

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

% **Date of decision: 23rd September, 2013.**

+ **RFA 552/2005**

M/S SUNEET FINMAN PVT.LTD. Appellant

Through: Mr. Anilendra Pandey, Adv.

Versus

AJIT SINGH & ORS. Respondents

Through: Mr. Madan Lal, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The appeal impugns the judgment and decree, dated 2nd February, 2005 of the Court of the Additional District Judge (ADJ) in Suit No.30/2002 filed by the respondent No.1/plaintiff against the appellant and against one Mr. Rajan Arora and Mr. Batan Singh, for recovery of Rs.1,50,000/- together with interest at 9% per annum from the date of judgment/decree till realization, from the appellant and the said Mr. Rajan Arora and Mr. Batan Singh jointly and severally.

2. Notice of the appeal was issued and on the direction contained in the order dated 10th November, 2006, the said Mr. Rajan Arora and Mr. Batan Singh who were earlier not impleaded as parties to the appeal were so

impleaded and amended memo of parties filed. The said Mr. Rajan Arora and Mr. Batan Singh failed to appear inspite of substituted service and were vide order dated 12th March, 2013 proceeded against *ex-parte*. The Trial Court record has been requisitioned. The counsel for the appellant and the counsel for the respondent No.1 Mr. Ajit Singh have been heard.

3. The respondent No.1 Mr. Ajit Singh instituted the suit from which this appeal arises, pleading:

- (i) that he was the registered owner of H.T.V. truck bearing registration No.HR-38-4999;
- (ii) that the appellant/defendant No.1 company is dealing in the business of advancing of loans on the security of vehicles;
- (iii) that the respondent No.1/plaintiff approached the appellant/defendant No.1 for a loan of Rs.1,50,000/- and to secure the same handed over the original Registration Certificate of his aforesaid vehicle to the appellant/defendant No.1 for verification;
- (iv) that however the said loan transaction did not materialize and the appellant/defendant No.1 accordingly returned the original Registration Certificate to the respondent No.1/plaintiff;
- (v) that the respondent No.1/plaintiff on return of the original

Registration Certificate found an endorsement of loan having been thereon in the name of the appellant/defendant No.1;

(vi) that the respondent No.1/plaintiff asked the appellant/defendant No.1 to have the said endorsement cancelled but the appellant/defendant No.1 failed to do so;

(vii) that on 29th/30th November, 2000, the appellant/defendant No.1 illegally, unlawfully and unauthorisedly and acting in collusion with the local police seized the aforesaid vehicle without any warning or notice in writing to the respondent No.1/plaintiff;

(viii) that though the respondent No.1/plaintiff approached the appellant/defendant No.1 for return of the vehicle but with no effect;

(ix) that the appellant/defendant No.1 thus unauthorisedly and illegally retained possession of the said vehicle of the respondent No.1/plaintiff to the great loss and detriment of the respondent No.1/plaintiff;

(x) that the appellant/defendant No.1 on the basis of false, forged and fabricated documents transferred the said vehicle to the said Mr. Rajan Arora impleaded as defendant No.2 and Mr. Batan Singh impleaded as defendant No.3;

(xi) that the respondent No.1/plaintiff, on 28th February, 2002, upon finding the said vehicle plying on the road, being driven by the driver of defendant No.2, complained to the police and the same was seized and later on released on *Superdari* to the respondent No.1/plaintiff.

The respondent No.1/plaintiff on the basis of the aforesaid averments claimed the reliefs of, (a) mandatory injunction directing the appellant/defendant No.1 to get the endorsement of loan in its favour on the Registration Certificate of the vehicle cancelled/removed from the records of the registration authorities and from the Registration Certificate of the said vehicle; (b) permanent injunction restraining the appellant/defendant No.1 and the other two respondents/defendants from interfering in plying of the said vehicle by the respondent No.1/plaintiff; and (c) for recovery of Rs.4,79,000/- towards damages/mesne profits for illegal retention of the said vehicle between 1st December, 2000 till 4th March, 2002 when it was released on *Superdari* to the respondent No.1/plaintiff.

4. The appellant/defendant No.1 contested the suit by filing the written statement, pleading:

(a) that the endorsement on the Registration Certificate of the

vehicle was made in anticipation of the loan transaction with the respondent No.1/plaintiff and upon submission of Form No.34 by the respondent No.1/plaintiff;

(b) that however upon the loan transaction not materializing not only was the original Registration Certificate returned to the respondent No.1/plaintiff but also an appropriate form duly signed on behalf of the appellant/defendant No.1 and to enable the appellant/defendant No.1 to have the said endorsement on the Registration Certificate in favour of the appellant/defendant No.1 removed also handed over to the respondent No.1/plaintiff; a letter dated 30th March, 2001 in this regard was also written to the Motor Vehicles Department of the place where the said vehicle was registered;

(c) denying that the appellant/defendant No.1 had seized the said vehicle or that the same was ever in the custody of the appellant/defendant No.1 or that the appellant/defendant No.1 had sold the same to the respondents No.2 & 3.

5. The respondent No.3 Mr. Batan Singh also contested the suit by filing the written statement pleading that the said vehicle had been sold by the

respondent No.1/plaintiff through his father to the respondent No.3 Sh. Batan Singh.

6. On the pleadings aforesaid of the parties, the following issues were framed in the in the suit on 1st August, 2003:

- “1. *Whether on 29/30-11-2000 defendant No.1 illegally unauthorisedly seized the truck bearing no.HR 38-499 of which plaintiff is the registered owner without any warning or notice at Delhi UP border? OPP*
2. *Whether defendants jointly and severally remained in actual physical possession, control and user of the aforesaid truck on the basis of false, forged and fabricated documents from 29/30.11.2000 till 28.2.2002? OPP*
3. *Whether there is no cause of action qua defendant no.1? OPD-1*
4. *Whether plaintiff has signed form no.34? OPD-1*
5. *Whether defendant no.1 never came in possession of the truck in question? OPD-1*
6. *Whether defendant no.3 purchased the truck in question from the plaintiff and this father for a valid consideration of Rs.2.50 lacs vide receipt dated 2.5.2001? OPD-3*
7. *Whether the plaintiff is entitled for the relief claimed for? OPP*
8. *Relief.”*

7. The respondent No.1/plaintiff besides examining himself examined his father, the *Khalasi* on the vehicle when it was claimed to have been seized by the appellant/defendant No.1 and the officials from the Transport Department, police and the Court where the case on complaint of the respondent No.1/plaintiff was pending.

8. The appellant/defendant No.1 examined its Director. No evidence was led by the respondents No.2 & 3 who were proceeded against *ex-parte*.
9. The learned ADJ in the impugned judgment has found/observed/held:
- (i) that the respondent No.1/plaintiff prior to the institution of the suit had got issued a legal notice dated 9th June, 2001 to the appellant/defendant No.1 and to which the appellant/defendant No.1 had failed to reply, as it ought to have; that adverse inference had to be drawn against the appellant/defendant No.1 therefrom;
 - (ii) that since the respondent No.1/plaintiff and his father were in transport business and three of their other vehicles had also been financed from the appellant/defendant No.1, may be for this reason, the respondent No.1/plaintiff never reported the matter to the police or other authorities regarding illegal seizure of the vehicle aforesaid by the appellant/defendant No.1;
 - (iii) that had the appellant/defendant No.1 at the time of return of the original Registration Certificate to the respondent No.1/plaintiff also handed over the requisite form enabling the respondent No.1/plaintiff to have the endorsement in favour of the appellant/defendant No.1 cancelled and had the appellant/defendant

No.1 also written to the Transport Department for cancellation of the endorsement, the appellant/defendant No.1 would have definitely replied to the legal notice preceding the suit;

(iv) that it was the admitted case of the respondent/defendant No.3 Sh. Batan Singh that he came in possession of the vehicle; however his case was that the vehicle was sold by the father of the respondent No.1/plaintiff; that the respondent No.1/plaintiff and his father had denied selling of the vehicle to the respondent/defendant No.3; that the vehicle at the time of seizure on the complaint of the respondent No.1/plaintiff was in possession of respondent/defendant No.2 namely Mr. Rajan Arora who was the driver of the respondent/defendant No.3 Mr. Batan Singh; that though the respondent/defendant No.2 Mr. Rajan Arora has also moved an application for release of the vehicle to him but the vehicle had been released to the respondent No.1/plaintiff as he was found to be the registered owner thereof and as there was no record of transfer of vehicle to any other person;

(v) that it thus stood proved that the vehicle was illegally seized by the appellant/defendant No.1 on 29th/30th November, 2000 and

remained in possession of the appellant/defendant No.1 and the other respondents/defendants No.2 & 3 and the respondent/defendant No.3 Mr. Batan Singh had failed to prove that the vehicle was sold to him by the father of the respondent No.1/plaintiff.

Accordingly, damages in the sum of Rs.1,50,000/- with interest as aforesaid were decreed against the appellant/defendant No.1 and the respondents/defendants No.2 & 3 jointly and severally.

10. Even though there is no discussion in the judgment with respect to the other reliefs including of mandatory injunction claimed by the respondent No.1/plaintiff and no such relief has been granted but the counsel for the respondent No.1/plaintiff states that no appeal has been filed and no grievance with respect thereto has been made. Rather, finding that there is no stay of execution, though the appeal has been pending before this Court for the last nearly eight years, it was enquired from the counsel for the respondent No.1/plaintiff whether decree has been executed. The counsel for the respondent No.1/plaintiff states that no execution also has been filed owing to the pendency of this appeal.

11. The only contention of the counsel for the appellant/defendant No.1 is that the decree against the appellant/defendant No.1, solely for the reason of

the appellant/defendant No.1 having not replied to the legal notice preceding the suit, is unjustified. The counsel for the respondent No.1/plaintiff supports the judgment.

12. I have perused the evidence recorded.

13. Though the *major* part of the cause of action for the suit from which this appeal arises was the illegal seizure by the appellant/defendant No.1 on 29th/30th November, 2000 of the vehicle but strangely no complaint whatsoever was made by the respondent No.1/plaintiff of the said incident. The respondent No.1/plaintiff in the plaint did not even give any explanation therefor. The learned ADJ also, realizing the importance of the said fact, has not held the same against the respondent No.1/plaintiff reasoning that complaint of the incident 'may not have been' made by the respondent No.1/plaintiff for the reason of the father of the respondent No.1/plaintiff having got other three vehicles financed from the appellant/defendant No.1. However, on perusal of the Trial Court record, the said reasoning is found to be a hypothesis of the imagination of the learned ADJ and without any foundation in evidence. There is no evidence of the respondent No.1/plaintiff or his father to the said effect. No particulars even of the other vehicles of the father of the respondent

No.1/plaintiff so financed or documents of such finance in operation as on that date have been proved. Rather, the respondent No.1/plaintiff in his affidavit by way of examination-in-chief has deposed that he did approach the police for help but was not given on the ground that the dispute was of a civil nature.

14. Thus, the reasoning given by the learned ADJ on the important aspect of the respondent No.1/plaintiff having not complained of the alleged illegal seizure of the vehicle on 29th/30th November, 2000 by the appellant/defendant No.1 is without any basis and rather contrary to the evidence on record and cannot be sustained.

15. It is interesting to note that ultimately the respondent No.1/plaintiff went to the police and it was the police only who on 28th February, 2002 seized the said vehicle. If the respondent No.1/plaintiff could go to the police on 28th February, 2002, he could have so gone to the police on 29th/30th November, 2000 as well. It is not the case of the respondent No.1/plaintiff that the agreements of finance of other vehicles which were in force/operation on 29th/30th November, 2000 had come to an end by 28th February, 2002.

16. The counsel for the respondent No.1/plaintiff at this stage interjects to

state that on 28th February, 2002, the matter was reported to the police on finding the vehicle plying.

17. I find the said argument to be also strange. It appears that the respondent No.1/plaintiff was not aggrieved from the alleged illegal seizure on 29th/30th November, 2000 of the vehicle and became aggrieved only on seeing the same plying.

18. The counsel for the respondent No.1/plaintiff has while supporting the judgment contended that since the appellant/defendant No.1 was not a stranger to the respondent No.1/plaintiff, the appellant/defendant No.1 owed a duty to reply to the legal notice.

19. I may in this regard notice that the Director of the appellant/defendant No.1 in his cross-examination also has admitted the receipt of the notice.

20. I am unable to fix liability on the sole factor of non-reply to the legal notice. It may be noticed that though the appellant/defendant No.1 may have had relationship with the father of the respondent No.1/plaintiff of financing of vehicles but the said relationship cannot be equated to the relationship with respect to the subject vehicle. It is well nigh possible that the appellant/defendant No.1 finding the notice received by it to be not concerning any vehicle in which it had an interest, chose not to respond

thereto. Viz.-a-viz. the said vehicle, the appellant/defendant No.1 indeed was a stranger.

21. Without the respondent No.1/plaintiff establishing that the vehicle was seized on 29th/30th November, 2000 by the appellant/defendant No.1 and was transferred by the appellant/defendant No.1 to the other respondents/defendants No.2 & 3, no liability for illegal seizure and illegal retention of the vehicle can be fastened on the appellant/defendant No.1. There is absolutely no such evidence. The argument at this stage also raised by the counsel for the respondent No.1/plaintiff is of the respondent No.1/plaintiff having not proved having at the time of return of the original Registration Certificate of the vehicle delivered the requisite form to enable the respondent No.1/plaintiff to have the said endorsement removed or to the Transport Department for the said purpose.

22. I am unable to agree. Even if that be so, there is nothing to show that the respondent No.1/plaintiff at any time called upon the appellant/defendant No.1 to do so. The learned ADJ has in para 13 of the impugned judgment given the date of the said endorsement as 12th February, 2001. Finding the same to be incongruous with the case of the respondent No.1/plaintiff, I have scanned the Trial Court record and do not find the said

date neither in the pleadings nor in the evidence led. The date of the endorsement of hypothecation in favour of the appellant/defendant No.1 on the Registration Certificate appears to be 12th February, 2000 and not 12th February, 2001 as also confirmed from the copy of Form 34-A claimed to have been handed over by the appellant/defendant No.1 to the respondent No.1/plaintiff and the date whereof is 17th February, 2000. Admittedly, after 12th February, 2000 the vehicle was being plied by the respondent No.1/plaintiff till the alleged seizure on 29th/30th November, 2000. The respondent No.1/plaintiff for the said long span of time did not deem it appropriate to have the endorsement changed. Thus, mere factum of the said endorsement cannot link the appellant/defendant No.1 to the seizure even if any of the vehicle on 29th/30th November, 2000. Rather, there is no evidence at all to show that the vehicle was so seized on that date. All that has been proved is that the vehicle was seized by the police on the complaint of the respondent No.1/plaintiff on 28th February, 2002 and at that time it was being plied by the driver of the respondent/defendant No.2.

23. The judgment of the learned ADJ thus, insofar as against the appellant/defendant No.1, cannot be sustained and is set aside.

24. The appeal is accordingly allowed; the impugned judgment and

decree dated 2nd February, 2005 insofar as against the appellant/defendant No.1 is set aside. However in the facts and circumstances, I refrain from imposing any costs on the respondent No.1/plaintiff.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 23, 2013

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