

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

+ **RFA No. 673/2017**

% **Reserved on: 31st July, 2017**
Pronounced on: 4th August, 2017

ABDUL REHMAN Appellant

Through: Mr. Bahar U. Barqi, Advocate

versus

M/S SPEARHEAD DIGITAL STUDIO PVT. LTD. Respondent

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No.27027/2017 (Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

RFA No. 673/2017 & CM No. 27026/2017 (Stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/defendant impugning the judgment and decree of the trial court dated 24.12.2016 decreeing the suit filed by the respondent/plaintiff for recovery of the vehicle Ford Ikon car (hereinafter referred to as "the car") with

damages, for a sum of Rs. 6,09,041/- being the value of the car along with damages of Rs. 3,70,000/-, totaling to Rs. 9,79,041/-, along with interest at 18% per annum. Trial court by its judgment instead of ordering return back of the car as prayed in the plaint, instead has granted recovery of the price of the car and damages.

2. The facts of the case are that the respondent/plaintiff by the suit pleaded that the appellant/defendant who was a practicing Advocate was appointed by the respondent/plaintiff as its Advocate. Respondent/plaintiff had purchased the car on 25.4.2001 from M/s. NPF Motors Pvt. Ltd., Okhla Industrial Estates, New Delhi after making a payment of Rs. 6,09,041/- and the respondent/plaintiff had been duly paying the EMIs. Respondent/plaintiff was also paying insurance premium on the vehicle. Since the appellant/defendant was retained as a legal advisor of the respondent/plaintiff/company and had been discharging its duty at that capacity, in September 2001 appellant/defendant when approached the respondent/plaintiff to provide him the car for few days as the appellant/defendant's car was out of order, his request was agreed to. Appellant/defendant after few days approached the respondent/plaintiff that he has forgotten the car

keys inside the car and therefore the duplicate keys be provided and which were according given by the respondent/plaintiff to the appellant/defendant. Appellant/defendant since in spite of requests refused to return the car, therefore the subject suit came to be filed. There were also some disputes existing between the parties with respect to forcible taking over of the vehicle and the claim of the appellant/defendant of having purchased the car from the respondent/plaintiff and which resulted in certain criminal cases between the parties.

3. Appellant/defendant filed the written statement and pleaded that the suit was time barred and that it was not maintainable. It was also pleaded that the car was in fact purchased by the appellant/defendant to help the respondent/plaintiff which was in financial difficulties. Appellant/defendant pleaded that on 9.10.2001 he paid a sum of Rs. 5,75,000/- to the MD of the respondent/plaintiff company Sh. Rajesh Duggal and who in turn delivered the car in question to the appellant/defendant with the original documents and with the keys of the same. Appellant/defendant pleaded to have purchased the car in terms of two documents being the

acknowledgment receipt and undertaking dated 9.10.2001, and which documents as per the respondent/plaintiff were forged and fabricated documents.

4. After pleadings were complete the trial court framed the following issues:-

- “(1) Whether the suit of the plaintiff is liable to be dismissed as filed on account of registration of FIR? OPD
- (2) Whether the plaintiff is registered owner of the car throughout and till filing of the case? If so, its effect? OPP
- (3) Whether the defendant is in illegal and unauthorised possession of the car in suit on the basis of forged documents i.e. acknowledgment dated 09.10.2001 and undertaking dated 09.10.2001? OPP
- (4) To what amount of misuse charges and damages, if any, plaintiff is entitled from the defendant? OPP
- (5) Relief.”

5. Respondent/plaintiff through its Director Sh. Rajesh Duggal filed his affidavit by way of evidence and proved various documents. This is referred to in paras 32, 33, and 49 to 51 of the judgment of the trial court and which paras read as under:-

“32. Shri Rajesh Duggal, Director of the plaintiff has tendered his evidence by way of affidavit Ex.PW1/A. He also relied upon the documents mention in his affidavit as Ex. PW1/1 to Ex. PW-1/8. Original minute book w.r.t documents sought to be exhibited Ex. PW-1/1 was not available with the witness, as such said document which was only an extract was de-exhibit and only mark as PX1, document sought to be exhibited as Ex. PW-1/2 (colly) which includes a copy of RC and

a photocopy of an invoice were mark de-exhibited and marked as Mark PX2, document sought to be exhibited as Ex. PW-1/3 which is photocopy of an insurance cover note as de-exhibited and marked as Mark PX3, documents sought to be exhibited as Ex. PW-1/4, Ex. PW-1/5 , Ex. PW-1/6 and Ex.PW1/7, but the originals were not available and being photocopy same were marked as PX4, PX5, PX6 and PX7. Certified copy of case titled as Rajesh Duggal vs. The State & Anr. CRL(R) No.22/04 was exhibited as Ex.PW1/8.

33. Sh. Om Prakash, Record Keeper, State Transport Authority, Sheikh Sarai, New Delhi was examined as PW2. He deposed that as per certificate Ex.PW2/A, vehicle No.DL3CS4120, Ford Ikon was registered in favour of Spearhead Digital Studio on 26.04.2001. He also proved compilation of loose sheets including Form 26 and Form 47 paginated as 1 to 23, as Ex.PW2/B.

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XXXXX

XXXXX

49. Sh. Rajesh Duggal examined himself as PW1 on his affidavit Ex.PW1/A, and he also relied upon following documents from Ex.PW1/1 to Ex.PW1/8:-

Ex.PW1/1 – Board Resolution in his favour

Ex.PW1/2 – Copy of RC of the car in question and invoice

Ex.PW1/3 – Copy of insurance cover note

Ex.PW1/5 – Copy of FIR No.520/04, PS Okhla

Ex.PW1/6 – Copy of order dated 18.11.2003 passed by Ld. ASJ,

Ex.PW1/7 (colly) – Copies of acknowledgment and undertaking originals of Ex.PW1/2 to Ex.P1/7 being not available, the same were de-exhibited and marked.

50. Record keeper from State Transport Authority was summoned and examined as PW2. He produced record of the Registration Certificate of the vehicle in question, stating that same was registered in favour of the plaintiff company on 26.04.2001, and said certificate was also exhibited thereafter on the basis of the original record brought as Ex.PW2/A.

51. Complete file which seemed to be like compilation of loose sheets including Form 26 and Form 47 and various other documents, were paginated in court from page no.1 to 23, and same were exhibited as Ex.PW2/B (original file was seen, compared and returned).”

6. The appellant/defendant’s defence was struck off vide order of the trial court dated 20.7.2012 and which has become final. Therefore, it is seen that the respondent/plaintiff has led evidence but

appellant/defendant has led no evidence and there is no written statement on record as the defence of the appellant/defendant stood struck off.

7.(i) Trial court in terms of the impugned judgment has held that the respondent/plaintiff has proved his case of ownership of the car in terms of the certified copy of the registration certificate issued by the registering authority proved as Ex.PW2/A. It was also found by the trial court that there is no transfer found of subject vehicle in the name of anyone else in the record of the registering authority till the suit was filed. This is demonstrated by the documents Ex.PW2/B (colly) containing a total of 23 pages of the record of the registering authority. The respondent/plaintiff proved the invoice of purchase of vehicle as Ex.PW1/2 and the insurance cover note as Ex.PW1/3, and both of which were in the name of the respondent/plaintiff.

(ii) Therefore, no fault can be found with the conclusion of the trial court that the respondent/plaintiff was the owner of the vehicle and the vehicle was not owned by the appellant/defendant. As already stated above, appellant/defendant has led no evidence, and did not even cross-examine the witness of the respondent/plaintiff. In view of the

fact that the appellant/defendant led no evidence hence the trial court has held that the documents relied upon by the appellant/defendant being the acknowledgement and undertaking dated 9.10.2001 are not proved and therefore do not transfer the ownership of the subject car to the appellant/defendant. In any case, as already discussed above, the subject vehicle stands in the name of the respondent/plaintiff right from the date of the purchase till the date of filing of the suit. Therefore, I agree with the discussion and the conclusion of the trial court holding the respondent/plaintiff to be the owner of the said car.

8. Trial court has thereafter for granting of relief observed that since the car is very old, no purpose will be served by directing the return of the car and therefore instead trial court passed a decree for the value of the car being the invoice value of Rs.6,09,041/-. Trial court also granted a sum of Rs.3,70,000/- as damages. Trial court also granted *pendente lite* and future interest at 18% per annum.

9. Learned counsel for the appellant/defendant argued that respondent/plaintiff has failed to prove the damages and that trial court could not have granted value of the car when there was no such relief

prayed in the plaint and which was only for return of the vehicle. It is therefore argued that the impugned judgment is liable to be set aside.

10. In my opinion, the argument urged on behalf of the appellant/defendant is misconceived in view of the provision of Order VII Rule 7 CPC and which provides that courts can mould the reliefs and grant different reliefs than as prayed in the plaint, in terms of the facts which have emerged on record of the court. In the present case, I do not find any illegality in the trial court granting the relief of the value of the car instead of return of the car because the car was taken by the appellant/defendant in September 2001 and the suit was decreed over 16 years later on 24.12.2016. The present was therefore a fit case where the trial court was entitled to and rightly molded the relief and which is exercised under the power provided as per Order VII Rule 7 CPC. Therefore, I uphold the findings and the reliefs granted by the trial court for giving value of the car instead of return of the vehicle.

11. Though there is strength in the arguments of the counsel for the appellant/defendant that the damages of Rs.3,70,000/- have not been proved, however, in my opinion, the damages as granted are

really in the nature of interest on the principal amount of Rs.6,09,041/- . Accordingly, I modify the impugned judgment and decree that instead of damages of Rs.3,70,000/- being granted to the respondent/plaintiff, the respondent/plaintiff is granted interest at 12% per annum simple from 1.9.2001 till the date of filing of the suit and also *pendente lite* and future interest till payment at the same rate of 12% per annum.

12. In view of the aforesaid discussion the appeal is dismissed but the impugned judgment is modified to the extent that instead of granting damages, the respondent/plaintiff is granted interest at 12% per annum simple from 1.9.2001 on the amount of Rs.6,09,041/- and which interest payable from 1.9.2001 will continue till the amount under the decree is paid by the appellant/defendant to the respondent/plaintiff. Appeal is disposed of accordingly, leaving the parties to bear their own costs.

AUGUST 04, 2017
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VALMIKI J. MEHTA, J