

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 69 OF 2015

THE MANAGER, SHRIRAM TRANSPORT
FINANCE COMPANY LTD. THROUGH POA
MR. CHETAN SURESH MHALSEKAR.

... Appellant

Versus

PUNDALIK DATTA PRABHU.

... Respondent

Mr. Galileo Francisco Teles, Advocate for the appellant.
Mr. Jagannath Jayant Mulgaonkar, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 7th October, 2016

ORAL ORDER :

Heard Mr. G. Teles, learned counsel appearing for the appellant and Mr. J. J. Mulgaonkar, learned counsel appearing for the respondent.

2. The above appeal challenges the judgments passed by the Courts below whereby the suit filed by the respondent for recovery of money in a sum of Rs.4,00,000/- along with interest came to be decreed.

3. Mr. Teles, learned counsel appearing for the appellant has submitted that both the Courts below have misconstrued the documents on record to erroneously come to the conclusion that the respondent has established that he is entitled to claim the amount

from the appellant. The learned counsel further pointed out that there was a letter issued on 20.11.2007 which clearly showed that such letter would be in operation in case the truck was transferred within 20 days. It is further pointed out that the truck was not transferred to the purchaser Mr. Sarvesh Gaonkar and as such, the question of the appellant being liable to pay the amount would not arise at all. The learned counsel further pointed out that PW1 in his cross examination has stated that he has no material to show that the truck was transferred in favour of the said Sarvesh Gaonkar. The learned counsel further pointed out that the records reveal that the truck was transferred only on 12.12.2007 and as such, as there was a breach of the terms of the said letter, the question of claiming any amount from the appellant would not arise. The learned counsel further pointed out that even the cheque issued in the name of the respondent was dated 02.01.2008. The learned counsel further pointed out that as there is misreading of evidence on record, the findings arrived at by the Courts below are perverse which require interference by this Court.

4. On the other hand, Mr. Mulgaonkar, learned counsel appearing for the respondent points out that the Courts below upon appreciating the evidence on record have concurrently come to the conclusion that the respondent has established that the appellant are liable to pay the amount as decreed. The learned counsel further submitted that the learned Lower Appellate Court has also rendered finding that the possession of the truck was delivered to Sarvesh

Gaonkar on 20.11.2007. The learned counsel further pointed out that this itself suggest that based on the said letter the truck was in fact transferred to Sarvesh Gaonkar. The learned counsel further pointed out that the Courts below have also examined that the cheque was in the name of the respondent to come to the conclusion that the contention of the appellant that there was no privity of contract is erroneous. The learned counsel further pointed out that the Registration Certificate issued by the Road Transport Authority clearly shows that the hypothecation of the subject truck is in favour of the appellant herein. The learned counsel as such points out that there is no substantial question of law which arises in the present appeal for consideration.

5. I have considered the submissions of the learned counsel and I have also gone through the records. The undisputed fact is that the respondent who was the owner of the said truck had agreed to sell the truck to Sarvesh Gaonkar. The said Sarvesh Gaonkar was being financed by the appellant. The appellant had also issued a cheque in favour of the respondent herein. Based on the said letter dated 20.11.2007, the respondent delivered the possession of the subject truck in favour of the said Sarvesh Gaonkar. Thereafter, the truck was also transferred in the RC book in favour of the said Sarvesh Gaonkar. The hypothecation is also recorded in favour of the appellant herein. The cheque in favour of the respondent was issued by the appellant and was dated 02.01.2008. The aforesaid fact read as

a whole would show that the findings of the Courts below are justified. The Courts below have minutely considered the material on record to concurrently come to the conclusion that the respondent is entitled to claim a sum of Rs.4,00,000/- from the appellant. The fact that the truck has been delivered to Sarvesh Gaonkar in November, 2007 at the instance of the appellant has not been disputed. The learned Lower Appellate Court has also noted that DW1 who was a witness of the appellant has admitted the case of the respondent in the cross examination. This Court in a Second Appeal under Section 100 of Civil Procedure Code cannot reappraise the evidence on record when there is no perversity in the findings of fact rendered by the Courts below. In such circumstances, as there is no perversity in the findings arrived at by the Courts below as such findings have been rendered based on the appreciation of evidence on record, I find that there is no substantial question of law which arises in the present appeal for consideration. Hence, the appeal stands rejected.

F. M. REIS, J.

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