

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.3943 of 2011 (O&M)

Date of decision : 10.02.2015

Som Dutt

...Appellant

Versus

M/s CITICORP Finance (I) Ltd. & another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.P. Chahar, Advocate
for the appellant.

AMIT RAWAL, J. (Oral)

CM No.11284-C of 2011

The application is allowed as deficiency in Court fees has been made good subject to all exceptions.

Applications stands disposed of.

CM No.11285-C of 2011

This is an application for condonation of delay of 41 days in refiling the present appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 41 days in refiling the present appeal is condoned.

CM stands disposed of.

CM No.11286-C of 2011

This is an application u/s 151 CPC for exemption from filing the certified copy of judgment and decree dated 18.3.2009 and typed copy of annexures.

For the reasons stated in the application, which is duly supported by an affidavit, application is allowed subject to all just exceptions.

CM No.11287-C of 2011

In view of the observations rendered, application under Order 41 Rule 27 seeking permission of this Court to place on record the documents by way of additional evidence is dismissed, since they do not have direct bearing and not required for adjudication of the present appeal.

Accordingly, the said application is dismissed.

Main Case

This is a Regular Second Appeal at the instance of the appellant-plaintiff against the judgments and decrees of both the Courts below, whereby the suit of the appellant-plaintiff for mandatory injunction for issuance of an appropriate direction to the defendants to hand over the physical possession of the vehicle bearing registration No.HR-55-A-3868 Make-Swaraj Mazda to the appellant-plaintiff and for accepting the defaulted amount of ₹1,40,377/-, had been dismissed.

Mr. S.P. Chahar, learned counsel appearing on behalf of the appellant-plaintiff, in support of grounds of appeal, submits that both the Courts below have committed illegality and perversity in dismissing the suit as well as the appeal. He further submits that there was umpteen number of oral and documentary evidence on record to substantiate the plea as culled out in the plaint.

I am afraid, the aforementioned argument of learned counsel for the appellant-plaintiff is devoid of merit. The appellant-plaintiff had sent a

legal notice dated 06.06.2003 showing his willingness to pay the entire outstanding dues towards the loan liability taken in respect of aforementioned vehicle.

The case set out by the appellant-plaintiff was that on 27.04.2003, the vehicle was taken into custody by the Finance Company-respondent No.1 as the appellant-plaintiff had failed to pay the balance outstanding amount.

As per the facts brought on record during the pendency of the suit, it surfaced that vehicle in question was sold on 21.05.2003 by defendants-respondents and this fact was in the knowledge of the appellant-plaintiff. Despite having knowledge, the appellant-plaintiff did not file an appropriate suit claiming damages or some other appeal in respect of said mandatory injunction for handing over the custody of the vehicle after accepting the outstanding amount. The said claim was no longer in existence in the month of September, 2003, when the suit for permanent injunction was filed.

Both the Courts below have rendered a finding of fact and law, after appreciating the oral and documentary evidence.

No substantial question of law arises for adjudication of the present appeal.

Accordingly, the present appeal is dismissed.

10.02.2015

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**(AMIT RAWAL)
JUDGE**