 to get the ownership of the vehicle transferred in its name within the said period. It is quite apparent from the facts on record that the appellant became active only when the said car met with an accident after 2-1/2 years from the date of the purchase and consequently had to get major repairs done. No letter of request was made by the appellant to the respondents during this period of 2-1/2 years, therefore it is quite evident that the appellant itself was negligent in taking proper steps to get the ownership of the said vehicle transferred in its name.

7 . Hence, in the light of the above discussion, I do not find any merit in the present appeal, the same is hereby dismissed.

August 12, 2010
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KAILASH GAMBHIR, J