

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

RSA No.919 of 2012 (O&M)

Date of decision: 25.08.2015

Anil

..... Appellant

versus

ICICI Bank Branch, Rohtak

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.U.K.Agnihotri, Advocate for the appellant
Mr.Sandeep Suri, Advocate for the respondent

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J. (Oral)

Challenged in the present regular second appeal is the judgment and decree dated 18.12.2011, passed by the learned District Judge, Rohtak, affirming the judgment and decree dated 30.9.2010 passed by the learned Civil Judge, Junior Division, Rohtak, vide which, suit of the plaintiff for mandatory injunction directing the defendants to hand over the possession of the Dumper bearing registration no.HR 46-B 2805, which was forcibly taken into possession on 21.3.2006, after receiving the balance amount of the installments upto 25.5.2006, was dismissed.

The brief controversy in this case is that the plaintiff had purchased a Dumper. The same was financed by the defendants by advancing loan to the tune of Rs.10.30 lacs. Some of the

installments were paid but there was default in payment of some of the installments. According to the plaintiff, the said Dumper was forcibly taken into possession by the bank officials on 21.3.2006, regarding which he lodged a complaint with the police which did not take any action. It is further alleged that balance amount of Rs.1,23,000/- was paid on 5.4.2006. Another sum of Rs.30,690/- was paid on 12.4.2006 and Rs.27,000/- were paid on 15.4.2006.

In the written statement, the defendant has stated that the Dumper was taken into possession in accordance with law and that the defendant has further sold the same after complying with the legal formalities and issuing notice.

The lower Court came to the conclusion that after taking the possession of the Dumper, the same sold by the bank -defendant to a subsequent vendee and is no longer in its possession. The plaintiff did not implead the subsequent purchaser in the suit rather he did not file the replication to the written statement filed by the defendant. Therefore, relief could not be granted. The lower Court also relied upon the re-possession document (Ex.D2), which bears the signatures of Jagbir Singh, Supervisor of the Dumber at three places. Accordingly, it was held that the plaintiff is not entitled to re-possession of the said Dumper.

Dissatisfied with the said judgment, the plaintiff preferred an appeal before the learned District Judge, Rohtak, which dismissed the same on 8.12.2011, affirming the findings recorded by the learned Civil Judge, Junior Division, Rohtak.

I have heard learned counsel for the parties and have

also carefully gone through the file.

After hearing the arguments of learned counsel for the parties, I am of the view that in this case, the Dumper was taken into possession by the bank. According to the plaintiff, the possession was taken forcibly, whereas the defendant has maintained that the re-possession was taken in accordance with the terms of the loan agreement and in accordance with law and the plaintiff had signed some documents at the time of delivery of the vehicle. The vehicle was sold before filing of written statement. The subsequent purchaser is not impleaded as party and for this simple reason, the mandatory injunction could not be granted.

Learned counsel for the appellant has argued that the possession of the vehicle could not be taken forcibly and that he has paid the amount of loan and plaintiff has been harassed by the bank.

I am of the view that the short question in this case is as to whether the mandatory injunction can be granted or not? The other points are not in issue in this case. Both the Courts have recorded findings of facts. I do not find any illegality and infirmity in the same. No substantial question of law arises in the present case.

Hence, the appeal is dismissed.

25.08.2015
gk

(Kuldip Singh)
Judge