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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1459 OF 1987

- | | |
|---|--------------|
| 1). Tata Motors Limited, formerly known) | |
| as Tata Engineering & Locomotive) | |
| Company Limited, having its) | |
| Registered office at Bombay House,) | |
| 24, Homi Mody Street, Fort, Bombay) | |
| 400 001 & Sales Headquarters at) | |
| 148, Mahatma Ghandi Road, Fort) | |
| Bombay – 400 023.) | ...Plaintiff |

....Versus....

- | | |
|--|---|
| 1). M/s.Lakhia Brothers, a partnership) | |
| carrying on business at Lal Darwaja,) | |
| Ahmedabad.) | |
| |) |
| 2A). Sriraj Rajnikant Lakhia) | |
| |) |
| 2B). Kaumudiniben Rajnikant Lakhia) | |
| |) |
| 2C). Maitreyee Shishir Ahattangadi) | |
| |) |
| Defendant Nos.2A to 2C all of) | |
| Indian Inhabitants, residing at) | |
| Amrakadam Bungalow, Ramdev) | |
| Nagar,Satellite Ara,) | |
| Ahmedabad – 380 015.) | |
| |) |
| 3). Shri Snehal Natverlal Lakhia,) | |
| Adult, Crrying on business at Lal) | |
| Darwaja, Ahmedabad and residing) | |
| at 57, Popatlal Hemchand Jain) | |
| Nagar, Near Sanjivani Hospital,) | |
| Paldi, Ahmedabad – 380 007.) | |
| |) |
| 4). Shree Sheetal Natverlal Lakhia) | |

- as Karta of Sheetal Natverlal Lakhia)
HUF, Adult, carrying on business at)
and residing at 2, Pritam Nagar,)
Ellis Bridge, Ahmedabad.)
)
- 5). Shri Shriraj Rajnikant Lakhia,)
Adult, carrying on business at)
and residing at address as stated)
in No.2, above.)
)
- 6). Shri Sheetal Natverlal Lakhia)
as Trustee of Shri Snehal Natverlal)
Lakhia Family Trust, Adult,)
carrying on business at and)
residing at address shown as above)
)
- 7). Shri Rajnikant Natverlal Lakhia)
as Trustee of Shri Snehal Natverlal)
Lakhia Family Trust, Adult,)
carrying on business at & residing)
at address shown at 2 above)
)
- 8). Shri Snehal Natverlal Lakhia, as)
Trustee of Shri Rajnikant Natverlal)
Lakhia Family Trust, Adult,)
carrying on business at & residing)
at address shown at 3 above)
)
- 9). Smt.Indrabalaben Ramniklal Lakhia,)
Adult, carrying on business at)
and residing at Tulsibaug, Near)
Parimal Society, Ellis Bridge,)
Ahmedbad – 380 006.)
)
- 10). Shri Ashish Snehal Lakhia,)
Adult, carrying on business at and)
residing at address as shown)
at 3 above.)
)
- ...Defendants

Mr.Karl Shroff with Mr.Avinash Joshi i/b Mulla & Mulla & C. B. & Co.
for the Plaintiff.

None for the Defendants.

CORAM : R.D. DHANUKA, J.

DATE : 17TH NOVEMBER, 2017.

ORAL JUDGMENT :-

1. The plaintiff was formerly known as Tata Engineering & Locomotive Company Limited. The name of the plaintiff was changed to Tata Motors Limited with effect from 29th July, 2003. The defendant no.1 is the partnership firm and the original defendant no.2 and defendant nos.3 to 10 are and were at all material time partners of the defendant no.1 firm. During the pendency of the suit, the defendant no.2 expired. The defendant nos.2-A to 2-C are the legal heirs and representatives of the original defendant no.2.

2. The plaintiff had appointed the defendant no.1 as its dealer for fostering and promoting the sale of the Tata Diesel Vehicles, spare parts etc. in various districts of Gujarat. The transaction between the parties was on principal to principal basis. The plaintiff and the defendant no.1 entered into Hire Purchase Agreement on 19th February, 1985 under which the vehicles were supplied by the plaintiff to the defendant no.1. The dealer was to recover from the purchasers hire purchase installments and to pay over the same to the plaintiff under clause 4 of the Hire Purchase Agreement. There were about 61 transactions between the plaintiff and the Hirers recommended by the defendant no.1 during the period between 1st

January, 1983 to 2nd June, 1986.

3. It is the case of the plaintiff that since no installments were forthcoming from the Hirers, the plaintiff sent various reminders for payments. Some of the letters were returned by the Postal Authorities with a remark "Not Known". The plaintiff accordingly deputed their representatives to several offices of the Regional / Assistant Regional Transport Office on 9th March, 1987 to ascertain as to whether the vehicles in question in fact is registered with them or not. The plaintiff came to know that 63 Hire Purchase Proposals introduced by the defendant no.1 were not genuine and the representations made by the defendant no.1 were untrue and fraudulent. The defendant no.1 and its partners induced the plaintiff to purchase various vehicles from the defendants and to pay a sum of Rs.1,19,87,977=59 based on such fraudulent representation.

4. The plaintiff had sold to the defendant 193 vehicles during the period between 23rd January, 1997 to 9th March, 1997. The plaintiff drew Hundis of Citibank, Mumbai and American Express Bank Limited, Mumbai of Rs.2,19,97,524=30 and Rs.1,97,97,771=87, aggregating to Rs.4,17,95,296=17 for the price of 190 vehicles. Those Hundis however, were not honoured upon presentation by the plaintiff. The defendants vide their letter dated 18th March, 1987 however, promised and undertook to pay Rs.1.65 crores which

according to them was due and payable by them to the plaintiff stating that the said liability had arisen as a result of certain hire purchase transactions recommended and proposed by them and agreed to hand over to the plaintiff the title deeds of the properties belonging to them i.e. a building together with land at Lal Darwaja, Ahmedabad and the land at Aslali in the State of Gujarat. The plaintiff filed a suit on 1st June, 1987 in this Court *inter-alia* praying for a decree against the defendants in the sum of Rs.5,97,53,036=69 and for other reliefs.

5. The defendants filed a written statement on 4th March, 1990 and also counter claim in this suit. The defendants prayed for a decree against the plaintiff for various amounts set out in the counter claim. The plaintiff filed a written statement to the counter claim on 6th July, 2006. During the pendency of the suit, the original defendant no.2 expired. On 27th February, 2007, the defendant nos.2-B and 2-C filed a separate written statement.

6. By an order dated 16th June, 2007, this Court framed 36 issues between the plaintiff and the defendant nos.1 and 3 to 10 and three issues between the plaintiff and defendant nos.2-B and 2-C, which are extracted as under and are answered :-

“ 1. Whether this Hon’ble Court does not have jurisdiction to entertain or try the present suit for the reasons alleged in para 1 of the Written Statement ?

...In Negative

2. Whether the Hire-purchase scheme operated in the manner set out by the Plaintiffs in para 4 of the Plaint or as alleged by the Defendants in paras 4 of the Written Statement ?

...As per order in Para No.13

3. Whether any of the proposals forwarded by the Defendants under the Hire-purchase scheme were fraudulent as claimed in paras 5 to 9 of the Plaint ?

...In Affirmative

4. Whether the Plaintiffs are entitled to recover a sum of Rs.14,44,87,077=59 or any part thereof from the Defendants for the loss caused to the Plaintiffs as set out in paras 9 to 12 of the Plaint ?

...As per order in Para No.15

5. Whether the Defendants were coerced into signing any documents by the officers of the Plaintiff as alleged in paras 26 and 33 of the Written Statement and whether the documents are voidable at the option of the Defendants ?

...In Negative

6. Whether the Defendants are liable to pay to the plaintiffs a sum of Rs.17,01,887/- or any part thereof in connection with the Bill marketing Scheme as claimed in para 14 of the Plaint ?

...Does not arise

7. Whether the Defendants are liable to pay the plaintiffs a sum of Rs.11,08,850/- or any part thereof towards spare parts supplied by the Plaintiffs as claimed in para 15 of the Plaint ?

...Does not arise

8. Whether the Defendants have returned to the Plaintiffs goods worth Rs.13,30,000/- as alleged in para 28 of the Written Statement ?

...Does not arise

9. Whether the Defendants are liable to the plaintiffs a sum of Rs.4,24,55,221=90 or any part thereof in respect of sale of vehicles mentioned in

paras 16 to 24 of the Plaint ? **...Does not arise**

10. What interest are the plaintiffs entitled to ?
...18% p.a.

11. What decree are the plaintiffs entitled to ?
...As per order

COUNTER CLAIM

12. Whether the Counter-claim ought to be dismissed as Defendants have failed and neglected to give inspection of documents as set out in para 4 of the reply to Counter claim ? **...In Negative**

13. Whether the Counter claims or any part thereof are barred by the law of limitation as set out in para 32 of the Reply to Counter-claim ? **...In Negative**

14. Whether the Counter-claim is false, frivolous, vexatious and vague ? **...In Negative**

15. Whether the Defendants are entitled to any Compensation as claimed in paras 42,47,54 of the Counter-claim and if so at what rate/ amount ?
...In Negative

16. Whether 3000 vehicles were sold by other dealers in the territory allotted to the 1st Defendants as claimed in para 42 of Counter claim ?
...In Negative

17. Whether the Defendants are entitled to any compensation by way of dealers margin in respect of vehicles sold by the Plaintiffs in their territory as alleged in para 43 of Counter claim and if so, at what rate ?
...In Negative

18. Whether 300 vehicles were sold by the Plaintiffs in the Defendant in 1's territory between 15/03/1997 to 17/07/1997 ? **...In Negative**

19. Whether the Plaintiffs debited/deducted any amounts from the Defendant's accounts as alleged in

paras 44,46, 49 of Counter-claim and if so, whether the same was wrongful as illegal ? **...In Negative**

20. Whether the Defendants carried out any repairs to chassis supplied to GSRTC or Cabins of vehicles supplied to ONGC ? **...In Negative**

21. Whether the Plaintiffs officers had agreed to pay reimburse/pay any sums to the Defendants as claimed in paras 45,48, 51,52,56, 58,66 of the Counter-claim ? **...In Negative**

22. Whether the Plaintiffs requested the Defendants is to give any discount to GSRTC as alleged in paras 48 of the Counter claim and if so, whether the Defendants were promised reimbursement thereof ? **...In Negative**

23. Whether the Defendants have not been paid by the Plaintiffs a sum of Rs.86,906=90 in respect of the vehicles claimed to be serviced/repaired during the warranty period as claimed in para 50 of the Counter claim ? **...In Negative**

24. Whether the plaintiffs removed any of the Defendants belongings as alleged in para 51 of the Counter-claim and if so to what extent ? **...In Negative**

25. Whether the Plaintiffs have used any of the godowns of the Defendants as claimed in para 52 of the Counter claim and if so whether the Defendants are entitled to any compensation for the same ? **...In Negative**

26. Whether the Defendants have issued any credit notes as alleged in para 53 of Counterclaim and if so whether the Defendants were entitled to credit which the Plaintiffs have failed to give ? **...In Negative**

27. Whether the Plaintiffs are liable to pay any commission to the Defendants as alleged in paras 55,62 and 64 of the Counter-claim ? **...In Negative**

28. Whether any spare parts of obsolete models were sold to the Defendants as alleged in para 56 of the Counter-claim ? **...In Negative**

29. Whether the GSRTC deducted any amount as alleged in para 57 of the Counter claim and if so whether the Plaintiffs are liable to reimburse the same? **...In Negative**

30. Whether the Defendant No.1 procured any orders for sale of excavators/cranes as alleged in para 58 of the Plaint ? **...In Negative**

31. Whether the Defendants rendered any services as alleged in paras 59 and 60 of the Counter claim and whether they are entitled to a reimbursement in respect thereof ? **...In Negative**

32. Whether the Defendants had paid any Hundi charges / advance interest in respect of vehicles not delivered as alleged in para 61 of Counter claim ? **...In Negative**

33. Whether the plaintiffs supplied vehicles without tools and accessories and the Defendants are entitled to any reimbursement in respect thereof as alleged in para 65 of the Counter claim ? **...In Negative**

34. Whether the Plaintiffs deducted a sum of Rs.2,00,000/- being amount payable to Western Motors as alleged in para 66 of the Counter claim ? **...In Negative**

35. Whether the Defendants are entitled to any amount claimed in paras 42 to 66 of the Counter claim and if so to what extent ? **...In Negative**

36. What interest, if any, are the Defendants entitled to ? **...In Negative**

The following issues are framed between plaintiff and defendant Nos. 2(B) and (C) :-

37. Whether the suit has abated against Defendants 2A, 2B and 2C ? **..Does not survive**

38. Whether the suit is barred by the law of limitation against Defendants 2A, 2B and 2C ?
...Does not survive

39. Whether the Plaintiffs are entitled to any orders against Defendants 2A,2B and 2C ? “
...Does not survive

7. By an order dated 3rd March, 2014, this Court recorded the statement made by the learned counsel for the plaintiff that the plaintiff did not want to press the claim in the suit against the defendant nos.2-A to 2-C, who are the legal heirs and representatives of the original defendant no.2. This Court issued various directions from time to time for filing affidavit of documents along with compilation of documents, for inspection of documents, affidavit in lieu of examination in chief, for marking of documents etc. Some of the defendants have also filed the counter claim, except defendant nos.2-A to 2-C.

8. This Court accordingly passed an order that the suit be placed on board for *ex-parte* decree by an order dated 24th March, 2014. The plaintiff thereafter filed affidavit in lieu of examination in chief dated 12th December, 2014 and further affidavit in lieu of examination in chief on 17th October, 2016. The plaintiff also placed reliance on 64 documents running into 1440 pages. No statement of

admission and denial came to be filed by any of the defendants. The plaintiff examined Mr. Sunil Digambar Pundlik (PW 1) as a witness on 25th September, 2017 before this Court. None appeared for the defendants. This Court received in evidence and marked Exhibit P-1/2 (Collectively) to Exhibit P-1/65 (Collectively) respectively and closed the examination in chief. Since none appeared for the defendant to cross-examine the witness of the plaintiff, the evidence of the plaintiff was closed, as "no cross" by the defendants. The Plaintiff closed its evidence.

9. This Court thereafter directed the defendants to file their list of witnesses, affidavit in lieu of examination in chief of the first witness together with compilation of documents and to serve a copy thereof upon the plaintiff on or before 3rd November, 2017. The matter was placed on board for directions on 10th November, 2017. The order dated 25th September, 2017 was corrected by an order dated 13th October, 2017. It was directed that in paragraph 1, sub-paragraph 2, the figure "64" be read as "63" and in sub-paragraph 4, the words "P-1/65 (Colly.)" be read as "P-1/64 (Colly.)". On 10th November, 2017, since the defendants had not complied with the directions issued by this Court on 25th September, 2017, this Court closed the evidence of the defendants and placed the suit on board on 16th November, 2017.

10. Mr.Shroff, learned counsel appearing for the plaintiff invited my attention to various averments made in the plaint and also the documents annexed to the plaint and other documents and also to the written statement and counter claim filed by the defendants. He submits that the defendants have committed fraud upon the plaintiff. Various vehicles were in fact hypothecated to different Institutions and Banks in respect of which the defendants had sought to create hypothecation in favour of the plaintiff. The defendants have admitted the liability in the sum of Rs.1.75 crores in the letter annexed at page 53 of the plaint and to the extent of Rs.1.65 crores in a writing at page 109 of the plaint.

11. It is not in dispute that there was no statement of admission and denial filed by the defendants though various opportunities were granted to the defendants in respect of the documents referred to and relied upon by the plaintiff. All those documents were proved by the witness examined by the plaintiff. There is no cross-examination of the said witness by the defendants inspite of opportunity granted by this Court. The deposition of the plaintiff made in the affidavit in lieu of examination in chief is thus proved being not controverted by the defendants. Similarly since the defendants did not enter the witness box to prove the allegations made by the defendants in the written statement and the counter

claim filed before this Court, the same are not proved by leading any oral evidence. The documents referred to and relied upon by the defendants in the written statement are also not proved. I shall now deal with the issues framed by this Court.

12. **Issue No.1** : Though the defendants had raised the plea of jurisdiction in the written statement, various documents placed on record and marked as exhibits clearly shows that the same were received by the plaintiff in Mumbai and/or were executed at Mumbai. The said issue is accordingly answered **in Negative**. This Court has jurisdiction to entertain, try and dispose of the present suit.

13. **Issue No.2** : A perusal of the evidence on record clearly indicates that the plaintiff has proved that the hire purchase scheme was operated in the manner set out by the plaintiff in para 4 of the plaint whereas the defendants have failed to prove that the same operated as alleged in paragraph 4 of the written statement. The issue is answered accordingly.

14. **Issue No.3** : A perusal of the record clearly indicates that the plaintiff has proved the modus operandi of the defendants in carrying out hire purchase transactions which were *ex-facie* fraudulent. The deposition made by the plaintiff is not controverted by the defendants. The issue is answered in the **Affirmative**.

15. **Issue No.4** : Since the defendants have acknowledged the

liability of of Rs.1.65 crores as on 18th March, 1987. In my view, the plaintiff has made out a case for a decree in the sum of Rs.1.65 crores as on 18th March, 1987 with interest thereon. The issue is answered according.

16. **Issue No.5** : The plaintiff has deposed in affidavit in lieu of examination in chief in respect of acknowledgement of Rs.1.65 crores by the defendants. The witness examined by the plaintiff has not been cross-examined by the defendants. The defendants did not lead any evidence to prove the alleged coercion and thus those allegations of coercion are not proved. Issue no.5 is accordingly answered in **Negative.**

17. Insofar as **issue Nos.6 to 8** are concerned, these issues do not arise for consideration since the plaintiff has expressly given up those issues in paragraph 10 of the affidavit in lieu of examination in chief dated 12th December, 2014. The issues are not answered as the same do not arise.

18. **Issue No.9** : In view of the fact that the plaintiff has already recovered the amount as set out in paragraph 10 of the affidavit in lieu of examination in chief dated 12th December, 2014, the said issue does not arise for consideration.

19. **Issue No.10** : I am inclined to grant interest at the rate of 18% p.a. from the date of suit till payment and/or realization in prayer

clause (a) of the plaint on the amount of Rs.1.65 crores.

20. **Issue No.11** : The plaintiff is entitled to a decree in the sum of Rs.1.65 crores with interest from the date of filing of the suit till payment and/or realization.

21. **Issue Nos.12 to 36** : Since the onus to prove these issues was on the defendants who did not enter the witness box, the defendants have failed to discharge the onus to prove. The issues are accordingly answered in **Negative**.

22. **Issue Nos.37 to 39** : Since the plaintiff has not pressed any reliefs against the defendant nos.2-A to 2-C, these issues do not survive.

23. I therefore, pass the following order :-

a). The Suit No.1459 of 1987 is decreed in terms of prayer clause (a) however restricted to an amount of Rs.1.65 crores from the date of filing of the suit together with interest at the rate of 18% p.a. from the date of the suit till payment and costs against all the defendants excluding defendant nos.2-A to 2-C.

b). Counter claim is dismissed.

c). Drawn up decree is expedited.

(R.D. DHANUKA, J.)