

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09 / 07 / 2018
DELIVERED ON : 09 / 03 / 2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SECOND APPEAL NO.1297 OF 2011
&
M.P.No.1 of 2011

S.K.Sampathkumar ... Appellant/Plaintiff

Vs.

Indo Asain Finance Ltd
15, New Giri Road,
Theyagarya Nagra
Chennai-600 017

... Respondents/Defendant

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 22.11.2010 made in A.S.No.29 of 2009 passed by the learned VI Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 10.04.2008, dismissing the suit in O.S.No.6614 of 2006 passed by the learned XII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.M.Balasubramanian
For Respondent : Mr.S.Nataraj Shankar

J U D G M E N T

Aggrieved over the concurrent findings of the Courts below the unsuccessful plaintiff has preferred the above Second Appeal.

2. The suit was filed for permanent injunction restraining the defendant from encumbering or selling the A.L. Bus bearing registration No.PY-01-T-1677 to any third party for a consequential mandatory injunction to return back the same to the plaintiff.

3. The case of the plaintiff is that he availed hire purchase loan to the tune of Rs.10,00,000/- from the defendant. He was actually paid a sum of Rs.7,70,000/- out of Rs.10,00,000/-. Besides a sum of Rs.55,000/- was taken for service charge and the balance amount of Rs.2,30,708/- was

retained by the defendant as deposit. As per the agreement, the plaintiff shall repay the loan amount along with interest at the rate of 36% in 36 equal instalments, the monthly instalment being Rs.45,000/-. Due to some financial difficulties the plaintiff could not pay four instalments and it was adjusted from the deposit amount. Suddenly on 25.08.2004, the vehicle was repossessed by the defendant and hence he filed the suit for permanent injunction restraining the defendant from selling the vehicle. According to the plaintiff, he has already paid a sum of Rs.6,40,000/- to the defendant and after deducting the deposit amount of Rs.2,30,708/-, he is liable to pay only Rs.1,29,299/. Worth of the seized bus is around Rs.12,00,000/-. Therefore, the seizure of the bus is illegal and interest and financial charges at the rate of 36% flat is violative of Usurious Interest Prevention Act and Tamil Nadu Prohibition on Exorbitant Interest Act 13 of 2003. Therefore, he laid the suit for injunction and return of the bus.

4. Denying the allegation the defendant has filed a detailed counter, wherein it is claimed that the total arrears due and payable as on that day was Rs.15,00,000/-. The plaintiff admittedly had committed default in payment and despite repeated demands by telegraphs, the plaintiff failed to pay the instalments. After giving information to the concerned Police stations, both at Puducherry and Chennai the vehicle was repossessed. The plaintiff has failed to act in accordance with the agreed terms and conditions. On the other hand, the defendant is strictly adhering to the terms contained in the hire purchase agreement. Further, the seizure was made in the year 2004, whereas the suit is filed only in the year 2006. Thus delay by itself disentitles the plaintiff seeking discretionary and equitable relief before this Court.

5. The Trial Court framed appropriate issues and dismissed the suit.

6. On appeal, Lower Appellate Court framed appropriate points for consideration and heard the arguments of both sides. At that juncture, the plaintiff filed C.M.P.No.1800 of 2010 for receiving additional document and the Lower Appellate Court considered the document which was already marked as Ex.B.1 sought to be received as additional document and after considering the arguments dismissed both the CMP as well as the appeal. Aggrieved over the same, the appellant is before this Court.

7. This Court on 29.10.2011 admitted the Second Appeal on the following questions of law:

" The Second Appeal is admitted subject to the consideration of following substantial questions of law:

(1) Whether the Courts below uniformly committed an error of law in dismissing the Suit filed by the Appellant/Plaintiff merely by relying on the false and misleading allegations made by the Respondent/Defendant?

(2) Whether the Court below has committed an error of law in dismissing the application for adducing additional evidence at the Appellate stage on the side of the Appellant/Plaintiff?

(3) Whether the Courts below committed an error of law in totally misconstruing the genuineness of the relief claimed in the suit and the scope and vitality of the relief sought for?

(4) Whether the Courts below committed an error of law in not following the well settled decision on the point rendered by the Apex Court and followed by this Court in identical cases?"

8. I heard the submissions of both sides.

9. The admitted facts are that the plaintiff borrowed a sum of Rs.10,00,000/- for purchase of a bus through one hire purchase agreement. It is also admitted that the loan shall be repaid in 36 equal monthly instalments along with interest at the rate of 36%. It is categorically admitted by the plaintiff during his cross examination that as per the hire purchase agreement the creditor is entitled to repossess the vehicle and sell it in auction. The plaintiff during cross examination would also admit that he has signed the hypothecation agreement, T.O form and other required documents for transferring the ownership of the vehicle in favour of third parties.

10. Be that as it may, when the plaintiff seeks an equitable relief he should ensure that he has acted bonafide and complied with the terms of agreement properly. But on the other hand plaintiff himself has admitted in the plaint that he has defaulted payment of instalments. Of course, taking repossession of the vehicle, directly without an order of Court is illegal. The judgment relied on by the learned counsel for appellant in Manager, ICICI Bank Ltd Vs. Prakash Karu and Others, 2007 MLJ 854(SC), para 23 reads as under:

" 23. Before we part with this matter, we wish to make it clear that we do not appreciate

the procedure adopted by the Bank in removing the vehicle from the possession of the writ petitioner. The practice of hiring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to procedure recognized by law to take possession of vehicles in cases where the borrower may have committed default in payment of the installments instead of taking resort to strong arm tactics."

11. The other judgment reported in, R.Omprakash Choralaya vs. Deputy Inspector General of Police, Tirunelveli and Others, 2008 1 MLJ 616, para 6 of the order reads as under:

" 6. However in my considered view, such a direction to the Police to give aid to the petitioner for the purpose of seizing and repossessing the vehicles, may be used exactly to do what was sought to be undone by the Apex Court in the aforesaid judgment. What the financiers are not expected to do through collection agents, they shall not do through Police also. Therefore the proper remedy open to the financiers and financial institutions in such a case is to approach the Civil Court, obtain interim orders ex parte or otherwise, for the, appointment of Advocate Commissioners for seizing and possessing vehicles. While obtaining such orders, the financiers could always seek Police protection for the Advocate Commissioners to execute the warrant of commission issued to them. This procedure in my considered view would be the due process of law. It will ensure that there is no complaint either against the financier or against anyone else even while ensuring that the terms of the Hire Purchase Agreement could be enforced b) the financiers."

12. Both the judgments are applicable to the cases of repossession without the aid of Court and such an act was held illegal. But in the instant case the vehicle was seized in the year 2004. He has filed the suit in the year 2006 i.e to say after a lapse of 24 months. There is no evidence on record as to why such a huge delay in filing the suit. In other view, in addition to the admitted default, the plaintiff would have committed default of more than 20 instalments. In order to prove that he has paid 16 instalments as claimed by him promptly, he should have filed the proof of payment or the receipts, whereas none of such documents were marked. On the side of the plaintiff only a telegram was marked as Exhibit A1. Other than this, hire purchase agreement, payment receipts and notices issued by

either of parties were not marked before the Court. The defendant has marked the statement of accounts as Ex.B.1 and adduced evidence that total due payable by the plaintiff amounts to Rs.15,00,000/-. No contrary evidence disputing the actual statement has been produced by the plaintiff himself.

13. Both the Courts considering the failure on the part of plaintiff to prove the case, have decided against them. Contrary to the procedure plaintiff contend that the defendant should have proved the default committed by him by producing the hire purchase agreement and other proof of payments. The Lower Appellate Court has rightly found that plaintiff has failed even to call for production of documents from the defendant. He failed to take any attempts to call for the documents through Court, much less the hire purchase agreement. In such circumstance, it held that the plaintiff is not entitled to claim any discretionary relief. The Courts below have rightly considered the issues and decided the matter in accordance with law. The contention of the appellant before this Court was seizure was made illegally and contravention of the judgment of this Court will not be of much use.

14. The relief sought for is permanent injunction not to sell the vehicle and not against illegal repossession. Infact, the plaintiff has condoned the act of the defendant in illegally repossessing the vehicle by keeping quiet for two years without initiating any legal action. All that the plaintiff prays is injunction not to alienate the vehicle to the third parties and return it back to him. Without proving proper payment and without showing bonafides, the plaintiff is not entitled to the discretionary relief sought for in the plaint. The judgments relied on by the appellant is not applicable to the case on hand and questions of law raised by them does not commensurate with the relief sought for in the suit and hence answered in the negative.

On consideration of the above, I find the judgment and decree of the Lower Appellate Court does not require any interference. Accordingly, second appeal is dismissed. No costs. Connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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1.The VI Additional Judge,
City Civil Court, Chennai

2.The XII Assistant Judge,
City Civil Court, Chennai

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VD(CO)
SP(02/09/2020)



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