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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: March 01, 2017*

+ **RSA 67/2017**

ANUPAM AGGARWAL Appellant

Through: Mr.Satish Kumar, Advocate

versus

SUDESH & ORS Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

CM No.7766/2017

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

CM No.7767/2017

1. For the reasons stated in the application, the delay of 67 days in re-filing the appeal is condoned.
2. The application is disposed of.

RSA No.67/2017

1. The appellant/defendant is invoking the jurisdiction of this Court impugning the concurrent finding of the Courts below i.e judgment dated 30th August, 2016 passed in RCA No.68/2016 and judgment dated 2nd May, 2016 passed in Civil Suit No.4937/2015 whereby the suit for recovery filed by the respondents/plaintiffs has been decreed.
2. Learned counsel for the appellant has submitted that instant appeal raises substantial question of law as the respondents/plaintiffs had been able to obtain decree in their favour by playing fraud in both the Courts below.

3. Learned counsel for the appellant has referred to proceedings of MACT Case No.42/2009 at Karnal (Haryana), wherein the respondent No.1/Sudesh, wife of late Sh.Satbir Yadav during her cross-examination before the MACT denied the suggestion that her husband has purchased the car in question from the appellant who was respondent No.1 in the claim petition. Rather her case in the claim petition to seek compensation was that her husband, deceased Satbir Yadav was earning ₹3,300 per month as a driver.

4. Learned counsel for the appellant has also referred to the receipt at page No.282 of the paper book wherein signature of the appellant appear in Hindi whereas on Form No.29 at page 257 of the paper book his signature appear in English. It is contended that a person cannot sign in Hindi and English both. The main contention raised on behalf of the appellant is that the respondent No.1/plaintiff No.1 after admitting her husband to be driver of the car on a salary of ₹3,300 per month, cannot now claim that her husband was owner of the car having purchased the same from the appellant herein.

5. Both the Courts below have dealt with this contention of the appellant/defendant and rejected the same.

6. The Civil Suit No.4937/2015 was filed by the respondents/plaintiffs, who are widow and other legal heirs of late Sh.Satbir Yadav respectively, pleading the following facts:

(i) Late Sh.Satbir Yadav had entered into an agreement to purchase Travera car bearing registration no.DL-5CB-9007 from the appellant/defendant, Sh.Anupam Aggarwal for a sale consideration of ₹5,54,952/- out of which ₹1,25,000/- was to be paid in cash and balance amount to be paid in 32 EMIs of ₹13,436/-. After receiving the cash

payment of ₹1,25,000/- the Travera car was handed over to late Sh.Satbir Yadav and at that time 20 post-dated cheques from serial number 969601 to 96920 were also received by the appellant/defendant. An amount of ₹94,116/- had also been withdrawn by the appellant/defendant from the account in United Bank of India through some of the above cheques.

(ii) Late Sh.Satbir Yadav died in a road accident on 30th April, 2009.

(iii) The Travera vehicle bearing registration No.DL-5C-B-9007 was impounded by the police. The appellant/defendant got the vehicle released on *superdari* as registered owner.

(iv) The appellant/defendant retained the amount received from Sh.Satbir Yadav under sale agreement as well the Travera car thus compelling the legal heirs of late Sh.Satbir Yadav to file a suit for recovery.

7. The Civil Suit was decreed by learned Trial Court after proper appreciation of the evidence led by the respondents/plaintiffs. So far as the appellant/defendant is concerned, he preferring not to lead any evidence. The learned Trial Court referred to the receipt Ex.PW1/2 put to the respondent No.1/plaintiff No.1 and as per the Trial Court the conclusion was that the appellant/defendant himself admitted the case of the plaintiff regarding agreement between him and late Sh.Satbir Yadav for purchasing Travera car in question. It was further noted that ownership in respect of that car could have been transferred in the name of Satbir Yadav only after the complete payment was made by him. At the outset it needs to be recorded that the appellant/defendant did not lead any evidence in the Trial Court whereas respondents/plaintiffs led detailed evidence both oral and documentary. How the respondents/plaintiffs had been able to prove their case so as to be held entitled to obtain a decree, has been noted by the learned Trial Court.

The relevant discussion by the learned Trial Court appears in paras 12 to 14, 17 and 18 of the impugned judgment and is extracted hereunder:-

'12. Moving further, plaintiff placed on record cash receipt Ex.PW1/3, signed by defendant which was not challenged by defendant. That receipt proved that defendant had received ₹1,25,000 from Late Sh.Satbir Yadav. In addition to that, four blank transfer papers ex.PW1/4 (collectively) signed by defendant, further indicated that defendant had taken steps towards transfer of Tavera car in question in favour of Late Sh.Satbir Yadav. Further, withdrawals of amounts from the account of deceased Satbir Yadav, as per passbooks Ex.PW1/5 and Ex.PW1/6, indicated that defendant had taken the aid amounts, pursuant to the aforesaid agreement with late Sh.Satbir Yadav. Testimony of plaintiff and her father in law Ranvir Singh with respect to aforesaid aspects, were not shaken during cross examination. These witnesses stuck to their version and as such stood the acid test of cross examination. They did not accept the version of defendant that defendant had advanced loan to late Sh.Satbir Yadav and it was pursuant thereto, that Late Sh.Satbir Yadav had paid aforesaid amounts to him.

13. Testimonies of PW2 and PW4, were based on records pertaining to the ownership of car in question and with respect to litigation between the parties. Their testimonies were relevant to the extent that they proved that car in question was owned by defendant, that after the death of Late Sh.Satbir Yadav, claim petition was filed by plaintiff no.1 in which the evidence was recorded and with respect to the criminal complaint of plaintiff no.1 regarding recovery of said amount in question. None of the said documents supported the claim of defendant regarding advancement of loan amount to Late Sh.Satbir Yadav.

14. The net result of aforesaid appreciation is that plaintiffs were able to prove that there was an agreement between late Sh.Satbir yadav and defendant with regard to sale purchase of Travera car in question and pursuant thereto, Late Sh.Satbir Yadav had paid ₹2,19,116/- to defendant. Receiving of said amount from Late Sh.Satbir Yadav, was a benefit which he had

received on account of non gratuitous act of Late Sh.Satbir Yadav. In addition to that, defendant also received Travera car in question on superdari from LRs of Late Sh.Satbir Yadav. So, LRs of Late Sh.Satbir Yadav have received double beatings from defendant. On one hand, defendant has received aforesaid amount from Late Sh.Satbir Yadav and on the other hand, he has also received the car in question. In these circumstances, aforesaid amount received by defendant amounted to unjust enrichment.

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17. Apart from that, defendant failed to make gin-roads in the case of plaintiffs. He was unable to point out any shortcomings in the case of plaintiffs. Though, he claimed that documents relied by plaintiff no.1, were forged by them but did not explain as to how the said documents were forged and who had forged them. He did not impute any motive to the plaintiffs with regard to the said forgery claimed by him. Therefore, his claim of documents relied by plaintiffs, being forged and fabricated, remained a bald plea. Similarly, his claim that he had given loan of ₹1,00,000/- to Late Sh.Satbir Yadav, again was a bald plea as he did not prove the same in his evidence. That claim was not accepted by plaintiffs in their evidence. Further, defendant did not specify the details of said loan viz. Date, time and place of advancement of said loan, details of payment of loan amount, manner in which it had to be repaid by Late Sh.Satbir Yadav and likewise, in his written statement. He failed to put his said defence to plaintiff no.1 Smt.Sudesh and plaintiff no.3 Sh.Ranvir Singh for checking its veracity. Thus, defendant failed to prove his case.

18. Further, I found that defendant, apart from aforesaid aspects, had misunderstood the claim of plaintiffs. As per him plaintiffs were seeking the declaration that car in question was owned by Late Sh.Satbir Yadav. It was because of said understanding that he pointed out that in claim case before competent MACT Tribunal, plaintiff no.1 had admitted the defendant to be the owner of car in question. This was not correct way for appreciating the claim of plaintiffs. They had never claimed that Late Sh.Satbir Yadav be declared as the

owner of car in question and because of said fact, they must receive the amount given to defendant. Plaintiffs, rather, were aggrieved for the reason that Late Sh.Satbir Yadav, who was their legal guardian, had advanced ₹2,19,116/- to defendant for purchase of Travera car in question but in return they neither received the said car nor did they get the aforesaid money back from the defendant. As such, defendant failed to prove that he was entitled to the aforesaid amount of ₹2,19,116/- received from Late Sh.Satbir Yadav and had no liability to pay it back to LRs of Late Sh.Satbir Yadav, in the given facts and circumstances.'

8. Feeling aggrieved by the judgment passed by learned Trial Court, the appellant/defendant filed RCA No.68/2016. The learned First Appellate Court while dismissing the appeal held as under:

"The parties led their evidence on the lines as mentioned in the pleadings. Infact defendant did not take any steps to prove the contentions. Admittedly, the defendant has not made any complaint before any authority nor proved any material evidence to prove the contentions of payment. Mere oral and bald averments is not sufficient to deny the claim and defendant was under obligation to prove the contentions in the WS. This Court is of the considered view the defendant has failed to discharge the onus and rebut the contention of the plaintiff. The plaintiff on the other hand examined herself as PW-1 and proved the case alongwith relevant documents. Examining the case of the plaintiff even on the basis of preponderance of probabilities, this Court is of the considered view that plaintiff has succeeded to prove her case and Ld. Trial Court rightly reached to the conclusion and decreed the suit of the plaintiff. The findings of the Ld. Trial Judge does not suffer from any illegality or infirmity and appears to be passed after correct appreciation of facts. All the original documents is duly proved as per law and the impugned judgment do not warrant for any interference."

9. It is well settled that in second appeal the High Court cannot set aside the concurrent finding of the facts given by the Courts below and can

entertain an appeal only if the second appeal raises a substantial question of law. Merely because two views are possible and the Courts below have taken one possible view, cannot mean that a substantial question of law is involved.

10. The contention raised on behalf of the appellant/defendant that the version of the respondent No.1/plaintiff No.1 as to whether her husband late Sh.Satbir Yadav was a driver of Travera car on salary of ₹3,300 per month or was owner of the said car has been dealt with in detail by the Courts below. On the basis of the receipts executed by the appellant herein and the cheques handed over to him towards payment of sale consideration of Travera car, the learned Trial Court held that the family of the deceased had suffered not only on account of his death in the accident but also for the reason that the vehicle was got released on *superdari* and retained by the registered owner i.e. the appellant who even refused to return the part-payment received by him to the legal heirs of late Sh.Satbir Yadav.

11. The appreciation of evidence is within the jurisdiction of the original Court and the First Appellate Court and such appreciation of evidence ought not to be lightly interfered with any second appeal which is maintainable only on a question of substantial law.

12. In my considered opinion the argument raised by learned counsel for the appellant are misconceived and the instant appeal does not raise any substantial question of law. The findings of both the Courts below are founded on appreciation of oral and documentary evidence which has resulted in concurrent finding of fact in favour of the respondents/plaintiffs.

13. Since no substantial question of law arises in this case, the appeal is dismissed.

14. Since the family of the deceased Sh.Satbir Yadav has been harassed on frivolous grounds, it is directed that the decretal amount be paid to the respondents/plaintiffs along with the interest @10% per annum accrued thereon within four weeks from today, failing which the appellant/defendant shall be liable to pay interest @15% per annum from the date of this order till the amount is paid.

CM No.7765/2017 (stay)

The application is dismissed as infructuous.

MARCH 01, 2017
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PRATIBHA RANI
(JUDGE)

