IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.03.2019

PRONOUNCED ON : 22.05.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.65 of 2013

1.D.Ravi
2.S.Palani ..Appellants/Defendants 1 & 3

Vs.

M/s.Sagar Investment,
a partnership firm
Rep. by its Partner
T.Jayaraman
At No.9, K.R.Koil Street,
West Mambalam,
Chennai - 600 033. ... Respondent/Plaintiff

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree/judgment dated 28.11.2008 passed in A.S.No.393 of 2007 by the Hon'ble VI Additional City Civil Judge, Chennai, by reversing the Decree and Judgment dated 14.02.2007 passed in O.S.No.1143 of 2005 by the Hon'ble XI Assistant City Civil Judge, Chennai.

For Appellants : Mr.D.Madhusudanan
for Mr.A.M.Loganathan

For Respondent : Mr.A.R.Nixon

JUDGMENT

This Second Appeal has been filed by the defendants 1 and 3 against the judgment and decree passed by the VI Additional Judge, City Civil Court, Chennai in A.S.No.393 of 2007 dated 28.11.2008, reversing the judgment and decree passed by the XI Assistant Judge, City Civil Court, Chennai in O.S.No.1143 of 2005 dated 14.02.2007.

2.The respondent herein has filed a suit in O.S.No.1143 of 2005 on the file of the XI Assistant Judge, City Civil Court, Chennai for recovery of Rs.55,776/- with interest for Rs.30,600 at the rate of 36% per annum from the date of plaint till the date of realisation and for cost. The learned XI Assistant Judge, City Civil Court, Chennai by the judgment dated 14.02.2007 had dismissed the said suit with cost. Aggrieved by the same, the plaintiff have filed an appeal in A.S.No.393 of 2007 on the file of the VI Additional Judge, City Civil Court Chennai. The learned VI Additional Judge, City Civil Court Chennai by the judgment dated 28.11.2008 had partly allowed the said appeal and decreed the suit directing the first defendant to pay a sum of Rs.23,500/- with interest at the rate of 9% per annum from the date of plaint till the date of realisation with proportionate cost. Feeling aggrieved, the defendants 1 and 3 have filed the present Second Appeal.

3.For the sake of convenience, the parties are referred to as described before the Trial Court.

4.The averments made in the plaint in brief are as follows:-

On 21.01.2002, the first defendant borrowed a sum of Rs.1,60,000/- from the plaintiff by executing a hire purchase agreement in respect of a lorry bearing registration number TAV 777. The first defendant agreed to repay the said amount together with finance charge of 18% per annum in 30 monthly installments amounting to Rs.72,000/- and the total amount to be paid by the 1st defendant was Rs.2,32,000/- at the rate of Rs.7,800/- per annum commencing from 21.02.2002 from 1st to 29th installments and at Rs.5,800/- for the last and 30th installment. The defendants 2 and 3 have stood as guarantors for the first defendant for the due repayment of the aforesaid amount. As per the terms and conditions of the hire purchase agreement, the monthly installment amount to be paid on or before the date fixed, in default of payment of monthly installments on the due date, the defendants have agreed to pay additional finance charge at the rate of 36% per annum on the defaulted amount for the defaulted period. Further, in default of payment of monthly installments, the plaintiff has the right to re-possess the vehicle and sell the same. The defendants never paid the monthly installments on the due dates and hence committed default in payment of monthly installments. Till 21.07.2003, the defendants have paid a sum of Rs.86,400 and thereafter, they did not make any payment, hence, the plaintiff has re-possessed the vehicle on 18.09.2003 in a very bad condition and the same was intimated to the defendants by the letter dated 22.09.2003. Thereafter, on 18.12.2003, the plaintiff had sold the vehicle to one N.Muthusamy for Rs.1,15,000/- and the said fact was informed to the defendants by the letter dated 30.12.2003 and the first defendant had received the said letter and sent a reply dated 24.01.2004, but the other two defendants returned the said notice. After giving credit to the payment of Rs.86,400/- paid toward installments on 21.07.2003 and after giving credit to the sale amount of vehicle that is Rs.1,15,000/-, the defendants are liable to pay a sum of Rs.30,600/- towards arrears of installments. Further, apart from the said amount, the defendants were due and payable a sum of Rs.24,388/- towards additional finance charges on the defaulted arrears of monthly installments and a sum of Rs.7,900/- towards the expenses incurred by the plaintiff and hence a sum of Rs.62,888/- was due and payable by the defendants. Further, after giving credit to the additional finance charges of Rs.6,312/- from and out of Rs.24,388/- and a sum of Rs.800/- which were paid by the defendants, the defendants still due and payable a sum of Rs.55,776/-. Since, the transaction is a commercial transaction, plaintiff is entitled to charge interest at the rate of 36% per annum on the principal amount of Rs.30,600/-. Hence, the suit.

5.The averments made in the written statement filed by the first defendant are, in brief as follows:

The suit is not maintainable, as the transaction between the first defendant and the plaintiff is a simple money transaction and not a hire purchase agreement as alleged in the plaint. It is false to state that the first defendant availed financial assistance from the plaintiff in respect of the vehicle bearing registration number TAV 777. It is also false to allege that he agreed to pay financial charges at the rate of 18% per annum and he agreed to repay the aforesaid amount in 30 installments. It is false to allege that the defendants paid the installments with delay. It is false to allege that the defendants have agreed to pay additional financial charges at the rate of 36% per annum in case of delayed payment. The vehicle was in good and sound condition and the market price of the said vehicle was Rs.2,50,000/- on the alleged date of sale. It is false to allege that the said vehicle was sold to one N.Muthusamy for Rs.1,15,000/-. There are no particulars to show how the vehicle was sold. In the absence of such particulars, the plaintiff cannot claim that the alleged sale was fair and just. In any case, the first defendant was not informed about the same. It is false to allege that the first defendant is due and payable a sum of Rs.30,600/- towards arrears of installments and Rs.24,388/- towards additional finance charges and a sum of Rs.7,900/- towards the expenses. The first defendant is not liable to pay any amount, much less the suit amount and therefore he prayed to dismiss the suit.

6.The averments made in the written statement filed by the third defendant in brief are as follows:

The third defendant never stood as a guarantor for the due repayment of the amount alleged to be due by the first defendant. The third defendant was persuaded only as witness and not as a guarantor. In all other aspects, he adopts the written statement filed by the first defendant and therefore he prayed to dismiss the suit.

7.Based on the aforesaid pleadings, the learned XI Assistant Judge had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, one witness was examined as P.W.1 and Exs.A1 to A13 were marked as Exhibits. On the side of the defendants 1 and 3, the 1st defendant was examined as D.W.1 and no Exhibits were marked on the side of the defendants 1 and 3.

8.The learned XI Assistant Judge, after considering the materials placed before him found that since the plaintiff had seized the vehicle ten months before the last date on which the final installment was to be paid, the plaintiff is not entitled to claim finance charge of Rs.24,000/- for the aforesaid ten months. He further found that the plaintiff failed to prove as to how it is entitled for additional finance charge of Rs.24,388/- and also a sum of Rs.7,900/- towards expenses and finally found that the plaintiff had received a sum of Rs.512/- in excess from the 1st defendant and as such, the plaintiff is not entitled to claim any amount from the defendants. Accordingly, he dismissed the suit with cost. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.393 of 2007 on the file of the learned VI Additional Judge, City Civil Court, Chennai. The learned VI Additional Judge, City Civil Court, Chennai had partly allowed the said appeal and decreed the suit declaring that the plaintiff is entitled to get a sum of Rs.23,500/- with interest at the rate of 9% per annum from the date of plaint till the date of realisation with proportionate cost. Feeling aggrieved, the defendants 1 and 3 have filed the present Second Appeal.

9.This Court at the time of admitting the Second Appeal has formulated the following substantial questions of law:

> "1. Is not the transaction between the plaintiff and the first defendant a simple and pure money transaction and not a hire purchase agreement as per the decision reported in AIR 1967 Calcutta page 256 and AIR 1980 Bombay 168?

2. Are not the Courts below failed to consider the question of law namely the transactions between plaintiff and the first defendant is a simple and pure money transaction and not hire purchase agreement?

3. Is not the lower Appellate Court acted with material irregularity in interfering with the decree and judgment of the lower Trial Court and passing a decree for Rs.23,500/- together with interest at 9% per annum without assigning any acceptable and sound reason?"

10.Heard Mr.D.Madhusudanan for Mr.A.M.Loganathan, the learned counsel for the appellants and Mr.A.R.Nixon, the learned counsel for the respondent.

11.The Substantial Questions of Law 1 to 3:-

The learned counsel for the appellants/defendants 1 and 3 has submitted that the First Appellate Court failed to consider that the transaction is only a simple money transaction and not an hire purchase agreement. He further submitted that the First Appellate Court failed to consider that the plaintiff is not entitled to claim finance charges after seizing the vehicle. He further submitted that the First Appellate Court erred in reversing the findings of the Trial Court and directing the defendants to pay a sum of Rs.23,500/- with interest at the rate of 9% from the date of plaint till the date of realisation with proportionate cost and therefore he prayed to allow the Second Appeal and set aside the judgment and decree passed by the First Appellate Court and restore the judgment and decree passed by the Trial Court.

12.In support of the aforesaid contentions, the learned counsel for the appellants has relied upon the following decisions:-

(i) Shyamsunder Bubna, Vs. Mahindra Nath Ghose and another - AIR 1967 Calcutta 256 (V 54 C 56)

(ii) Tata Engineering and Locomotive Co.Ltd., Vs. Bharat Mining Corporation Ltd. and others - AIR 1980 Bombay 168

13.Per Contra, the learned counsel for the respondent/plaintiff has submitted that the documents produced by the plaintiff would show that the transaction is an hire purchase agreement and not a simple money transaction. He further submitted that as per the said hire purchase agreement, the plaintiff is entitled to seize the vehicle and sell the same in the case of non making payment of installments. He further submitted that the defendants have not filed either suit or counter claim challenging the sale of the lorry and as such, it is not open to the defendants 1 and 3 to question the sale in this proceeding. He further submitted that the Trial Court without considering the evidence in proper perspective has erroneously dismissed the plaintiff's suit, but the First Appellate Court after considering the materials in proper perspective has rightly decreed the suit declaring the plaintiff is entitled for recovery of Rs.23,500/- with interest at the rate of 9% per annum from the date of plaint till the date of realisation and in the said factual findings, this Court cannot interfere and therefore he prayed to dismiss the Second Appeal. In support of the aforesaid contentions he relied upon the decision in Charanjit Singh Chadha And Ors. Vs. Sudhir Mehra on 31 August, 2001- AIR 2001 SC 3721.

14.It is seen from Ex.A3, that the first defendant had entered into a hire purchase agreement with the plaintiff in respect of a lorry bearing registration number TAV 777 and obtained a loan of Rs.1,60,000/- and agreed to repay the said amount with hire purchase charges @ 18% per annum within 30 monthly installments. According to the plaintiff, the defendants 2 and 3 stood as guarantors for the prompt repayment of loan by the first defendant. Its further case is that the first defendant has not paid the monthly installments on the due dates and he has paid a sum of Rs.86,400/- till 21.07.2003 and thereafter he did not make any payment. The first defendant has not denied the aforesaid facts. Further, according to the plaintiff, it has re-possessed the vehicle on 18.09.2003 and the same was sold to one N.Muthusamy on 18.12.2003 for Rs.1,15,000/- and the said fact was intimated to the defendants vide the letter dated 30.12.2003. Its further case is that the first defendant alone received the letter and he sent a reply dated 24.01.2004 with false averments. To substantiate the aforesaid facts, the plaintiff has produced a copy of the letter dated 30.12.2003 marked as Ex.A7 and the reply notice sent by the first defendant on 24.01.2004 marked as Ex.A9. Though, the first defendant has taken a stand that the aforesaid vehicle would fetch for Rs.2,50,000, it was sold for a meagre amount of Rs.1,15,000/- and the particulars as to the sale proceedings have not been disclosed, questioning the said sale, the first defendant has not filed any suit or counter. Taking into consideration all the said facts, the Trial Court has held that the transactions are not simple money transactions and it is pertaining to hire purchase agreement. Challenging the said findings, the first defendant has not filed any cross objection before the First Appellate Court. Therefore, the findings of the Trial Court that the said transaction is not a simple money transaction and it is pertaining to hire purchase agreement has become final. In the said circumstances, the first defendant cannot raise the said point before this Court in the Second Appeal.

15.In Shyamsunder Bubna, Vs. Mahindra Nath Ghose and another (Cited Supra), the first defendant had obtained the permit to buy a new car. He was short of funds and time set by the authorities for the first defendant to purchase the car was fast running out. The first defendant approached the plaintiff to avail financial assistance. There upon they entered into disputed agreement and under the said agreement, the plaintiff was described as the owner of the car and the first defendant was described as the hirer. On the same day the defendant has executed a promissory note in favour of the plaintiff. Two days thereafter, the plaintiff paid a sum of Rs.13,970/- towards the price of the car to the dealer and obtained a receipt. On behalf of the plaintiff firm, one of the partners was examined as witness. About the ownership of the car, at the time of execution of the agreement, he gave different versions. He has stated that the plaintiff firm had purchased the car and thereafter hired out to the defendant. But, the hire purchase agreement was executed on 10.12.1963, whereas the receipt was issued by the dealer of the car on 12.12.1963. Taking into consideration of the aforesaid facts, the High Court of Calcutta has held that even before purchasing the car, a hire purchase agreement was entered and hence the transaction is only a simple money transaction and not based on hire purchase.

16.But, in this case, the facts are totally different. In this case, the lorry bearing registration number TAV 777 was purchased by the first defendant even before getting loan from the plaintiff and only after purchasing the lorry, the first defendant approached the plaintiff seeking financial assistance and hence, the plaintiff gave a sum of Rs.1,60,000/- by entering into an agreement of hire purchase with the first defendant. Further, in pursuance of the said agreement, the first defendant has paid installments up to 21.07.2003 and the said fact has not been disputed by the first defendant. After 21.07.2003, the first defendant did not make any payment and hence the plaintiff by exercising the powers conferred under the hire purchase agreement has re-possessed the said vehicle on 18.09.2003 and with regard to that a letter dated 22.09.2003 also has been sent to the defendants and the said letter has been received by the first defendant. Postal acknowledgment has been produced by the plaintiff and marked as Ex.A5. According to the plaintiff, it has sold the lorry to one N.Muthusamy for Rs.1,15,000/- and the said fact was intimated to the defendants by letter dated 30.12.2003 and the first defendant has received the said letter and sent a reply letter dated 24.01.2004. As already pointed out that the plaintiff has produced a copy of the letter dated 30.12.2003 marked as Ex.A7 and reply letter sent by the first defendant on 24.01.2004 has been marked as Ex.A10. The said facts have not been disputed by the first defendant. Therefore, the defendants cannot contend that the said transaction is a simple money transaction and not a hire purchase agreement. Therefore, the aforesaid decision will not apply to the facts of this case.

17.In Tata Engineering and Locomotive Co.Ltd., Vs. Bharat Mining Corporation Ltd. and others (cited Supra), taking into consideration, the clauses mentioned in the hire purchase agreement, the High Court of Bombay has held in paragraph 34 as follows:-

> “34.Therefore, on reading the agreements, Ex.B (collectively) as a whole and looking at its substance and in the absence of any circumstances mutilating the same, in my opinion, these agreements are in essence hire-purchase agreements. Therefore, the property in the suit vehicles did not at the time when the agreements were made but remained with the plaintiffs and property could pass on the option being exercised after compliance with all the obligations under the agreement. It is not in dispute that defendant No. 1 has not complied with all the terms and that it had not exercised the option. It is clear from the uncontroverted evidence before me that defendant No. 1 had committed default in payment of the agreed instalments. Under the circumstances, the property had remained in the plaintiffs and they continue to be the owners. I, therefore, reject Mr. Cooper's (collectively), are in reality loan or financing transactions against the security of the suit vehicles”.

18.In this case also a perusal of Ex.A3/hire purchase agreement would show that it is not a simple money transaction, but it is an hire purchase agreement. Therefore, the said decision also will not help the appellants.

19.In Charanjit Singh Chadha And Ors. Vs. Sudhir Mehra on 31 August, 2001 (Cited Supra), the Hon'ble Supreme Court has held that ordinarily, a contract of hire purchase confers no title on the hirer, but a mere option to purchase on fulfilment of certain conditions, it was further held that the contract of hire purchase may also provide for the agreement to purchase the thing hired by deferred payments subject to the condition that title to the thing shall not pass until all the installments have been paid. Further, it was held that the hirer would not become the owner of the property until he pays the entire installments. Further, it has been held that the hirer would be liable for all the expenses of the owner and obtaining re-possession or attempting to obtain re-possession of the vehicle. Further, it was held that if the hirer has committed default by not paying the installments and under the agreement, the financier has taken re-possession of the vehicle, the hirer cannot have any grievance. In this case, in Ex.A3/hire purchase agreement, in clause 14, it is stated that if the hirer makes default in payment of any rent, the owner may without notice, can take re-possession of the vehicle invoking the said clause. By invoking the said clause, the plaintiff has re-possessed the vehicle and sold the same. Therefore, in view of the aforesaid decision of the Hon'ble Supreme Court, repossession and selling of the vehicle is legally permissible and the first defendant cannot have any grievance.

20.As per Ex.A3, a sum of Rs.1,60,000/- was advanced to the first defendant on 21.02.2002. The first defendant had signed in the said document as hirer and the defendants 2 and 3 had signed as guarantors. In the said document, it is also stated that for the aforesaid amount of Rs.1,60,000/-, hire purchase charges at the rate of 18% for 30 months was calculated as Rs.72,000/- and added the said amount with the principal and the total amount liable to be paid by the defendants was mentioned as Rs.2,32,000/-. As per the said agreement, the aforesaid amount of Rs.2,32,000/- has to be paid in 30 monthly installments at the rate of Rs.7,800/- per month commencing from 21.02.2002 from 1st to 29th installment and at Rs.5800/- for the last and 30th installment. According to the plaintiff, the first defendant has totally paid a sum of Rs.86,400/- till 21.07.2003 and thereafter he did not make any payment and hence the vehicle was re-possessed by the plaintiff on 18.09.2003. As already pointed out that the hire purchase charges at the rate of 18% was calculated in advance for 30 months and added to the principal amount and thereafter the said amount has to be paid in 30 monthly installments. The last installment to be paid on 21.07.2004 but on 22.09.2003 itself, that is 10 months prior to the last date for payment, the vehicle was seized by the plaintiff. Taking into consideration of the said facts, the Trial Court has held that the plaintiff is not entitled to claim hire purchase charges after repossession of the vehicle. But the First Appellate Court without adverting to the said point, simply relying upon the calculation memo filed by the plaintiff, has held that the plaintiff is entitled to claim Rs.23,488/- rounded to Rs.23,500/-. The plaintiff is not able to show under which clause of the hire purchase agreement, it is entitled to claim hire purchase charges even after repossession of the vehicle. After re-possessing the vehicle and selling the same, there is no justification in claiming hire purchase charges. Therefore, this Court is of the view that the findings of the First Appellate Court are liable to be set aside. Accordingly, the substantial questions of law are answered.

21.In the result, the Second Appeal is allowed, judgment and decree passed by the First Appellate Court are set aside and the judgment and decree passed by the Trial Court are restored. Considering the facts and circumstances of the case, the parties are directed to bear their own costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The VI Additional City Civil Judge,
Chennai

2.The XI Assistant City Civil Judge,
Chennai.

Copy to : The Section Officer,
VR Section, High Court, Madras.

+1 cc to M/s.A.R.Nixon, Advocate Sr.No. 44141

AKM/12.11.19/10P- 5C /

Judgment made in
S.A.No.65 of 2013