

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.02.2020

DELIVERED ON: 14.02.2020

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

S.A.No.1347 of 2007

and

M.P.No.1 of 2007

1.M.D.Joshi (deceased)

2.Mrs.A.Elizabeth Lilly

3.Mrs.M.J.Maria ... Appellants/Respondents/
Plaintiff

Appellants 2 and 3 brought on record
as Lrs of the deceased sole appellant
vide order of Court dated 12.12.2014
made in M.P.No.3 of 2014 in
S.A.No.1347 of 2007

vs.

M/s.Nahar Investments,
rep.by its Director,
Nahar Mansion

51,G.N.Nagar, Chetty Street,
T.Nagar, Chennai-17.

... Respondent/Appellant/
Defendant

Second Appeal is filed against the judgement and decree,
dated 23.01.2006, passed by the Additional District Cum Sessions
Court (Fast Track Court No.4), Chennai, in A.S.No.562 of 2004,
reversing the judgement and decree, dated 24.09.2003, passed by
the 16th Assistant City Civil Court, Chennai, in O.S.No.2786 of
2000.

For Appellants : Mr.G.Veerapathiran

For Respondents : Ms.B.Aparna for
M/s.K.Balakrishnan

JUDGEMENT

This second appeal is filed by the plaintiff in the suit as against the judgement and decree, dated 23.01.2006, passed by the Additional District-Cum-Sessions Court (Fast Track Court No.4), Chennai, in A.S.No.562 of 2004, reversing the judgement and decree, dated 24.09.2003, passed by the 16th Assistant City Civil Court, Chennai, in O.S.No.2786 of 2000.

2.The appellant herein is the plaintiff and the respondent is the defendant in the suit. The plaintiff approached the trial Court by filing O.S.No.2786 of 2000, seeking to direct the defendant to pay a sum of Rs.60,000/-, being the value of the van at the time of seizure, with interest at 18% per annum from the date of plaint till the date of realization; to pay a sum of Rs.50,000/- towards Medical expenses, and Rs.95,000/- for loss of income between September 1998 and March 2000 and also to pay future loss of income.

3.The case of the plaintiff was that he entered into a hire-purchase agreement with the defendant in respect of a Maruthi Van, on 20.10.1995, agreeing to clear the amount in 16 monthly instalments at the rate of Rs.3700/- per month, commencing from 20.10.1995. According to the plaintiff, he paid a sum of Rs.17,000/- on the same day as initial deposit. The van was delivered by the defendant on 20.10.1995 and it was registered as TSH 7282 in the defendant's name.

4.According to the plaintiff, he had duly paid the monthly instalments and cleared the entire amount payable to the defendant under the hire-purchase agreement, on 16.04.1998. Thereafter, it appears that the plaintiff approached the defendant to have the Registration transferred in his name and for cancellation of the endorsement in the certificate of Registration. Without transferring the Registration, according to the plaintiff, the defendant's men had seized the vehicle/van on the ground that the plaintiff had not paid the instalments. The case of the plaintiff was that the amount had been fully settled at the time of seizure and in view of the seizure, he suffered mental agony and became paralytic and also suffered loss of income. Therefore, he had filed the suit for recovery of money under various heads, as stated supra.

5.The suit was resisted by the defendant on the ground that the plaintiff did not adhere to the payment schedule at all and there was an outstanding of Rs.64,864/- due from the plaintiff to the defendant. Under the hire-purchase agreement, the defendant had the right to repossess the property. Therefore, the vehicle was repossessed and was sold for Rs.10,000/-, being an old vehicle, and the sale consideration was also adjusted to the credit of the plaintiff. The defendant

also denied all the averments regarding the medical expenses incurred by the plaintiff and also the loss of income claimed by him.

6.A reply statement was also filed by the plaintiff denying all those averments in the written statement.

7.The trial Court, which went into the various issues framed by it and also the evidence and pleadings placed for consideration, has partly allowed the suit. According to the trial Court, although several amounts were claimed under various heads, the plaintiff was entitled to be compensated only to the extent of Rs.30,000/-. According to the trial Court, the various amounts claimed towards medical expenses, loss of earning etc., were not established at all by the plaintiff. The trial Court has, however, come to the conclusion that the vehicle had been illegally seized and after giving depreciation value, quantified the sale price for the old vehicle at Rs.30,000/- and ordered payment of the same. As against the judgement and decree of the trial Court, an appeal was filed by the defendant, in A.S.No.562 of 2004, before the Additional District Cum Sessions Court (FTC No.4), City Civil Court, Chennai.

8.The lower appellate Court, vide its judgement and decree, dated 23.01.2006, reversed the judgement and decree of the trial Court and dismissed the suit. The lower appellate Court has held that under the hire-purchase agreement, the defendant had the right to repossess the vehicle. The lower appellate Court has also held that there was an Arbitration Clause in the agreement and the plaintiff could have invoked the Arbitration Clause and without invoking the same, the plaintiff could not have approached the trial Court. The lower appellate Court has also held that the basis of arriving at compensation of Rs.30,000/- by the trial Court was completely wrong in view of the fact that the trial Court has not gone into the entire issue as to what were the terms of the contract; how many instalments were paid and whether there was any delay in complying with the terms of the agreement. Without going into those issues, the compensation arrived at by the trial Court was irrational and arbitrary and also incorrect. On those grounds, the appellate Court reversed the findings of the trial Court. As against the judgement and decree of the appellate Court, the present Second Appeal has been filed by the plaintiff.

9.The Second Appeal was admitted by this Court on the following Substantial Questions of Law:

"(i)Whether the judgement and decree of the lower appellate Court is vitiated by non-consideration of Section 17(4) of Hire Purchase

Agreement Act, 1972?

(ii) Whether the lower appellate Court is right in law in not following the mandatory provisions of Order 41 Rule 31 C.P.C. while setting aside the judgement and decree passed in the suit?

(iii) Whether the lower appellate Court is right in law in casting the burden on the appellant when the burden lies heavily on the defendant when he has failed to produce the statement of accounts and an adverse inference has been drawn against the defendant by the trial Court?"

10. Mr. Veerapathiran, the learned counsel appearing for the appellants would submit that the entire EMI amount, under the hire-purchase agreement entered into between the plaintiff and the defendant, had been paid at the time when the defendant repossessed the vehicle. Only after appreciating the said fact, which was established by the plaintiff, the trial Court had arrived at the compensation of Rs.30,000/-. The compensation amount quantified by the trial Court was on the basis of the Auditor's report, assessing the value of the vehicle. Even though, the plaintiff did not choose to file an appeal against the rejection of his claim in respect of medical expenses and loss of earning, the lower appellate Court ought to have accepted the trial Court's finding in respect of compensation payable to the plaintiff at Rs.30,000/-. According to him, unfortunately, the lower appellate Court, without proper reasons, has reversed the findings of the trial Court.

11. The learned counsel for the appellants would also submit that the defendant's evidence itself would establish that the amount that was to be paid in full, under the hire-purchase agreement, had been received. However, the lower appellate Court has overlooked the said evidence given by the defendant himself. The learned counsel would draw the attention of this Court to the evidence of the defendant. The learned counsel, therefore, would submit that the judgement and decree of the lower appellate Court, reversing the judgement and decree of the trial Court, warrant interference by this Court.

12. On behalf of the respondent/defendant, Ms. B. Aparna, learned counsel had appeared and she would submit that the trial Court has completely erred in allowing the suit partly without framing any issues regarding the compliance part, in respect of the hire-purchase agreement, on the side of the plaintiff. The

trial Court has not gone into the issues such as the factual aspect of payment schedule, accrued interest, etc. The trial Court has completely overlooked those crucial factors and has arbitrarily quantified Rs.30,000/- to be payable to the plaintiff. This apparent error committed by the trial Court was set right by the lower appellate Court and the reasons adopted by the appellate Court were perfectly in order. Therefore, the learned counsel for the respondent/defendant would submit that the judgement passed by the lower appellate Court was a well considered judgement and the same does not call for interference by this Court.

13. Considered the submissions of the learned counsel for the parties, perused the materials and the pleadings placed on record.

14. As rightly concluded by the lower appellate Court, the trial Court has completely misdirected itself by accepting the case of the plaintiff in respect of his first claim seeking compensation for repossessing of the vehicle, without going into various aspects of the time schedule fixed under the hire-purchase agreement and the payments actually paid and received in furtherance of the hire-purchase agreement. Without touching upon those issues, the trial Court has incorrectly arrived at the compensation payable to the plaintiff by blindly accepting the version of the plaintiff that the entire EMI amounts payable under the hire-purchase agreement were complied with.

15. On the other hand, from the evidence as made available, there was no proof at all as to the plaintiff sticking to the time schedule as contemplated under the hire-purchase agreement, as per Exs.A1 and A2. Without going into those aspects, the trial Court has completely erred in partly allowing the claim of the plaintiff. However, the lower appellate Court has correctly appreciated the fact and has rightly reversed the findings of the trial Court. In fact, the lower appellate Court has also held that the defendant had the right to repossess the vehicle under the hire-purchase agreement and also the fact that there was an Arbitration Clause in the agreement, which the plaintiff failed to invoke. The lower appellate Court has further held that the quantification of Rs.30,000/- was arbitrary and was not called for at all, when the claim of the plaintiff was disputed by the defendant in regard to the compliance part of the plaintiff under the hire-purchase agreement. This Court, after consideration of the pleadings and the evidence, is of the view that the trial Court has completely erred in not framing proper issues and fortunately, the lower appellate Court has overturned the verdict of the trial Court.

16.In fact, the judgement and decree of the lower appellate Court was in line with the settled legal principle and also on appreciation of various facts and the pleadings of the parties. In such view of the matter, this Court finds that there is no scope for interference with the judgement and decree passed by the lower appellate Court, dated 23.01.20006, in A.S.No.562 of 2004.

17.For the above said reasons, the Substantial Questions of Law framed by this Court, while admitting the Second Appeal, are answered against the appellants. The Second appeal stands dismissed. No costs. Connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

msk

To

- 1.The Additional District Cum Sessions Court
(Fast Track Court No.4), Chennai.
- 2.The 16th Assistant City Civil Court, Chennai .

Copy to :

The Section Officer,
V.R. Section, High Court , Madras-104.

+1cc to Mr.G.Veerapathiran, Advocate, sr no.12744

GMR (CO)
RMP (29/12/2020)

S.A.No.1347 of 2007

WEB COPY