

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

% *Judgment delivered on : 27.04.2011*

+ **R.S.A.No. 30/2007**

MANISH MEHTA

.....Appellant

Through: None.

Versus

UNITED INDIA INSURANCE COMPANY LTD.

.....Respondents

Through: Mr. K.L. Nandwani, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1. This appeal has impugned the judgment and decree dated 15.09.2006 which had reversed the finding of the trial judge dated 02.08.2005. Vide judgment and decree dated 02.08.2005, the suit filed by the plaintiff Sh. Manish Mehta seeking recovery of ₹78,590/- had been decreed for a sum of ₹ 58,590/- along with the interest at 6 % per annum. This was reversed by the impugned

judgment. Suit of the plaintiff stood dismissed.

2. Plaintiff had purchased the Hyundai Santro car bearing no. DL-5CB-3326 on the hire basis; the finance had been obtained from the M/s G.M.A.C. TCFC Finance Ltd. The vehicle was insured with defendant no. 3 vide Insurance Policy dated 01.08.2000. On 12.03.2001, the vehicle was stolen. FIR was lodged in the concerned police station. On 14.03.2001, information about theft was given to the finance company. It was also conveyed to defendant no. 3. Since the vehicle no longer remained in possession of the plaintiff, the hire installments were not paid by the plaintiff. In the process of settlement and the negotiations which were going on with defendant no. 3 for payment of the insurance amount, the vehicle was recovered by the police on 26.05.2002; it was in a dilapidated state; it required extensive repairs. The car was delivered to the plaintiff on superdari. Necessary repairs were carried out. Information in this regard was given to the defendants. Defendant no. 3 obtained the survey report and sanctioned an amount of ₹54,676/- as damages. Meanwhile, some disputes arose between the plaintiff and the finance company on account of delay in payment of installments. Defendant no. 3 contravened his obligations and

conveyed to the finance company the amount which had been sanctioned in favour of the plaintiff for the repair of the vehicle. This act of defendant no. 3 was malafide; it was in breach of the Insurance Policy between the plaintiff and the defendant no. 3. On 25.09.2002, defendant no. 3 asked the plaintiff to obtain the signatures of the finance company on the payment voucher as a token of no objection for making the payment of ₹54,676/- in the name of the plaintiff. Thereafter, in spite of requests, the amount was not released to the plaintiff. He sent legal notice dated 16.12.2002 but to no avail. A suit for injunction was filed by the plaintiff seeking a direction to defendant no. 3 to release the aforementioned amount in his favour which was thereafter released. The vehicle was ready for delivery but meanwhile M/s M.G.F. Automobiles Ltd. who had conducted the repairs demanded the sum of ₹12,000/- for parking this vehicle in this intervening period between June 2002 to January 2003 as the vehicle was ready for delivery but the same could not be taken by the plaintiff because of the funds not being available with him. The defendants had prevented the plaintiff from taking this delivery of the car in June 2002 as the money had not been released by them. Plaintiff had to hire the car from M/s. Dholakia Tours and Travels between June

2002 to January 2003 for his business purpose for which he had spent Rs. 93,180/-; 50 % of this amount i.e. ₹ 46,590/- has been claimed by the plaintiff; another sum of ₹ 20,000/- had been claimed on the account of harassment. Rs. 12,000/- were the parking charges. Total sum of ₹ 78,590/- had been claimed by filing the present suit.

3 In the written statement, defendant denied the allegations of the plaintiff. It was vehemently denied that the defendants were responsible for the loss, if any, which had accrued to the plaintiff.

4. On the pleadings of the parties, the following issues were framed. They inter alia reads as follows:-

- 1) *Whether the suit is bad for non-joinder of G.M.A.C.P. Company Finance Ltd? If so its effects? OPD.*
- 2) *Whether the plaintiff is entitled for decree of recovery of ₹ 78,590/-? OPP.*
- 3) *Whether plaintiff is entitled for any pendente lite interest? If so, at what rate? OPD.*
- 4) *Whether there was any breach of contract by the defendant? OPP.*
- 5) *Relief.*

5. Oral and documentary evidence was led by. The trial judge was of the view that the plaintiff was entitled to the aforementioned amounts; defendants could not have asked for a No Objection

Certificate from the plaintiff which he, in turn, had to obtain from the finance company; this was not a part of the contract between the plaintiff and the defendants. Suit of the plaintiff was accordingly decreed.

6. In appeal, this finding was reversed. The impugned judgment had disallowed the claim of the plaintiff.

7 This is a second appeal. It had been admitted and on 08.09.2009, the following substantial questions of law were formulated. They inter alia reads as follows:-

1) Whether the First Appellate Court appreciated the evidence and pleadings of the parties in the right perspective while holding that the Court at Delhi had no territorial jurisdiction to entertain in the suit?

2) Whether the First Appellate Court without any proper reasoning rightly held that the suit was barred under Order 2 Rule 2 CPC?

3) Whether the First Appellate Court was right in holding that in view of the arbitration clause contained in the agreement, the court has no jurisdiction to entertain the suit especially when no such objection has raised by the respondent in the written statement and parties submitted themselves to the jurisdiction of the civil court to settle their dispute?

8. None has appeared for the appellant inspite of matter having been retained on board and the counsel for the appellant having been served with the court notice.

9 The impugned judgment had correctly noted that the claim

of the plaintiff for the cost of repairs incurred by him on his vehicle, in terms of his contract with the insurance company had been paid over to him. It was not in dispute that a sum of ₹54,676/- had in fact been received by the appellant/plaintiff in full and final settlement of his amount. Receipt had been proved as Ex. PW-1/D1. This has also been admitted by the plaintiff. In fact the case of the plaintiff was that he had filed an earlier suit i.e. suit No. 994/2002 seeking a direction against the defendant asking them to release the aforementioned amount i.e. ₹54,676/- which he had incurred for the repairs of his insured vehicle and in terms of the directions of the Court this amount had been released to him in January, 2003. This second suit had been filed by the plaintiff seeking the amounts as aforementioned. ₹12,000/- had been demanded for parking this vehicle at the MGF Automobile as the vehicle was ready for delivery to the plaintiff but could not be taken by him because the funds were not available to him to get the vehicle released. ₹46,950/- was 50% of ₹93,180/- the amount which he had spent between June, 2002 to January, 2003 which he had incurred on travelling because he did not have the aforementioned vehicle and this loss was attributed to the fault of the defendant; ₹20,000/- had been claimed on account of harassment. The

impugned judgment had correctly noted that the plaintiff has failed to prove the aforementioned averments; his oral and documentary evidence did not substantiate these claims in his favour; in fact Ex. PW-1/D1 which the receipt showing that an amount of ₹54,676/- had been received by the plaintiff did not state that this amount is being received without prejudice to any further claim. The earlier suit i.e. suit No. 994/2002 had also been abandoned after the receipt of this amount and it had not been taken to its logical conclusion. The impugned judgment had noted that the damages claimed by the plaintiff are remote and not attributable to the act of the defendant. Moreover, the 13 bills proved by the plaintiff as travelling expenses incurred between June, 2002 to January, 2003 were all amounts paid by cash; these bills were found to be suspect. The impugned judgment had correctly appreciated the oral and documentary evidence in arriving at the aforementioned finding.

10 In a second appeal, the findings of fact cannot be interfered with unless there is a perversity. No such perversity is made out. The first appellate court had appreciated the pleadings of the parties and the evidence led before it in the correct perspective. The first suit i.e. suit No. 994/2002 was filed on 24.12.2003; this

was simpliciter a suit for injunction; no other relief had been claimed in this suit on account of any harassment or damages for the travelling expenses as has been detailed in the second suit. Order 2 Rule 2 of the Code was rightly adverted to; where the plaintiff omits to sue or intentionally or relinquishes any portion of his claim, he shall not afterwards sue in respect of that portion which he has so omitted or relinquished.

11 The impugned judgment on no square calls for any interference. Substantial questions of law are answered accordingly. Appeal is without any merit. Dismissed.

INDERMEET KAUR, J.

APRIL 27, 2011

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