

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.6382 of 2017 (O&M)

Date of Decision: December 07, 2018

Magma ITL, Finance Limited

...Appellant

Versus

Ashok Kumar

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Nakul Sharma, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

Appellant-defendant has not been successful in defending the decree of possession of Multi Utility Vehicle bearing registration No.PB-03-R-9488, which was ordered to be returned to the respondent-plaintiff within a period of six months.

Plaintiff Ashok Kumar alleged to have purchased the aforementioned motor vehicle from one Jasvir Singh vide affidavit dated 11.06.2008. It was alleged that Jasvir Singh had purchased the said vehicle from M/s Prime Motors, Bathinda vide sale certificate and invoice dated 31.12.2007 and was insured with M/s Reliance General Insurance, Ludhiana. Plaintiff had applied for a loan for purchasing of the vehicle from defendant No.1 and all formalities, including submission of signed cheques as security were completed. Defendant No.1 informed that the plaintiff was not eligible, but somehow he managed to purchase the vehicle from his own sources. Defendants misused the papers and on 14.12.2008 possession of

the motor vehicle was taken. Even the plaintiff approached the police for re-possession of the vehicle and having failed, has been constrained to file the suit on 04.03.2010.

Appellant-defendant opposed the suit by raising the objection of jurisdiction in view of the arbitration clause and apprised that the plaintiff had issued three cheques bearing Nos.961768 dated 10.09.2008, 961769 dated 10.10.2008 and 961770 dated 10.11.2008 for a sum of ₹13,145/- and a complaint under Section 138 of the Negotiable Instruments Act (for short, the Act) in this regard was filed, wherein the plaintiff had been convicted.

Since the parties were at variance, the trial court framed the following issues:-

- “1. *Whether the plaintiff is entitled to recovery of possession of vehicle from the defendants? OPP*
2. *Whether this Court has no jurisdiction to try the suit? OPD*
3. *Whether the suit of plaintiff is bad for non-joinder of necessary party? OPD*
4. *Relief.”*

Plaintiff himself appeared as PW-1 and also examined PW-2 Jasvir Singh and brought on record various documents, whereas defendant No.1 tendered Ex.D4 to Ex.D6, copies of the application, loan agreement, resolution and registration certificate.

Mr. Nakul Sharma, learned counsel appearing on behalf of the appellant-defendant submitted that once the categorical case of the plaintiff was that he had submitted an application for obtaining loan and issued cheques, the possession of the vehicle was taken as per the terms and conditions of the loan documents and, therefore, there was no illegality.

Conviction of the plaintiff is a testimony of non-discharge of the legal liability. In such circumstances, the courts below ought not to have drawn an adverse inference in not proving the loan documents as the conviction in proceedings under Section 138 of the Act was sufficient.

I have heard the learned counsel for the appellant-defendant, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel.

It is settled law that the findings of the criminal court are not binding on the civil court. The defendants were required to discharge the onus which keeps on shifting during the stage of the trial, particularly onus as per the issues. Ex.D4 to Ex.D6 have been only tendered into evidence, but not proved. In the absence of the proof, irresistible inference drawn was that there was no loan transaction and, therefore, possession of the vehicle was not held to be valid.

No other argument has been raised to counter the concurrent findings of fact and law arrived at by the courts below, which are based on appreciation of evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

December 07, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No