

105.

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

RSA-1160-2018 (O&M)

Date of decision:05.04.2018.

NAZIR MOHAMMAD ALIAS NAZEED MOHAMMAD AND ANR

... Appellants

Versus

HAZURA SINGH AND ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Ms.Supriya Garg, Advocate,
for the appellants.

HARI PAL VERMA, J.

CM-2877-C-2018

Prayer in this application filed under Section 151 CPC read with Section 5 of Limitation Act is for condonation of delay of 4 days in filing the present appeal.

For the reasons stated in the application, same is allowed and the delay of 4 days in filing the appeal is condoned.

RSA-1160-2018

Appellant-defendants No.1 and 2 have filed the present Regular Second Appeal against the judgment and decree dated 13.11.2017 passed by learned District Judge, Panchkula whereby their appeal against the judgment and decree dated 12.02.2016 passed by learned Civil Judge (Junior Division), Kalka, was dismissed.

Briefly stated, plaintiff had filed a suit for recovery of ₹2,13,600/- along with pendente lite and future interest or in the alternative

directing the defendants No.1 to 4 to hand over the possession of Truck

bearing registration No.HR-38F-8634 to him (plaintiff). He also prayed for a decree of permanent injunction restraining defendants No.1 to 4 from selling and transferring the possession of the vehicle to any other person except the plaintiff. It is the case of the plaintiff that he had sold the aforesaid truck to defendants No.1 and 2 vide agreement dated 25.10.2005 who paid ₹1,05,000/- to him (plaintiff). Defendants No.1 and 2 had agreed to pay the remaining amount to Tata Finance Limited and agreed that they (defendants No.1 and 2) would be responsible for tax, challan, accident, theft etc. qua the truck and would not sell the vehicle to any other person without his permission. However, in the intervening night of 05/06.02.2008 when the said vehicle was being driven by defendant No.4 (Pankaj Kumar), it met with an accident and in this accident, Mange Ram had died. The legal heirs of Mange Ram filed a claim petition under Section 166 of the Motor Vehicles Act before the MACT, Saharanpur, (UP) against him (plaintiff) and defendant No.5 (Bajaj Allianz General Insurance Company Limited). Since the vehicle in question was still registered in the name of the plaintiff and had not been transferred in the name of defendants No.1 and 2, the plaintiff was impleaded as a party. Thereafter, appellant-defendant No.1 had given an affidavit that defendants No.1 and 2 had purchased the vehicle from the plaintiff and even got the said vehicle released on superdari from the Court. The MACT award was passed on 09.01.2009 directing defendant No.5 to pay a sum of ₹1,78,000/- along with interest to the claimants on the death of Mange Ram and further directed defendant No.5 (Bajaj Allianz General Insurance Company Limited) that it could recover the said amount from the plaintiff. In this manner, the Tribunal sent a recovery certificate for recovering a sum of ₹2,13,600/- from the plaintiff as arrears of land revenue,

which the plaintiff had paid to the Collector, Panchkula through the Tehsildar, Kalka, by way of five bank drafts. The appellant-defendants No.1 and 2 sold the vehicle to defendant No.3. However, when the plaintiff requested the defendants to pay back the awarded amount of ₹2,13,600/- to him, the same was not paid.

Defendants No.1, 2 and 5 appeared and filed their written statements. The defendants No.1 and 2 have taken preliminary objections that the suit is not maintainable, plaintiff has no locus-standi to file the suit, there exists no cause of action to file the suit, plaintiff has not approached the Court with clean hands and the suit is bad for non-joinder and mis-joinder of parties. However, defendants No.1 and 2 admitted that they have sold the vehicle to defendant No.3. It was averred that the plaintiff himself had offered to give the vehicle on lease to them on the condition that the vehicle would be driven by defendant No.4 and salary would be paid by defendants No.1 and 2 out of the profits and they would also pay the installments of the vehicle. The plaintiff had put a condition that so long as all the installments of the vehicle are not paid, he would be the owner of the truck and accordingly, at the time of accident, the plaintiff was the owner of the vehicle. Considering that admission is the best piece of evidence, the trial Court having recourse to the sale agreement executed between the parties, has come to the conclusion (of course on the basis of agreement to sell dated 22.10.2005) that the defendants took possession of the vehicle from the plaintiff and it was agreed between the parties to the suit that the defendants would be responsible for the tax, challan, theft etc. qua the vehicle. Even during cross-examination, defendant No.2 had admitted his

F & B on Ex.P2-sale agreement. Similarly, the signatures were admitted on affidavit Ex.P3 dated 25.10.2005 which shows that the defendants purchased the vehicle from the plaintiff and they made themselves liable for challan, tax, accident theft etc. qua the vehicle. The trial Court, vide judgment and decree dated 12.02.2016, decreed the suit and held as under:-

“20. So far as the liability of the defendant nos.1 and 2 to pay ₹2,13,600/- to the plaintiff is concerned, demolishing the case of the defendant nos.1 and 2, the defendant no.2 has testified that in the intervening night of 05/06.02.2008, the Vehicle met with an accident. The said witness has also categorically deposed that the plaintiff paid the aforesaid amount. So, it can be safely presumed that the aforesaid admissions would operate as estoppel against the defendant Nos.1 and 2 and they cannot wriggle out of their liability to pay ₹2,13,600/- to the plaintiff on the ground that in the Registration Certificate of the Vehicle they were not shown as its owners.

21. So far as the argument raised by the learned counsel for the defendant nos.1 and 2 that the defendant nos.1 and 2 cannot be penalized for the plaintiff's negligence is concerned, the same holds no ground when during cross-examination, the defendant no.2 has categorically stated that since, the installments were not paid to the finance company, so, the Vehicle could not be transferred in the names of the defendant nos.1 and 2.”

Not satisfied with the aforesaid judgment and decree dated 12.02.2016, the appellant-defendants No.1 and 2 filed an appeal. However, the same was dismissed by the learned Lower Appellate Court vide judgment and decree dated 13.11.2017. While dismissing the appeal, learned Lower Appellate Court observed as under:-

“39. It has come in the evidence that the plaintiff on the basis of Ex.P-2, gave NOC on payment of installments by defendants. The clause No.8 is independent clause. This did not wipe the total impact of Ex.P-2 that shows that the sale of the truck. It contained aforesaid condition, as admittedly, truck was on hypothecation. The admission when clear and unequivocal, they are binding and are the best piece of evidence, unless explained. They amount to estoppel. In this regard, reference may be made to the

authority reported as Divisional Manager, United India Insurance Co. Ltd. v. Samir Chandra Chaudhary, (SC): Law Finder Doc Id # 83537 wherein it was observed that:

“.....Admission is the best piece of evidence against the persons making admission. As was observed by this Court in Avadh Kishore Das v. Ram Gopal and Ors., AIR (1979) SC 861 in the backdrop of Section 31 of Indian Evidence Act, 1872 (in short the 'Evidence Act') it is true that evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong; but they do raise an estoppel and shift the burden of proof placing it on the person making the admission or his representative-in- interest. Unless shown or explained to be wrong, they are an efficacious proof of the facts admitted. As observed by Phipson in his Law of Evidence (1963 Edition, Para 678) as the weight of an admission depends on the circumstances under which it was made, these circumstances may always be proved to impeach or enhance its credibility. The effect of admission is that it shifts the onus on the person admitting the fact on the principle that what a party himself admits to be true may reasonably be presumed to be so, and until the presumption is rebutted, the fact admitted must be taken to be established. An admission is the best evidence that an opposing party can rely upon, and though not conclusive is decisive of matter, unless successfully withdrawn or proved erroneous. (See Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi and Ors., AIR (1960) SC 100).
....”

40. In view of above, the defendants are bound by the terms and conditions of Ex.P-2 and reiterated in Ex.P-3. Whether the Award Ex.P5 was passed rightly or wrongly, this Court is not to comment on it. Nor it is issue before this Court. The plaintiff-respondent, has laid the suit on the basis of Ex.P2/P3. On that account, the plaintiff has locus standi and his suit is maintainable. The averment that the appellant is not party to Ex.P-5 and not liable, is not tenable submission in view of above reasoning. The suit of plaintiff is within the period of limitation, as he paid the amount on 08.02.2012, as evident from Ex.P-6. After payment of same, the cause of action arose in favour of the plaintiff against the defendants on the basis of Ex.P-2/Ex.P-3. The suit is thus within limitation.”

It is in the aforesaid circumstances, the appellants have filed the present appeal impugning the judgments and decrees passed by courts below.

Learned counsel for the appellants has argued that the courts below have failed to appreciate the evidence on record and have based the decisions merely on the basis of conjectures and surmises including the statutory provisions of Motor Vehicles Act, 1988 which does not recognize any person as owner of any vehicle without No Objection Certificate by the previous owner. In the case in hand, NOC was never given by the plaintiff and as on the date of accident, RC was in the name of respondent-plaintiff and, therefore, the liability qua the appellants could not have been fastened on the appellant-defendants as the plaintiff-respondent could not prove the defendants No.1 and 2 as owners. The appellant-defendants were not parties in the claim petition filed by Smt. Rani and others seeking compensation before the Motor Accident Claims Tribunal and owing to gross negligence, respondent-plaintiff was held liable to pay compensation of ₹1,78,000/- with 6% interest to the claimants and the Insurance Company was given recovery rights against the respondent-plaintiff. The appellant-defendants were merely the caretakers and not the owners of the truck. There being a recital in the agreement between the parties that the plaintiff can take the truck back in case the appellant-defendants failed to pay the entire amount, strengthen the case of the appellants that they did not have the right to sell it further without full payment of the sale amount. Therefore, at the time of accident, the installments of payment were still left and the appellant-defendants had no ownership of the truck. She has further argued that even the suit filed by the plaintiff was barred by limitation. The MACT award was passed on

09.01.2009 whereas the suit was filed on 17.02.2012. Therefore, the suit was barred by limitation.

I have heard learned counsel for the appellants and perused the record.

The document Ex.P2 which is the sale agreement between the appellant-defendants and the respondent-plaintiff recites the terms & conditions of agreement dated 25th day of October, 2005. This document has been titled as “sale agreement” and there are 8 conditions incorporated in the agreement which reads as under:

- “1. That total sale price of the said vehicle has been fixed as Rs.4,90,000/- (Rupees Four lac and ninety thousand only).
2. That this vehicle is financed from Tata Finance Limited concerned for a sum of Rs.3,85,000/- which shall be paid by the said purchaser to the said finance company in easy installments regularly without any delay i.e. installment for approximate Rs.14,100/- per month.
3. That the possession of the said vehicle has been handed over to the said purchaser in running condition on 22-10-05.
4. That the balance amount of Rs.105000/- has paid by the said purchaser to the said seller.
5. That if the said purchaser shall not pay the instalment to the purchaser the said seller or financier can get the said vehicle back from the purchaser immediately.
6. That before its delivery date the said seller shall be fully responsible for any kind of Tax, Challan, accident, theft case, financier case or any case if to be caused by this vehicle.
7. That after its delivery date the said purchaser shall be fully responsible for any kind of Tax, Challan, accident, theft case financier case or any Police case of any case if to be caused by this vehicle in future.
8. That the said purchaser shall not sell it out, to any other person without the permission of the said seller.”

There is a clear recital that the vehicle was financed from the Tata Finance Company and a sum of ₹3,35,000/- was to be paid by the appellant-defendants to the said Finance Company in installments regularly.

The installment was fixed at ₹14,100/- per month. The vehicle was handed over to the appellants in running condition on 22.10.2005. As per agreement, after the delivery of this vehicle, the appellant-defendants (purchasers) were fully responsible for any kind of tax, challan, accident, theft case, financier case or any police case if any to be caused by this vehicle. Thus from the date of handing over the vehicle to the appellant-defendants, all liabilities had fastened upon the appellant-defendants. Since there being an award passed by the Tribunal and the amount has been paid by the plaintiff, but there being a recovery right, the respondent-plaintiff has rightly filed the suit for recovery. The case of the plaintiff is strictly based on agreement to sell. The agreement clearly spells out that on 22.10.2005, the appellants have taken possession of the vehicle from the plaintiff and in the agreement, it was agreed that from 22.10.2005 onwards, the appellant-defendants would be responsible for the tax, challan, accident, theft etc. qua the vehicle. The factum of execution of sale agreement (Ex.P2) and execution of affidavit (Ex.P3) have duly been admitted by the appellant-defendants. They have conceded that on 25.10.2005, they being owners of the vehicle have taken possession of the vehicle from the plaintiff with all liabilities which may occur after 22.10.2005. The plea that the suit was barred by limitation was never pleaded by the appellants before the court below. Therefore, courts below could not return any finding on this issue. Thus, this Court does not find any illegality in the judgments and decrees passed by the courts below.

No substantial question of law arises in the present regular second appeal.

No other argument is raised.

There being concurrent finding of facts recorded by both the courts below, this Court does not find any reason to interfere in the well reasoned judgments and decrees of the courts below. Accordingly, present appeal is dismissed.

(HARI PAL VERMA)
JUDGE

05.04.2018
sanjeev

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