IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.2182 of 2012 (O&M)
Date of Decision: December 4, 2015

Bank of Punjab Ltd., Miller Ganj Branch, Ludhiana

...Appellant

Versus

Harminder Kaur

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.R.C.Setia, Senior Advocate with
Mr.Surinder Singh, Advocate,
for the appellant.

Mr.Arun Gupta, Advocate for
Mr.Pankaj Bali, Advocate,
for the respondent.

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AMIT RAWAL, J. (Oral)

The appellant-defendant is in Regular Second Appeal against the judgment and decree of the Lower Appellate Court dated 2.12.2009, whereby the suit filed by the respondent-plaintiff for permanent and mandatory injunction, has been decreed.

Mr.R.C.Setia, learned Senior Counsel assisted by Mr.Surinder Singh Advocate, appearing on behalf of the appellant-defendant submits that the respondent-plaintiff had instituted a suit for permanent injunction restraining the appellant-Bank from taking the vehicle financed from the appellant-bank and as well as for mandatory injunction for issuance of direction to the Bank to hand over the possession of the vehicle. He further submits that the aforementioned vehicle was financed by the respondent-plaintiff by taking loan of ₹5.00 lacs and the aforementioned amount was to be paid in instalments. However, she failed to pay the entire loan amount and a sum of ₹3,23,337/- was outstanding, which necessitated the Bank to take the possession of the vehicle.

In the cross-examination, a specific question was put to the respondent-plaintiff whether she was willing to take back the vehicle or not and the answer was "No". The trial Court, on the basis of oral and documentary evidence, dismissed the suit, however, the Lower Appellate Court reversed the findings by holding that the Nationalised Banks should not indulge in taking into possession the vehicles and should resort to the procedure by invoking the jurisdiction of the competent Court and the statement in the cross-examination was an inadvertence. He further submits that following substantial questions of law would arise for determination by this Court:-

> "1. Whether the admission made in the cross-examination of the plaintiff can be said to be an inadvertence?
>
> 2. Whether the judgment and decree of the Lower Appellate Court treating the said admission in the cross-examination as a mistake is justified?

Mr.Arun Gupta for Mr.Pankaj Bali, appearing on behalf of the respondent-plaintiff, submits that there is no illegality and perversity in the impugned judgment and decree passed by the Lower Appellate Court, being the last Court of law, which, after appreciating the oral and documentary evidence on record, reversed the findings rendered by the trial Court, in essence, no substantial question of law arises for determination and, therefore, the appeal filed under Section 100 of the Civil Procedure Code is liable to be dismissed.

I have heard the learned counsel for the parties and appraised the paper book.

It is a matter of record that the respondent-plaintiff has not sought rendition of accounts nor had set up any claim that she had paid the entire loan amount. The question now arises is whether the action of the Bank in taking the possession of the vehicle for realising the outstanding amount was legal and justified or not. It is a matter of record that the vehicle was taken into possession and, therefore, mandatory injunction has been sought for recovery of the vehicle. Once the respondent-plaintiff, to a specific question, admitted that she was not willing to take back the vehicle, the Bank had no other option but to take the vehicle into possession, which as per the information provided during the course of the hearing, has been done.

The view expressed by the Lower Appellate Court that the admission in the cross-examination is an inadvertence and mistake is totally contrary to the provisions of Sections 145 and 148 of the Indian Evidence Act, which envisage the party to put number of questions in the cross-examination to check the veracity of the witness.

There is another aspect of the matter. The Lower Appellate Court has non-suited the appellant-defendant on the ground that the Hon'ble Supreme Court has come down heavily on them vis-a-vis taking possession of the vehicles in the absence of any condition in the agreement of law. I have gone through the contents of para (i) of the agreement of loan, which entitle the Bank to take the repossession of the hypothecated vehicle whether the entire amount of the loan is recalled or not. The same reads thus:-

"*(i) The Bank is entitled to take the repossession of the hypothecated vehicle whether the entire loan amount has been recalled or not, whenever in the absolute discretion of the Bank there is likelihood of due money not being paid and/or the vehicle is likely to be transferred to defeat the security and the due amounts of the Bank.*"

Thus, the ratio decidendi culled out by the Hon'ble Supreme Court in **The Managing Director, Orix Auto Finance (India) Ltd. Versus Jagmander Singh & Anr., 2006 (1) R.C.R. (Civil) 756** would not apply in the present case. In my view, the Bank was correct in its wisdom to take the possession of the vehicle for realising the outstanding dues.

Keeping in view the aforementioned facts, I am of the view that the reasoning given by the Lower Appellate Court is not justified and accordingly the substantial question of law is answered in favour of the appellant-defendant and against the respondent-plaintiff. The judgment and decree of the Lower Appellate Court is set-aside and the judgment and decree of the trial Court is restored.

Appeal stands allowed.

December 4, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**