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HIGH COURT OF DELHI AT NEW DELHI

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R.S.A. No.175/2014

Decided on : 17th March, 2015

MUKESH

..... Appellant

Through: Mr.Jitender Kumar Dhingra, Advocate.
Versus

DEVKI NANDAN JOSHI & ORS

..... Respondent

Through: Respondent No.2 in person.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellant against the judgment dated 21.03.2014 upholding the judgment and decree dated 29.02.2012 in CS No.300/2009.
2. Briefly stated, the facts of the case are that the appellant filed a suit for recovery of Rs.1,68,000/- with pendente lite and future interest along with cost of the suit.
3. It was alleged by the appellant/plaintiff that he was misled by respondent No.1, the employer/respondent No.3, to purchase a commercial vehicle of make Tata for a total price of Rs.1,50,000/-

and the balance payment of instalments of Rs.9,824/-. The appellant is alleged to have paid a sum of Rs.1,30,000/- initially and the balance amount was to be paid later according to schedule fixed between the parties.

4. It is alleged that on 06.07.2009, the vehicle was re-possessed by the financier and on 08.07.2009, at the instance of respondent No.1 and respondent No.3, the appellant/plaintiff paid Rs.20,000/- and again on 11.08.2009, the appellant/plaintiff paid a sum of Rs.10,000/- to the respondent No.1.

5. Since the appellant neither got the possession of the vehicle nor the refund of the money, therefore, he came to issue a notice to the respondents. The respondents refused to receive the notice which resulted in filing of a suit for recovery. There was no prayer with regard to the repossession of the vehicle nor could the vehicle have been repossessed because it was taken back by the financier. The suit was contested by the respondents.

6. The learned trial court framed the issues, permitted the parties to adduce evidence and dismissed the suit of the appellant

holding that the appellant was not entitled to a decree for a sum of Rs.1,68,000/-. I need not delve into the reasons which are given in detail by the learned trial court with regard to the dismissal of the case of the appellant/plaintiff.

7. The appellant feeling aggrieved preferred a first appeal against the judgment and decree of rejection of the suit by the trial court.

8. The appellate court upheld the judgment and decree passed by the trial court and dismissed the appeal as being devoid of any merit.

9. Still feeling dissatisfied, the present regular second appeal has been filed.

10. I have heard the learned counsel for the appellant. He has contended that the trial court has wrongly rejected the claim of the appellant. For this purpose, he wanted to go into the question of appreciation of evidence. He had also sought to place reliance on case titled *Randhir Singh v. Gurbux Singh*; 1979 WLN 170 and

Bengal Corporation Private Limited v. The Commissioners for the Port of Calcutta; AIR 1971 Calcutta 357.

11. I have gone through both these judgments and I fail to understand as to how both these judgments are helpful to the appellant/plaintiff. So far as the first judgment in Randhir Singh's case is concerned, that is a judgment delivered by the learned single Judge of the Rajasthan High Court by way of a first appeal where partly the decree which has been passed by the trial court had been modified and the amount of recovery has been increased.

12. The learned counsel for the appellant has failed to appreciate the fact that in the light of the concurrent finding of fact of the appellant having suffered adverse order of dismissal of his suit for recovery, the second appeal would be permissible only in the event of a substantial question of law arising from the appeal. The Rajasthan High Court judgment was on first appeal where the court is empowered to re-appreciate the evidence.

13. The learned counsel for the appellant has not been able to formulate any substantial question of law arising from the appeal.

All that has been stated by him is that the appellant/plaintiff has been cheated by respondent Nos.1 and 3 inasmuch as they had entered into an agreement to sell with respect to a vehicle which they had purchased on hypothecation from a financier. They had agreed to sell the vehicle to the appellant while as they themselves had defaulted in making the payment to the financier because of which the financier had repossessed the vehicle.

14. All these questions of repossession of vehicle and the money having been paid by the appellant to respondent Nos.1 and 3 or the said respondents failing to discharge their duties or the appellant having been cheated are essentially questions of fact and not question of law much less substantial questions of law. Therefore, the present regular second appeal is totally misconceived and accordingly the same is dismissed.

V.K. SHALI, J.

MARCH 17, 2015
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