

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.3063 of 2014 (O&M)
Date of decision: 15th March, 2018

Naveen Kumar

... Appellant

Versus

TATA AIG Insurance Co. Ltd. & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Pritam S. Saini, Advocate for the appellant.

Mr. Rajneesh Malhotra, Advocate
for the respondents.

FATEH DEEP SINGH, J.

This is an appeal by unsuccessful plaintiff Naveen Kumar who had filed a suit for recovery against the defendants Insurance Company on the grounds that the plaintiff had purchased a Mahindra Scorpio Turbo Jeep which was got financed by the plaintiff as well as insured with the defendants through cover note dated 20.10.2004.

It is alleged that when brother of the plaintiff took the vehicle to Delhi on 26.08.2005 at the house of his friend and while the vehicle was parked it was found to have been stolen leading to registration of FIR bearing No.845 of 2005 at Police Station South Vihar, New Delhi. When the vehicle was not found, an untraced report dated 13.12.2005 was filed and subsequently the defendants failed to make good the loss and hence the suit in question. Stance of the defendants is that initially the plaintiff had filed a complaint before the District Consumer Forum and when

failed to get any relief, he filed an appeal before the State Consumer Disputes Redressal Commission and now belatedly the plaintiff has invoked jurisdiction of the Civil Court. After framing issues, the Court of learned Civil Judge (Junior Division) Chandigarh through judgment dated 07.03.2010 dismissed the suit of the plaintiff however, as is reflected the decree sheet so drawn denotes that the suit has been decreed.

The Court of learned District Judge, Chandigarh through impugned judgment dated 14.01.2014 upheld the findings of the trial Court and dismissed the appeal. It is against this, the present regular second appeal has come about.

Heard Mr. Pritam Singh Saini, Advocate for the appellant; Mr. Rajneesh Malhotra, Advocate on behalf of the respondents and perused records of the case.

The short moot point involved is whether after being unsuccessful throughout under the Consumer Protection Act, 1986, the plaintiff/appellant can have recourse afresh through the Civil Court?

It is the admitted stance of learned counsel for the appellant that initially the plaintiff/appellant had invoked jurisdiction of the District Consumer Forum, UT Chandigarh by filing a complaint seeking compensation from the defendants. The same was dismissed by the learned District Consumer Forum vide orders dated 26.02.2007 and being aggrieved over this order, the plaintiff had filed an appeal before the State Consumer Disputes Redressal Commission, UT Chandigarh which also stood dismissed on 05.04.2007 and therefore, by all means by virtue of

Section 19 of the Consumer Protection Act, 1986, only a remedy by way of further appeal lies to National Commission. Since the plaintiff has already elected to choose a particular remedy before the Consumer Court under the Consumer Protection Act, and thus, by virtue of principle of 'doctrine of election' he cannot, after tasting defeat on merits, seek redressal of his grievance through Civil Court. Though learned counsel for the appellant has placed reliance on '**National Insurance Co. Ltd. v. Nitin Khandelwal**' 2008 (11) SCC 259 and '**P.C. Wadhwa v. Hanil Era Textiles Ltd.**' 2013(33) RCR (Civil) 191, however, on account of factual disparity the cited ratios do not come to the aid of the appellant.

Since the plaintiff/appellant had chosen a particular remedy of pursuing his relief on merits, now at this belated stage he cannot be allowed to retrace his steps for fresh adjudication to undo the effects of the earlier forum he had chosen to avail of the remedy. The first appellate Court below has rightly held it so and dismissed the appeal. There appears to be no merit in the instant appeal and the same stands dismissed.

However before parting, it is necessitated to observe here that the learned trial Judge and so the first appellate Court failed to observe the serious contradiction that has crept in the judgment and decree of the trial Court, quite contrary to the provisions of Order XX CPC, as the decree should agree with the judgment and clearly specify the relief granted and other determinations and that too, in the light of provisions enshrined in Order XX Rule 6-A CPC. The same also skipped the notice

of the learned first appellate Court. Keeping in view such a serious remiss which could have its repercussions on the administration of justice, let the matter be brought to the notice of the concerned officers to prevent any such future remiss. The matter stands disposed off accordingly. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

March 15, 2018

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No