NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 11-01-2019

Judgment delivered on 28-03-2019

FA No. 167 of 2003

Jitendra Kumar Sahu, aged about 37 years, s/o. Devendra Kumar Sahu, Prop. Anand Bus Services, r/o. Basantpur, PS, Tahsil and Dist. Rajnandgaon (CG).

---- Appellant/plaintiff

Versus

1. Laxmi Narayan Sharma, aged about 60 years, s/o. Unknown, prop. Golden Motor Body Repairs.
2. Mahendra Sharma, aged about 30 years, s/o. Laxmi Narayan Sharma, c/o. Golden Motor Body Repairs.

   Both r/o. Mamta Nagar, PS, Tahsil and Dist. Rajnandgaon (CG).
3. Goutam Lunawat, Prop. Mahaveer Motor Finance Company, Balak Chowk, Dhamtari, P.S, Tahsil and Dist. Dhamtari (CG).

---- Respondents/defendants.

For appellants : Ms. Shriya Mishra, Advocate.

For respondents : None

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decree dated 8-7-2003 passed by the 1st Additional District Judge, Ranjnandgaon

(CG) in Civil Suit No. 7-B of 2001 wherein the said court dismissed the suit filed by the appellant for recovery of the amount to the tune of Rs.87,126.88.

2) The appellant/plaintiff had purchased Omni Bus bearing registration No. CIT/8149 after obtaining financial assistance of Rs.2,00,000/- from respondent No.3/defendant No.3 some time in the month of April, 1996. The appellant was earning livelihood by plying the bus between Rajnandgaon and Dhamtari. As per version of the appellant, he repaid the entire amount of loan to the respondent No.3 by October, 1998 and in case any amount is proved to be due to the respondent No.3, he is ready and willing to pay the same. The said vehicle met with an accident as a result of which appellant had to put the vehicle for repairs in the garage of the defendant/respondents No. 1 and 2. Respondent No.2 handed over the vehicle to respondent No.3 without concurrence of the appellant. The appellant suffered loss of Rs.75,500/- for such illegal dispossession that is why suit was filed which was dismissed by the trial Court.

3. As per version of the respondents No. 1 and 2, the appellant had sold the vehicle to one Prakash Dillan in their presence for sum of Rs.35,000/-, therefore, they are not liable to pay any sum to the appellant.

4. Learned counsel for the appellant would submit as under:

i) The trial court erred in believing the defence story that there was sale of vehicle, but no document was produced pertaining to the sale of the vehicle, therefore, version of the respondents is not sustainable.

ii) The appellant was lawful authority when his vehicle was handed over to respondents No. 1 and 2 for repairs, therefore, vehicle ought to have been returned to the appellant by respondents No. 1 and 2 which is not done, therefore, respondents No. 1and 2 are liable to pay compensation as claimed by the appellant.

Iii) The trial court could have inferred in favour of the appellant regarding repayment of the loan as respondent No.3 had not opposed the case of the appellant, therefore, finding of the trial Court is liable to be set aside.

Reliance has been placed on the decision of Hon'ble the Supreme Court in the matter of

C. Venkata Swamy vs. H.N. Shivanna, reported in 2018 (1) SCC 604.

4. I have heard learned counsel for the appellant and perused the record of the court below in which judgment and decree has been passed.

6. Admittedly, the appellant purchased the Omnibus in question after obtaining finance assistance of Rs.2,00,000/- from respondent No.3 namely Goutam Lunawat. Though it is pleaded by the appellant that he has paid the entire sum due to the respondent No.3 and nothing was outstanding but no document was produced by the appellant as to how-much amount was re-paid to respondent No.3 and how much interest was paid on principle amount. From the evidence of Mahendra Sharma (DW/1) it is established that respondent No.3 Goutam Lunawat and one other person reached to the workshop and they demanded custody of the vehicle showing the document of hypothecation of the vehicle. As per version of this witness, he called the appellant in his garage and Goutam Lunawant and one other person took the vehicle from his workshop in presence of the appellant after having some conversation

7. From the evidence of both sides, it is clear that the amount was due to respondent No.3 regarding the vehicle and there is no

evidence that the amount outstanding with interest was repaid by the appellant. In case of hypothecation, unless the whole amount with interest is paid to the financer, the financer is deemed to be in legal possession of the vehicle though physical possession of the vehicle is with the person to whom financial assistance is given. The appellant has not demanded custody of the vehicle from any of the respondents which shows that he is not firm about repayment of amount which was taken from respondent No.3. It is not a case where respondents No. 1 and 2 handed over the vehicle to any unauthorised person which gives cause of action to appellant against respondents No. 1 and 2. Admittedly, respondent No.3 is financer of the vehicle and if his amount is not repaid, he is entitled to custody of the vehicle because the vehicle was in possession of the appellant on behalf of the respondent No.3. Therefore, the trial court is right in holding that the liability cannot be fastened on any of the respondents for possession of the vehicle by financer/respondent No.3. Therefore, argument advanced on behalf of the appellant is not sustainable and the case law cited on behalf of the appellant is clearly distinguishable from the facts of the present case. The appeal is liable to be dismissed.

8. Accordingly, decree is passed in favour of respondents and against the appellant as under:

(i) The appeal is dismissed with cost.

(ii) Parties to bear their own costs.

(iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.

(iv) A decree be drawn up accordingly.

Sd/-

(**Ram Prasanna Sharma**)
JUDGE

Raju