

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

+ **RFA 444/2003**

% **22ND December, 2011**

YAMAHA MOTOR INDIA P. LTD. Appellant
Through : Mr. Rajat Joneja, Advocate.

versus

SARLA SAHNI AND OTHERS Respondent
Through : Mr. M. Dutta and Ms. S. Bajaj,
Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 28.4.2003. By the impugned judgment the suit for recovery of the amount of security deposit filed by the appellant/plaintiff has been dismissed. The suit was dismissed at the initial stage i.e. without evidence being led by both the parties, on the ground that the lease agreement was entered into between M/s Escorts Yamaha Motor Limited, but the suit had been filed by M/s Yamaha Motor India Private Limited.

2. The facts of the case are that a lease agreement was entered into between the plaintiff and the defendants for letting out the premises being I-5, Maharani Bagh, New Delhi-110 065, and which lease commenced with effect from 1.4.1996 for a period of two years ending 31.3.1998. After the expiry of the lease, the appellant/plaintiff claimed back the amount of ₹4,32,000/- deposited with the defendant as interest free refundable security deposit, which was not refunded and therefore the subject suit for recovery came to be filed for the amount of the security deposit.

3. In the written statement one of the plea which was taken by the defendants/respondents was that the suit was not maintainable on behalf of the plaintiff-M/s Yamaha Motor India Private Limited as the lease was entered into by the respondents/defendants with M/s Escorts Yamaha Motor Limited. The appellant/plaintiff replied to the defence of the suit not having been validly filed by stating that there was only a change of name of the Company from M/s Escorts Yamaha Motor Limited to M/s Yamaha Motor India Private Limited.

4. The trial Court has given the following observations for dismissing of the suit:-

“13. Accordingly this lease deed itself states that lease agreement has been executed and signed between the defendants and Escorts Yamaha Motor Ltd, a company registered under the Companies Act, 1956, and not between the defendant and the plaintiff i.e. Yamaha Motor

India Private Limited.

14. In order to establish the locus standi and cause of action in favour of the plaintiff to file the present suit, the plaintiff was under an obligation to plead all the relevant material facts so as to establish the relationship between the plaintiff company and the company with whom the said agreement had taken place. If the name has been changed, as contended by the plaintiff in the application, the same must have been pleaded in the plaint; but no such change has been pleaded by the plaintiff in the entire plaint. Every company has a distinct identity and such distinct identity incorporate the right and locus standi to enforce their right or to discharge their liabilities. In order to enforce the right, the plaintiff bitterly failed to establish any fact for filing the present suit or showing cause of action in its favour on the basis of the said lease agreement executed and signed in the month of April, 1998. Since the agreement executed and signed admittedly between the defendants and the Escorts Yamaha Motor Ltd., and not with the plaintiff, I find that the plaintiff bitterly failed to plead any fact establishing its locus standi to file the present suit or disclosing any cause of action in its favour and against the defendants. On the other hand, the plaintiff has pleaded the misleading and false facts. The plaintiff has specifically pleaded that plaintiff and defendants 1, 2 and 3 entered into a lease agreement for letting out the premises namely i.e. I-5, Maharani Bagh in March, 1996. At the same time it has also pleaded in Para-7 that upon expiry of the said lease deed both the plaintiff and the defendants further entered and executed a fresh lease deed in April, 1998 for a further period of two years.

15. According to the reply given by the plaintiff itself the said company was allegedly changed in 2001. Even if it is assumed that the said company was changed in 2001 from Escorts Yamaha Motor Limited to M/s Yamaha Motor India Private Limited in 2001, I find that the M/s Yamaha Motor India Private Limited was not in existence in 1996 or 1998. Therefore, there was no question of entering into the lease agreement between the defendants

and the plaintiff and, therefore, I find that these facts are absolutely false and baseless and the same has been pleaded by the plaintiff merely to mislead the Court and thereby plaintiff has concealed the true facts from the Court on record in that regard for claiming such relief. Since the plaintiff company was not in existence 1996 or 1998, since as per admission made by the plaintiff, it has come into existence and it has been incorporated in 2001, I find that there was no question of entering into an agreement by the plaintiff with the defendants in 1996 or 1998. That being so, I find that plaintiff bitterly failed to establish its locus standi in its favour and against the defendant to file the present suit and the plaintiff also bitterly failed to plead any cause of action against the defendants for filing the present suit for recovery of Rs.4,32,000/-, since there was no privity of contract between the plaintiff and the defendants as the agreement had admittedly been signed between the defendants and the Escorts Yamaha Motor Limited. Therefore, keeping in view the facts of the present case pleaded in the plaint and the law cited and relied by the ld. counsel for the defendant which is squarely applicable to the present application, I find that the present suit is liable to be rejected and dismissed for disclosing no cause of action and no locus standi to file the present suit and there being no privity of contract between the plaintiff and the defendants. So this issue stands decided in favour of the defendants and against the plaintiff.

In view of my findings recorded for the aforesaid issue, this Court has no option but to reject the plaint under O.7 Rule 11(A) of the CPC. Consequently, the suit of the plaintiff is dismissed/rejected under order 7 Rule 11 (a) of CPC. Parties are left to bear their own Cost. File be consigned to RR.”

5. The aforesaid findings are completely illegal inasmuch as disputed questions of facts have been decided without the appellant/plaintiff being allowed to lead evidence to prove the case that the plaintiff, who filed the suit,

was the same plaintiff with whom lease was entered into with the respondent/defendant, and merely the name of the lessee company had changed from M/s Escorts Yamaha Motor Limited to M/s Yamaha Motor India Private Limited.

6. In view of Section 23 of the Companies Act, 1956, when a company changes its name, the rights and liabilities of the company continues to be of the company with the changed name. A mere change of name will not in any manner affect the rights and liabilities of the company. Section 23 of the Companies Act, 1956 is relevant, and the same reads as under:-

“23. Registration of change of name and effect thereof .-

(1) ...

(2) ...

(3) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name.”

7. In view of the above, the impugned judgment is clearly illegal and is set aside. The disputed question of fact as to whether present plaintiff is the same lessee who entered into the lease agreement with the appellant/defendants is an issue of fact which will be decided after the trial i.e. when the evidence is led by both the parties. Obviously, it will be open to

the appellant/plaintiff to lead evidence and establish that the lessee company is the plaintiff company, and only the name of the company has been changed from M/s Escorts Yamaha Motor Limited to M/s Yamaha Motor India Private Limited. Other issues in the suit will also be decided in accordance with law.

7. The present appeal is allowed and disposed of accordingly, leaving the parties to bear their own costs. Trial Court record be sent back. Parties to appear before the District and Sessions Judge, Tis Hazari Courts, Delhi on 1st February, 2012 and on which date the District and Sessions Judge will mark the suit for disposal to the competent Court in accordance with law.

VALMIKI J. MEHTA, J.

DECEMBER 22, 2011

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