

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CM No. 5312 C of 2019 in/and
RSA No. 1947 of 2019 (O&M)
Date of decision: 9.12.2019

Sukhjit Singh Chandi

...Appellant

Versus

M/s Ashwani Automobiles Private Limited.

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Rajan Bansal, Advocate,
for the appellant.

JAISHREE THAKUR, J.

CM No. 5312 C of 2019

This is an application that has been filed for condonation of 2 days' delay in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay in filing the appeal is condoned.

CM stands disposed of.

Main case

1. The appellant herein filed a suit for mandatory injunction seeking declaration against the respondent/defendant asking for return of his Santro Car. The said suit was dismissed by the Civil Judge (Junior Division), Chandigarh, which was subsequently challenged in the appeal and the appellant remained unsuccessful in the same.

2.

In brief, the facts are that the car of the appellant herein met

with an accident on 03.12.2006, which was then delivered to the respondent for repair on 04.12.2006. The date of delivery was mentioned as 28.12.2006. The appellant filed an insurance claim, which was allowed and an amount of ₹68,622/- was paid towards insurance claim to the respondent. However, since the bill raised towards the repair was ₹99,230/- and the balance was not paid by the appellant, therefore, he was not given possession of the car. He served a legal notice dated 17.05.2007 claiming return of the car. In the meantime, the respondent filed a suit for recovery of ₹65, 808/- against the appellant, which was dismissed in default under Order 9 Rule 8 of the Code of Civil Procedure by an order dated 12.10.2010. In the said civil suit, the appellant had also filed an application for recovery of the car, which application became infructuous on account of the fact that the suit for recovery itself filed by the respondent was dismissed in default. The appellant then filed the present suit for recovery of the said vehicle on 19.02.2013, which was dismissed on the ground of being barred by the period of limitation and non-joinder of necessary party. However, while dismissing the suit, the Civil Judge (Junior Division) held that the appellant could approach respondent/defendant and get back his Santro Car after making payment of unpaid service and repair charges within a period of 4 months, failing which the respondent/defendant could dispose of the vehicle as per the Company's rules and regulations. This judgment was affirmed by the first Appellate Court, giving rise to the instant appeal.

3. Learned counsel appearing on behalf of the appellant would contend that the appellant is entitled to recover the car and, therefore the

suit for mandatory injunction ought to have been allowed. It is also argued that once the appellant had raised insurance claim and the same was met by the Insurance Company and the amount of ₹68,622/- had been paid directly to the respondent herein, then there was no justification for withholding the said Santro Car. It is argued that the suit has wrongly been dismissed on the ground of being barred by limitation, while contending that the appellant had moved an application for recovery of the car in the suit that had been filed for recovery of the balance amount towards unpaid service charges by the respondent herein. It is also argued that once the suit was dismissed in default, it could be held that no amount was due and payable to the respondent and, therefore they were illegally withholding his car.

4. I have heard learned counsel for the appellant and find no ground to interfere in the reasoned judgments so passed by both the courts below.

5. The fact of the accident is not disputed nor the question that the part payment has been received by the respondent herein towards repair of the Santro Car, which had met with an accident. Admittedly, the appellant had served a legal notice in the year 2007 for return of his car and then kept quite till such a time he moved another application for return of the car in the civil suit filed by the respondent for recovery of the balance amount towards repair charges. The period of limitation commenced as soon as the respondent refused to return the car on account of unpaid repair charges. Even otherwise the legal notice had been served in the year 2007 and thereafter the appellant had, for the reasons best known to him, chosen not to pay the balance amount towards repair charges till such time he filed the

present suit in the year 2013. Merely because the suit for recovery of the balance amount was dismissed in default, it cannot be said that the period of limitation would start afresh. The cause of action accrued as far back as 2007 when the car was not returned on account of unpaid bills. Even otherwise the trial court had given a very fair offer to the appellant herein to clear the outstanding bills within a period of 4 months and the respondent was directed to release the car on receipt of outstanding due, but the said offer has not been availed of by the appellant.

6. Hence finding no infirmity or irregularity in the impugned judgments, the instant appeal is dismissed.

9.12.2019

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No