

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

**RSA No.6160 of 2016 (O&M)
Date of Decision.21.01.2019**

Parvinder Singh

...Appellant

Vs

ICICI Lombard General Insurance Co. Ltd. and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sachin Luthra, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff has not been successful in seeking declaration being owner of the truck bearing No.HR-37B-1794 as per the policy No.3003/542566515/00/000 with consequential relief of mandatory injunction directing the defendants to pay value of the truck as per the policy along with interest @24% per annum.

The plaintiff claimed to have purchased the truck in question and got insured with the respondents-defendants/insurance company. He executed power of attorney in favour of one Rajesh Sethi who allegedly paid installments of the truck as it was taken on loan. In February, 2009, it was allegedly stolen and the intimation of the same was sent to the Insurance Company on 21.05.2009. The insurance company repudiated the claim in September, 2009 whereas the suit was filed in April, 2012.

Learned counsel appearing on behalf of the appellant submitted that no doubt the consumer complaints were filed but they have been withdrawn under the advice of the counsel, resulting into filing of the present suit but the fact of the matter is that entire transactions were effected by the attorney, thus, non-examination of the plaintiff

cannot be fatal to the case, for, the attorney appeared as PW1.

I am afraid aforementioned argument of Mr. Luthra is not sustainable, for, insurance company had raised objection of maintainability of the suit but plaintiff did not lead evidence to that effect. Whether under the garb of mandatory injunction, plaintiff can be permitted to seek value of the truck without payment of the court fee in the absence of relief of recovery, the answer would be 'no'. Be that as it may, objection of the defendant with regard to the sale of the truck by the plaintiff in favour of the attorney has not been controverted through direct and cogent evidence. It has been noticed that only attorney of plaintiff appeared. No sane person would not come forward to seek the claim as sought. All these factors weighed in the mind of the Courts below in non-suiting the plaintiff.

The appeal is also accompanied by an application seeking condonation of delay of 28 days in filing of the appeal. The explanation given is also not plausible and lacks bona fide.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed both on the ground of delay as well as on merit.

(AMIT RAWAL)
JUDGE

January 21, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No