

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : August 25th, 2017

+ RFA 7/2007

PRITHVI RAJ THAREJA Appellant
Through: Mr.Naresh Thanai, Mr.G.P. Thareja,
Ms.Bharti, Mr.Mani Mishra,
Advocates.

versus

FIAT INDIA P. LTD. & ANR. Respondent
Through: Mr.Puneet Agrawal, Ms.Dalveer
Kaur, Advocates.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The present appeal has been filed by the appellant under Order 41 Rule 1 read with Section 96 CPC against the judgment and decree dated 20.09.2006 passed by the learned Additional District Judge, Delhi whereby the suit filed by the plaintiff/appellant for mandatory injunction and recovery was dismissed.

2. The facts enumerating from the plaint are that the defendant no.1 /respondent no.1 is manufacturer of cars including Fiat Palio and defendant no.2/respondent no.2 is its authorized dealer. The plaintiff purchased a Fiat Palio car from defendant no.2 for a consideration of Rs.3,99,000/- and the same was registered vide registration no.DL 4CF 0939. After taking delivery of the car, it was found that its power

steering was hard and the same was brought to the notice of defendant no.2. It remained hard after the same was driven for a few days. The vehicle was deposited at the workshop of defendant no.2 on 01.11.2002 for giving a low average and non-functional of parking light. The said vehicle also met with minor accidents due to the hard steering. Vehicle was returned to the plaintiff on 13.11.2001 against a charge of Rs.6,980/- with the assurance that the defect of power steering had been cured. When the vehicle was driven by the plaintiff, hardness of power steering was still present. The vehicle was again deposited and the defect was allegedly removed on the same day. The plaintiff took the delivery of vehicle but the defect of power steering was still persistent. The vehicle was again deposited on 02.01.2002 and its delivery was taken on 16.02.2002 but the defect had not been removed. Again the vehicle was deposited on 21.02.2002 and its delivery was taken on 09.03.2002 but the defect of power steering was still there. A notice dated 12.06.2002 was served upon the defendant either to replace the vehicle or refund the amount paid. The plaintiff had prayed for passing of a decree of mandatory injunction directing the defendants to replace the vehicle in case the same is found defect free or pass a decree for Rs.5,31,752/- along with pendent lite and future interest.

3. In the written statement filed on behalf of defendant no.1, it was contended that the Court had no territorial jurisdiction to entertain the suit. There was no cause of action because the grievances of the plaintiff were rectified and the same was informed vide letters dated

06.06.2002 and 19.06.2002. Since the car in question was an accidental car, the warranty had ceased to operate. The power steering assembly was replaced free of cost. The demand of the plaintiff for replacement of car was baseless. The car was purchased on 30.09.2001 and during the warranty period, minor complaints were attended to. Delivery of the car was taken by the plaintiff after full satisfaction. The car in question is roadworthy and has no defect. Despite the warranty of the car ceased to exist, the entire power steering assembly was replaced free of cost and the same was delivered to the plaintiff on 12.12.2001 after the plaintiff had taken a road test.

4. In the written statement filed by the defendant no.2, it was contended that the car of the plaintiff met with an accident; he approached the workshop for repairing the damages; complaints were rectified and the warrant of the vehicle had ceased to operate as the car met with an accident and as a gesture of goodwill, entire power steering assembly was replaced. The car was purchased on 30.09.2001 and the same met with an accident on 01.11.2011 and during the said duration the plaintiff did not make any complaints of hard power steering.

5. Replications to the written statements were filed on behalf of the plaintiff. On the basis of pleadings of the parties, following issues were framed by the Court below :

(1)Whether the plaintiff's suit has no cause of action as alleged in Para-1 of the preliminary objection of the W.S. of both the defendants? OPD

(2)Whether this court has no territorial jurisdiction as alleged in Para-2 of the preliminary objection of the W.S. of both the defendants? OPD

(3)Whether vehicle Fiat Palio ELX 1.2 petrol, Euro-II purchased by the plaintiff from the defendant No.2 and manufactured by the defendant No.1 carried inherent manufacturing defect and was not roadworthy as alleged in the plaint. If so, to what effect? OPP

(4)Whether the plaintiff is entitled to interest, if so, the rate, the period and amount thereof? OPP

(5)Whether the plaintiff is entitled to claim the damages towards harassment, mental agony and business loss as alleged in plaint, if so the amount thereof? OPP

(6)To what amount, if any, the plaintiff is entitled and from whom? OPP

(7)Relief.

6. To establish his case, the plaintiff had examined himself as PW1, PW2 Sh.Inderpal Singh, PW3 Sh.R.S. Gupta and PW4 Sh.Sham Singh. On the other hand, the defendants had examined D1W1 Sh.P.Robert, D1W2 Sh.R.C. Pathak and D2W1 Sh.J. Ranganathan Iyyer. The Court below after going through the evidence adduced by the parties and the documents on record, dismissed the suit. Issue no.2 was decided against the defendants and in favour of the plaintiff. Issue nos.1, 3 to 6 were decided against the plaintiff and in favour of the defendants.

7. Feeling aggrieved by the dismissal of the suit, the present appeal has been filed. It was submitted that the car in question had a defect since the day of its purchase. The plaintiff was having 35 years of experience of driving and since the very beginning the car was having defect in its power steering. It was due to defected power steering, there was an error of judgment and the vehicle met with an accident. The vehicle was taken to the workshop of the respondents time and again but they failed to rectify the fault in the power steering.

8. By way of instant appeal, the challenge has been made by the appellant/plaintiff with regard to decision on issue nos.1, 3 to 6.

9. Argument advanced by the counsel for the appellant is that since the very beginning the car purchased by him was having problem in its power steering as it was very hard due to which few minor accidents had taken place due to an error of judgment. It is also his case that he deposited his vehicle in the workshop of the respondent several times but the same was returned every time with the assurance that the problem had been cured and the car would run in a smooth condition but the problem thereafter persisted.

10. On the other hand, the case of the respondents is that the car purchased by the appellant/plaintiff was in roadworthy condition. There was no problem of any sort in the vehicle in question. The vehicle was duly covered under the warranty but since it met with an accident, the warranty ceased to operate. The appellant/plaintiff had complained for power steering of the car being hard and the said

problem was rectified free of cost despite the fact that the warranty had already ceased.

11. To appreciate the rival contentions of the parties, I have gone through the evidence adduced and the material placed on record.

12. The car in question was purchased by the appellant on 30.09.2001 and its delivery was taken by the appellant being found in roadworthy condition and had not reported any type of problem till 01.11.2001 i.e. when it met with an accident. Thereafter, the appellant deposited the vehicle to the workshop of the respondents and after taking its delivery claimed that its power steering was hard. It is the admitted case of the appellant himself that the vehicle in question had met with accidents twice. It was the consistent stand of the respondents that there was no manufacturing defect in the vehicle in question including the power steering and the problem in the power steering crept in only after it met with accidents.

13. Perusal of testimony of appellant witness Inderpal Singh (PW2) also shows that he admitted during his cross-examination that there may be various reasons responsible for the power steering and that it is not necessary that power steering may be hard because of manufacturing defect. He also stated that the power steering may become hard if the vehicle meets an accident.

14. It is an admitted fact on record that after the appellant/plaintiff complained that the power steering was hard, the same was replaced by the respondents twice but still the appellant was not satisfied with

the work done by the respondents and kept on claiming for a replacement of the car. It is also a matter of record that despite changing the assembly of power steering, the vehicle in question is still lying in the workshop of the respondents and its delivery has not been taken by the appellant despite the order dated 27.08.2002 passed by the Court below. Vide this order, the appellant was asked to take the delivery of the car from the workshop of the respondents as it was claimed by the respondents that the vehicle was in an ok condition and the appellant was given liberty to get the same inspected from any authorized engineer or Automobile Association of India.

15. It is important to refer to terms and conditions of warranty issued to the appellant as Ex.PW1/D1. Clause 1 of the said warranty reads as under:

“FIAT INDIA PRIVATE LTD (FIPL), hereinafter referred as the “company”, warrants to repair or replace, free of cost, any part or parts (except electric bulbs, tyres and tubes, music system, battery, oil filters, seals, gaskets and consumables) of new FIAT CAR which, to the satisfaction of the Company are found to be defective either in material or manufacture within a period of 12 months (365 days) with unlimited mileage from the date of delivery of the car to the original purchaser subject to the following terms.”

16. This warranty ExPW1/D1 provides that damages due to accident were not covered and it was the consistent case of the respondents that once a vehicle meets with an accident, the warranty ceases to operate. It clearly provides that the Company warrants to repair or replace, free

of cost, any part or parts of new car which to the satisfaction of the Company are found to be defective either in material or manufacture within a period of 12 months (365 days) with unlimited mileage from the date of delivery of the car. This warranty Ex.PW1/D1 provides only for repair or replace of parts of the car which were found to be defective either in material or during manufacture. This entire warranty does not provide for replacement of the car in any condition.

17. Refusal to receive the vehicle does not give any alternate right to the plaintiff/appellant. This Court is not agreeable with the arguments advanced by the counsel for the appellant in the absence of any agreement or contract with regard to exchange of vehicle which is not sustainable particularly when refusal by the appellant/plaintiff to take back the vehicle after repair or to put any condition to accept the delivery, does not give any right rather it puts the other side to bear the loss for rejection of the vehicle. It is an admitted fact that the period of warranty, has already lapsed on account of the accident of the vehicle having taken place as well as due to the lapse of time.

18. The contention of the appellant that he was driving the vehicle for the last about 35 years and that the vehicle was having hard power steering is not a ground to claim the replacement of car or refund of the entire money. It is a matter of record that the appellant purchased the car while having power steering. Most important fact is that the appellant had refused to take the delivery of the vehicle from the workshop of the respondents and such a refusal after repairs on account of warranty does not make the appellant entitled for

replacement of the vehicle. Regarding the contention raised, it is the driver who is to adjust according to the vehicle and not vice-a-versa. It is the suitability of the driver to drive the vehicle and not vice-a-versa in claiming that the power steering was hard or was not in consonance with the suitability of the appellant.

19. So far as the issue regarding damages is concerned, no documentary evidence or material had been placed on record by the appellant to claim that he suffered any damages.

20. In view of the above discussion, this Court is of the considered opinion that the issue nos.1 and 3 to 6 have been rightly decided by the Court below against the plaintiff and in favour of the defendants. There is no error in the judgment and decree passed by the trial court. The appellant/plaintiff has miserably failed to establish his entitlement for mandatory injunction or recovery against the defendants/respondents.

21. Consequently, the present appeal is accordingly dismissed.

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(P.S.TEJI)
JUDGE

AUGUST 25, 2017
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