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

+ RFA 189/2006

MOHD. RAMZAN

..... Appellant

Through: None.

versus

M/S SURYA FINCAP LTD. & ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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11.09.2018

1. This case is on the Regular Board of this Court since 3.7.2018.

No one appears for the appellant although it is 12.15 P.M.

2. This appeal is filed by the appellant in the suit impugning the judgment of the Trial Court whereby the suit filed by the appellant/plaintiff for recovery of Rs.4,62,052/- has been dismissed. The appellant/plaintiff claimed the amount by alleging that the financed vehicle was wrongly taken possession of by the respondent no.1/defendant no.1/financier.

3. Trial court has decided the relevant issue no.1 by holding that appellant/plaintiff is not entitled to the money decree because the appellant/plaintiff owed huge amount of Rs.2,97,031/- to the respondent

no.1/defendant no.1/financier. Trial court has distinguished the judgment passed by this Court in the case of ***Amitabh Verma Vs. Commission of Police 2003 I AD Delhi 329*** by holding that there is a difference where only one or two instalments or a small amount is due to the financier, and whereas in the present case a huge amount was due and payable by the appellant/plaintiff.

4. The relevant paras of the judgment of the trial court are paras 17 and 20 and these paras read as under:-

“17 In Amitabh Vema's case (Supra), the petitioner had sought registration of Criminal case against the Finance Company. The Hon'ble High Court had then dealt with the matter and had observed that Finance Companies cannot be permitted to hire Gundas and Anti-social elements to seize the vehicle. In para 24 of the judgment, it was observed as under:

“The finance company must consider the facts of each case in proper prospective. The case of the hirer who has not paid any installment or substantial no. of installments cannot be equated with the case of a hirer who has to pay only one installment or a very small amount”.

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20. Both these judgments are not applicable to the facts of this case. In the present case, in the WS, it was mentioned by Defendant no.1 in para 13 that “reply of the notice dated 17-07-1998 of the Plaintiff had been given on 23-07-1998”. In the replication, the Plaintiff has mentioned that the contents of para 13 of the WS need no replication. In the reply dated 23-07-1998, it was specifically mentioned by Defendant no.1 that from September, 1997 onwards the

cheques issued by the Plaintiff had been continuously dishonored. Admittedly, the case of the Plaintiff himself is that for few months he could not make the monthly installments. However, he had cleared the backlog and paid a sum of Rs.1,02,996/-. This fact has been denied by the Defendants. It was for the Plaintiff to establish that he had paid this particular amount. The Plaintiff would not have made this payment in cash as it would not have safe guarded his interest in the absence of receipt. No date or details of dates of payment of this amount have been furnished by the Plaintiff. In the reply dated 23-07-1998, it was mentioned in para 11 that a notice dated 10-04-1998 had been issued by Defendant no.1 vide which the agreement had been terminated. The Plaintiff had been asked to pay the amount within 14 days failing which the Defendant no.1 was to become entitled to repossess the vehicle. Merely because, the Defendant no.1 has not proved the service of the notice dated 10-04-1998, it does not mean that there is no evidence to substantiate this particular claim. An admission is the best piece of evidence. In the present case, the Plaintiff has admitted receipt of the reply dated 23-07-1998. The Plaintiff could have sent a rejoinder to Defendant no.1 intimating it (Defendant no.1) that he (Plaintiff) is not in receipt of the alleged notice dated 10-04-1998. The present suit had been filed on 27-07-2000. The earlier suit for mandatory injunction had been filed sometime in August, 1998. Copy of the plaint is mark A. In para 13 of mark A, there is a reference of reply dated 23-07-1998 sent by Defendant no.1. This document also establishes the fact that the Plaintiff had received the reply dated 23-07-1998 sent on behalf of Defendant no.1 in response to the notice dated 17-07-1998 of the Plaintiff. In the earlier suit also, it was not claimed by the Plaintiff that he had sent rejoinder to the reply dated 23-07-1998 refuting the claim of Defendant no.1 that a notice dated 10-04-1998 had been sent by Defendant no.1 before seizing the vehicle. The Plaintiff claims that he had gone on 22-05-1998 to pay Rs.60,000/-. It was a substantial amount and was outstanding on 22-05-1998. In my view, the vehicle had been seized as per the terms and conditions of the agreement Ex.PW1/D-1. In my view, the facts mentioned in the plaint and the evidence produced by the Plaintiff do not justify grant of relief to the Plaintiff for one cannot be allowed to make use of the vehicle without paying the installments.”

5. Since no one appears for the appellant, therefore, this appeal is dismissed in default and for non-prosecution. Let no application for restoration/recall of this order be entertained unless costs of Rs.25,000/- are first deposited with www.bharatkeveer.gov.in.

VALMIKI J. MEHTA, J

SEPTEMBER 11, 2018

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