IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.2621 of 2018 (O&M)
Date of Decision: August 29, 2018

M/s. HDB Financial Services Limited

...Appellant

Versus

Ali Mohammad

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Vipul Dharmani, Advocate,
for the appellant.

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AMIT RAWAL, J.

Defendant- HDB Financial Services Ltd. is in Regular Second Appeal against the concurrent findings of fact and law, whereby the suit of the respondent-plaintiff for mandatory injunction for directing the appellant-defendant to issue loan clearance certificate (form No.35) in respect of the vehicle mortgaged with the appellant with consequential relief of permanent injunction, has been decreed.

Plaintiff-respondent instituted the suit aforementioned on the premise that he had availed the facility of loan from the appellant- defendant and hypothecation deed was entered into and as a result thereof, Truck-3118 TC 56 WBBS 111 bearing registration No.HR38R-2517, which the plaintiff had purchased from the registered owner, namely, Jakir Hussain, was mortgaged. The seller had received full and final payment from the plaintiff and had executed an affidavit of sale and also executed Special Power of Attorney. Jakir Hussain had paid all the loan liabilities of the financial institution, but despite that, the finance company did not issue form No.35 which is required for transfer of the vehicle.

The aforementioned suit was contested by the defendant raising preliminary objections qua maintainability, locus standi etc. On merits, it was stated that as per the terms and conditions, the defendant- finance company had a right to resume the possession of the vehicle in case of default by the borrower.

On the basis of the pleadings of the parties, the trial Court framed the following issues:-

> "*1) Whether the plaintiff is entitled for decree of mandatory injunction directing the defendant to issue the loan clearance certificate (form no.35) of the above said vehicle and also a decree for permanent injunction restraining the defendant not to snatch the vehicle in question from the possession of plaintiff? OPP*
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> *2. Whether the suit of the plaintiff is not maintainable? OPD*
>
> *3. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD*
>
> *4. Whether this court has no jurisdiction to try present suit? OPD*
>
> *5. Relief."*

Respondent-plaintiff, in support of his case, examined himself as PW1 and brought on record various documents, whereas defendant did not lead any oral evidence and closed the evidence after tendering document Mark D1.

On the basis of the aforementioned evidence, the trial Court decreed the suit. The appeal laid before the Lower Appellate Court also met with the same fate.

Mr. Vipul Dharmani, learned counsel representing the appellant- defendant submitted that along with the appeal, appellant had also filed an application under Order 41 Rule 27 of CPC for production of documents by way of additional evidence, i.e., loan agreement No.137469 and 137480. The judgments and decrees of the courts below suffer from illegality as the original loanee had not cleared the loan taken with regard to the vehicle in question. Clause 20.1 of the hypothecated-cum- guarantee agreement dated 30.4.2011 envisages that the borrower in case fails to pay the money due to the institution without prejudice is entitled to exercise all rights under the hypothecated agreement. It is in these circumstances, the clearance certificate was not issued, but this fact has been ignored by the courts below and, therefore, there is illegality.

I have heard the learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Vipul Dharmani, for, the defendant has miserably failed to bring on record any documentary evidence to establish that it can stall the issuance of loan clearance certificate vis-a-vis the vehicle in question owing to the default committed by the borrower in respect of other loan agreement. For the adjudication of the same, the Court has no other occasion but to decree the suit, for, the loan amount vis-a-vis the vehicle has been paid. The finance institute is not expected to act as a shylock and cause unnecessary harassment to loanees/borrowers. Findings of fact and law arrived at by the Courts below are not falling within the realm of perversity enabling this Court to form a different opinion than the one arrived at.

If at all, there was some truthfulness in the stand taken in the written statement, nothing prevented the appellant to produce the application or place on record the material vis-a-vis the stand taken in the appeal and the written statement.

For the reasons stated above, I do not find any merit in the submissions of the learned counsel for the appellant. There is no illegality or perversity in the judgments and decrees under challenge. Resultantly, the appeal is dismissed.

August 29, 2018 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**