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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 22.04.2021

+ RSA 88/2019 and CM No.19306/2019

HYUNDAI MOTOR INDIA LTD. & ANR.APPELLANTS

Through Mr. Manish Shrivastava,
Mr. Rijul Taneja, Mr. Rahul Gupta
and Mr. Varun Chopra, Advocates

Versus

DR. T.N. GROVER

.....RESPONDENT

Through Mr. Sanjay Agnihotri, Advocate
and Mr. Sandeep Choudhary,
Advocates

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (Oral)

1. Present Regular Second Appeal has been filed assailing the judgment dated 28.02.2019 passed by the First Appellate Court whereby the appeal of the Appellants preferred against the judgment and decree dated 19.09.2017, was dismissed. Appellants herein were the Defendants in the suit and Respondent was the Plaintiff.

2. The facts of the case in a narrow compass are that the Respondent/Plaintiff purchased a new Hyundai Accent Car bearing Registration No. DL-9-CH-0668 from M/s. Rama Motors Pvt. Ltd., a registered dealer. At the time when the car was purchased,

Appellants/Defendants were conducting a 'World Cup Contest' as a part of their Sales Promotion Scheme. Under the Scheme, all those who purchased any Hyundai Model Car, during the specified period, could participate in the contest. The details of the contest and the various prizes were published in widely circulated newspapers for the benefit of the general public on 13.06.2002. According to the Scheme, the following prizes were to be awarded to the winners of the contest :-

“First Prize – Sonata Gold Car

Second Prize – Sonata Gold Miniatures from Tanishq

Third Prize – Sonata Gold coin from Tanishq 100 gm each

Fourth Prize – Gold coin from Tanishq 5 gm each

Hyundai T-Shirt and football for all the buyers”

3. Respondent/Plaintiff participated in the contest and filled up the necessary entry forms while purchasing the vehicle. He thereafter received a letter dated 14.08.2002 from the Appellants/Defendants informing him that he had won the third prize in the contest which was concluded on 08.08.2002 *albeit* the weight of the gold coin was mentioned as 5 Grams as against the weight of 100 Grams, which was the third prize as per the publication in the newspapers. He was also informed that the prize would be sent through direct mailers at the address of the Respondent/Plaintiff by 31.08.2002. To this extent, the facts are undisputed between the parties.

4. Respondent/Plaintiff sent a number of letters to the Appellants/Defendants asking them to fulfill their commitment and send

the third prize, but there was no response. A legal notice dated 10.10.2003 was sent to the Appellants/Defendants and in their reply dated 27.11.2003, Appellants/Defendants took a stand that the Respondent/Plaintiff had won the fourth prize, i.e., 5 Grams gold coin and mention of Third prize in the letter dated 14.08.2002 was an error. It was also stated that the error was rectified immediately and a corrigendum letter dated 16.08.2002 was sent.

5. Failing to receive the prize, Respondent/Plaintiff filed a suit seeking mandatory injunction directing the Appellants/Defendants to deliver 100 Grams Sonata gold coin being the third prize of the contest. Written Statement was filed by Appellants/Defendants and the suit was primarily contested on the ground that Respondent/Plaintiff had won fourth prize and was entitled to 5 Grams gold coin and not 100 Grams Sonata gold coin. Plea taken was that there was a typographical error in the letter dated 14.08.2002 and therefore, a corrigendum dated 16.08.2002 was sent to the Respondent/Plaintiff, clarifying the position since the contest was conducted by independent agency M/s. Quantum Direct India Private Limited through a computerized draw of lots on 08.08.2002. Replication was filed to the written statement, wherein, the Respondent/Plaintiff categorically denied receipt of letter dated 16.08.2002 and pleaded that the said letter was forged and fabricated to defeat the rightful claim of the Respondent/Plaintiff to the third prize.

6. Learned Trial Court framed the following issues on 04.08.2004:-

“1: Whether the Plaintiff has suppressed the material facts from this court? OPD

2: Whether the plaintiff is entitled to relief claimed for? OPP

7. Respondent/Plaintiff examined himself as PW-1 and led evidence by way of affidavit Ex. P-1. Legal notice was exhibit PW-1/2 and letters sent to the Appellants/Defendants were also relied upon and exhibited. Reply to the legal notice sent by the Appellants/Defendants was Ex. PW1/16. To rebut the case of the Respondent/Plaintiff, Appellants/Defendants examined Shri Priya Darshan Kumar, the Authorized Representative of the Company as DW-1, who filed evidence by way of affidavit Ex. DW1/A and relied on certified copy of the Board Resolution, Ex. DW1/1, original advertisement DW1/2, computerized list of draw DW1/3 and copy of the terms and conditions of the contest was marked as D-1. Shri Ramneek Singh, Director of M/s. Quantum Direct India Pvt. Ltd. was a summoned as witness, who deposed in the Court regarding the conduct of the contest.

8. Trial Court decided both the issues together. Onus *qua* Issue No.2 was on the Respondent/Plaintiff while *qua* Issue No.1 was on the Appellants/Defendants. The suit was decreed in favour of the Respondent/Plaintiff on 19.09.2017 and the Appellants/Defendants were directed to deliver the third prize being 100 Grams Sonata gold coin to the Respondent/Plaintiff. The judgment and decree was assailed by the Appellants/Defendants before the First Appellate Court in RCA SCJ No.11/2017. At this stage, it needs to be noted that an application was filed by the Appellants/Defendants before the First Appellate Court under Order XLI Rule 27 CPC seeking permission to lead additional evidence and prove the computerized list of draw along with a certificate under

Section 65B of the Indian Evidence Act *qua* this list as well as to summon Mr. Yogesh and Mr. Mathew as witnesses, being signatories to the said list.

9. Application was heard by the Appellate Court and dismissed, vide order dated 21.05.2018. Relevant part of the order is as follows :-

“Interestingly, no new document is sought to be produced at this stage and appellant is only seeking liberty to effectively prove the document which is already exhibited by it before the trial court! The document Ex DW1/3 was very much available with the appellant at the time of trial and he even attempted to prove the same by summoning the witness Mr. Ramneek Singh.

Once trial court has opined in its judgement that appellant herein could not prove the document Ex DW1/3 in a proper manner, no Liberty can be granted at this stage to the appellant to prove this document and cover up the lacunae as pointed out by the Ld. Trial court. No party can be allowed to cover up the deficiencies in its case at the appellate stage.

No reason has been advanced why appropriate certificate u/s 65B of Indian Evidence Act could not be filed earlier by the appellant before the trial court which could easily have been filed by them. No reason has been mentioned attempt was not made to examine Mr. Yogesh and Mr. Mathew before the trial court. No reason whatsoever has been mentioned why these witnesses could not be produced earlier.

*Opportunity to lead evidence at the appellate stage can be granted in rare circumstances and certainly cannot be granted to cover up, mistakes pointed out by the Ld. Trial court. If such permission was to be granted, there would be no end to litigation and at each stage of appeal either party may want to strengthen its case by bringing new witness and evidence before the court on the basis of observations made by the earlier court. Ld. Counsel for appellant has relied upon law as laid down in **Syed Abdul Khader v. Rami Reddy and***

Ors. Civil Appeal No. 1271 of 1969, decided on 29.11.1978 by Hon'ble the Supreme court of India. The said judgement has been carefully perused. However, considering that in the said judgement the hon'ble High Court itself felt the need to examine sale deeds before pronouncing its judgement, the said case is of little help to the Appellants/Defendants. Also since the additional documents in that case consisted of "registered sale deeds" which are anyways public record, the evidence now sought to be led cannot be equated with those documents. Accordingly, this application under consideration is devoid of any merits and is dismissed."

10. The judgment and decree of the Trial Court was challenged by the Appellants/Defendants before the First Appellate Court contending that (a) suit seeking relief of mandatory injunction was not maintainable in the absence of a relief of declaration; (b) Respondent/Plaintiff failed to establish that he was the winner of the third prize in the contest; and (c) Trial Court failed to appreciate the contents of the reply to the legal notice sent by the Appellants/Defendants.

11. The First Appellate Court noted that the entire appeal primarily revolved around the legal argument that the Respondent/Plaintiff did not seek relief of declaration and on this ground alone the suit ought to have been dismissed. According to the Appellants/Defendants, a declaration ought to have been sought that letter dated 16.08.2002, issued as a Corrigendum, informing the Respondent/Plaintiff, that he had won the fourth prize, be declared null and void. Court observed that while this argument was never raised before the Trial Court either in the written statement or during oral arguments, yet, being a legal argument touching upon the maintainability of the suit, could be raised at the stage of the appeal.

12. First Appellate Court dismissed the appeal, vide judgment dated 28.02.2019, holding (a) existence of the letter dated 16.08.2002 is itself doubtful and was not proved during trial; (b) Respondent/Plaintiff had always denied having received the letter; (c) letter was allegedly issued by the Appellants/Defendants and only they could prove the same; (d) original copy of the letter was never filed on record; (e) authors of the letter were never produced in the witness box; (f) no document was placed to establish even the dispatch of the letter to the Respondent/Plaintiff and there is no proof that the letter was delivered through any recognized mode of delivery; (g) no declaration can be sought of the document which was never received; (h) Respondent/Plaintiff was only an ordinary customer who tried his luck by filling a simple contest entry form and thus only the Appellants/Defendants could establish the result of the Contest; (i) no evidence was led by the Appellants/Defendants that Respondent/Plaintiff had won the fourth prize and the two witnesses failed to support and substantiate the stand of the Appellants/Defendants through their evidence.

13. Assailing the two judgments of the Trial Court and the First Appellate Court, counsel for the Appellants/Defendants submits that the substantial question of law that arises in the present case is, whether the suit seeking mandatory injunction without seeking relief of declaration is maintainable. Learned counsel for the Appellants/Defendants contends that while it is true that the Appellants/Defendants had initially issued a letter dated 14.08.2002 to the Respondent/Plaintiff, informing him that he

had won third prize entitling a 5 Gram Sonata gold coin, but the word “third” was a mere typographical error, as in fact the draw of lots indicated that Respondent/Plaintiff had won the ‘fourth’ prize of 5 Grams gold coin. Realizing the mistake, a corrigendum dated 16.08.2002, was sent, informing the Respondent/Plaintiff that he had won the fourth prize. Again, while responding to the legal notice of the Respondent/Plaintiff, Appellants/Defendants clarified, vide their reply dated 27.11.2003, that Respondent/Plaintiff had won the fourth prize and reference was made to corrigendum dated 16.08.2002. Therefore, Respondent/Plaintiff was well aware all along there was a dispute to his title to the third prize and this is also evident from a perusal of the plaint, wherein it is admitted that Appellants/Defendants were disputing his claim to third prize. Once the title of the Respondent/Plaintiff was in dispute, a suit for mandatory injunction simplicitor, in the absence of a relief for declaration of letter dated 16.08.2002 as null and void, was not maintainable and ought to have been dismissed by the Trial Court and First Appellate Court has also erred in dismissing the appeal.

Learned counsel for Appellants/Defendants argues that law is well settled that once there is a cloud eclipsing title to the alleged property, the only option is to seek declaration and mandatory injunction can only be sought as a consequential relief. Respondent/Plaintiff ought to have cleared the cloud over the title to 100 Grams gold coin and in this context, reliance is placed on the judgment of the Supreme Court in Anathula Sudhakar vs. P. Buchi Reddy (dead) through LRs and Ors,

(2008) 4 SCC 594, more particularly, para 21, where the Supreme Court has summarized principles to be followed in this context.

14. Reliance is also placed on a judgment of the Co-ordinate Bench of this Court in Rajeev Metals vs. DSIDC Ltd. & Ors., **RSA No.210/2007**, decided on 19.05.2011, wherein the Court has held that once the cancellation notice sent by the Defendant to the Plaintiff with regard to the allotment of the plot was specifically known to the Plaintiff, there was nothing that prevented him from seeking a declaration that cancellation is null and void. However, no such prayer was made. Prayer for mandatory injunction directing the Defendant to allot the plot in question without relief of declaration could not be granted. For the same proposition, reliance is also placed on the judgments in Mahant Purshottam Dass and Ors. vs. Har Narain and Anr., **AIR 1978 Delhi 114** and Sarjiwan Singh vs. Delhi Vidyut Board, **(2004) 75 DRJ 400**.

15. Learned counsel for Appellants/Defendants next contends that even otherwise, the Trial Court could not have directed the Appellants/Defendants to deliver to the Respondent/Plaintiff 100 Grams gold coin in view of the fact that the Respondent/Plaintiff had himself claimed to derive his cause of action, right and title to the gold coin from the letter dated 14.08.2002, which at best, entitles him to a 5 Gram gold coin. Both the Courts below have failed to appreciate that in the letter, reference is to a 5 Gram gold coin and if the title to the property is derived from this letter, the same would have to be read in entirety and accepted as a whole. It is thus prayed that the appeal be allowed in favour of the Appellants/Defendants and the suit be dismissed as not maintainable.

16. Learned counsel for the Respondent/Plaintiff *per contra* defending the orders of the Courts below argues that there is no infirmity in the impugned orders and suit has been rightly decreed in favour of the Respondent/Plaintiff. It is urged that the entire case of Appellants/Defendants hinges on the letter/corrigendum dated 16.08.2002, however, Appellants/Defendants failed to establish even the dispatch of the letter, leave alone, its delivery to the Respondent/Plaintiff. The plea is only an after-thought to defeat the right of the Respondent/Plaintiff and the letter is forged and fabricated. Respondent/Plaintiff sent several letters dated 09.12.2002, 16.04.2003, 07.05.2003, 23.07.2003 and 13.08.2003 to the Appellants/Defendants, seeking delivery of the 100 Grams gold coin, but Appellants/Defendants never responded, save and except, through their reply to the legal notice of Respondent/Plaintiff, wherein for the first time there was a reference to this letter. Respondent/Plaintiff had categorically denied receipt of the letter in the replication and the First Appellate Court has rightly held that declaration could not be sought with respect to a letter which did not exist and consequently, not received by the Respondent/Plaintiff.

17. It is argued that plea of the Appellants/Defendants that there was a typographical error in the letter dated 14.08.2002 and inadvertently 'third' was mentioned instead of 'fourth' prize, is a misconceived, dishonest and a false plea. It is argued that the words "third prize" in the letter dated 14.08.2002 are qualified by the words "Sonata Gold Coin" and a perusal of the advertisement publishing the details of the contest

and the prizes would show that 'Sonata' was used only with respect to the third prize and thus the typographical error was the number '5'.

18. Judgments relied upon by the Appellants/Defendants are distinguished on the ground that in each of the said cases the title of the Plaintiffs was under a cloud leading to a legal hurdle in obtaining the relief of mandatory injunction simplicitor, in contrast to the present case, where the title of the Respondent/Plaintiff is clear. Respondent/Plaintiff was a contestant who had filled an entry form and participated in a contest. He was not privy to the conduct of the draw of lots or how the list of winners was drawn up. After the contest concluded, Respondent/Plaintiff received a letter dated 14.08.2002 intimating that he had won the third prize, a Sonata gold coin, giving a clear title and right to the Respondent/Plaintiff to claim relief of mandatory injunction. Appellants/Defendants have set up a non-existent and imaginary letter allegedly dated 16.08.2002 and in the absence of the letter being received by the Respondent/Plaintiff, there was no reason for the Respondent/Plaintiff to believe that his title to the third prize was under a cloud. It is argued that the two Courts below have given a concurrent finding of fact on the very existence and dispatch/delivery of the letter, based on evidence and this Court in second appeal should not interfere in the said finding.

19. I have heard the learned counsels for the parties and examined their respective contentions.

20. After hearing the parties, the substantial question of law that arises for consideration of this Court is:-

“Whether the suit for mandatory injunction filed by the Respondent/Plaintiff was maintainable in absence of the relief of declaration.”

21. It is not in dispute that Respondent/Plaintiff was a participant in a contest conducted at the behest of the Appellants/Defendants as a part of their Sales Promotion Scheme. All those who purchased any Hyundai model car during the specified period could take part in the contest and win prizes, the details of which were published in the advertisement. Respondent/Plaintiff was informed, vide letter dated 14.08.2002, that he had won the third prize *albeit* it was mentioned in the letter that it was a 5 Gram Sonata Gold coin. After waiting for over a year and writing several letters, when the third prize was not delivered, Respondent/Plaintiff filed a suit for mandatory injunction. Suit was decreed in favour of the Respondent/Plaintiff directing the Appellants/Defendants to deliver 100 Grams gold coin and the First Appellate Court upheld the judgment and decree, leading to the Appellants/Defendants filing the present appeal.

22. The fulcrum of the argument of the Appellants/Defendants is that the suit was not maintainable, as knowing that the title of the Respondent/Plaintiff to a 100 Grams gold coin was under cloud, he failed to seek relief of declaration *qua* the letter dated 16.08.2002, whereby Appellants/Defendants had disputed his title to the third prize. Broadly understood, the second argument is that even if the letter dated 14.08.2002 is to be enforced, it only mentions 5 Gram gold coin and thus in any event, Respondent/Plaintiff is not entitled to a 100 Grams coin.

23. Respondent/Plaintiff examined himself and led evidence by way of affidavit, wherein he stood by and reiterated the stand in the plaint and replication and also relied on the letter dated 14.08.2002, as received from the Appellants/Defendants. The stand of the Respondent/Plaintiff as reflected from the evidence is that he was the winner of the third prize and the letter dated 14.08.2002 authored and sent by the Appellants/Defendants was enough evidence to prove his title to the third prize. The Appellants/Defendants, in order to rebut the case of the Respondent/Plaintiff examined two witnesses. DW-1 Sh. Priya Darshan Kumar, Authorized Representative of the Appellants/Defendants, in cross-examination by the Respondent/Plaintiff, stated that he was deposing solely on the basis of the record of the Appellants/Defendants and had no personal knowledge of the case. Significantly he deposed that Respondent/Plaintiff was declared winner of “Sonata Gold Coin” vide letter dated 14.08.2002, Ex. PW1/1. DW-2 Sh. Ramneek Singh was a summoned witness on behalf of the Appellants/Defendants and deposed in his capacity as one of the Directors of M/s. Quantum Direct India Pvt. Ltd., the Company which had conducted the draw of lots for and on behalf of the Appellants/Defendants. DW-2 deposed with respect to the conduct of the draw of lots and stated that it was a computerized draw. On being confronted with the computerized list of winners, ‘mark H’, the witness identified only the first page of the list, categorically stating that he was not sure of the remaining pages of the list, as they did not bear the signature or the seal of their Company. The Courts below have rendered a finding on the admitted position between the parties that name of the Respondent/Plaintiff is not on the first page of the said list of winners. As

per the record, the list was provided to DW-2 by the Appellants/Defendants, via an e-mail, only in the year 2015 and DW-2 had admitted in his cross-examination that he was deposing on the basis of documents made available by the Appellants/Defendants. He deposed that he could not state anything about the winners of the contest and/or whether the Respondent/Plaintiff won the third or the fourth prize.

24. While the Appellants/Defendants do not dispute the issuance or authenticity of the letter dated 14.08.2002, their defence is that word 'third' in the letter is a typographical error and to fortify their defence, heavy reliance was placed on a letter dated 16.08.2002, wherein according to them, the mistake was rectified and the Respondent/Plaintiff was informed that he had won the fourth prize. The Trial Court, on appreciation of the evidence before it, found that in light of denial by the Respondent/Plaintiff of receipt of the letter, onus was on the Appellants/Defendants, to establish its dispatch and receipt, which they failed to discharge. Appellants/Defendants produced the list of winners but failed miserably to prove even the genuineness/authenticity of the same. Trial Court notes that it was a computer-generated list and was admissible in evidence only if it was accompanied by a certificate under Section 65B of the Indian Evidence Act. Respondent/Plaintiff had objected to the mode of proof of the list, but even then, no steps were taken to prove the list, in a manner known to law. Trial Court also notes that DW-2 only identified the signatures and seal of the Company on the first page and thus even the list of winners relied upon, was not proved.

25. Before the Appellate Court, Appellants/Defendants made an attempt to improve upon their case and cover up the deficiency in the evidence led before the Trial Court. An application was filed under Order XLI Rule 27 CPC for producing the certificate under Section 65B of the Indian Evidence Act, 1872, to prove the authenticity of the list of winners, as also to summon Mr. Yogesh and Mr. Mathew, the signatories to the list. A perusal of the order, extracted in the earlier part of the judgment, shows that the application was rejected on the ground that no new document was sought to be produced and liberty was sought to prove the document which was already exhibited before the Trial Court. Appellants/Defendants had attempted to prove the list by summoning DW-2 and made no attempts at that stage to either produce the certificate or summon other witnesses, while there was no stopping them from doing so. No reasons were advanced as to why the said step could not be taken earlier. First Appellate Court observed that opportunity to lead evidence at the appellate stage can only be granted in rare circumstances and not to cover up mistakes before the Trial Court and rejected the application, which order, attained finality.

26. Objection to the maintainability of the suit was taken for the first time before the Appellate Court, but being a legal issue, it was considered by the Court. Having perused the record and heard the learned counsel for the Appellant, I do not find merit in the contention that the suit was not maintainable. The plea is based on a letter dated 16.08.2002. Both the Courts below have held that Appellants/Defendants were unable to prove the existence of the letter. In the light of the denial of the

Respondent/Plaintiff, of having received the letter, the onus was on the Appellants/Defendants to prove the existence, dispatch and the receipt of the letter by the Respondent/Plaintiff. The onus was not discharged. No documentary or oral evidence was brought on record to establish dispatch or receipt of the letter and the document remained only as “mark D”. The letter was allegedly authored and issued by the Appellants/Defendants and only they could prove the same. The original of the letter was never filed, author of the letter was not brought in the witness box and once the letter itself could not be proved, in my view, it was rightly held in the impugned judgments that Respondent/Plaintiff was not required to seek a declaration that the letter was null and void.

27. The proposition of law argued by learned counsel for the Appellants/Defendants can hardly be debated. If the title of a property is itself under cloud, no doubt, the party would have to seek a declaration and the relief of mandatory injunction simplicitor is not maintainable. In the present case, however, the title of the Respondent/ Plaintiff clearly flowed from the letter dated 14.08.2002 and there was no requirement to seek a declaration.

28. Learned counsel for the Appellants/Defendants has laid emphasis on the reply dated 27.11.2003 to the legal notice sent by the Respondent/Plaintiff and argues that the position taken by the Respondent/Plaintiff *qua* the third prize was controverted by the Appellants/Defendants and reference was also made to the letter dated 16.08.2002. This argument only deserves to be rejected. Letter dated 27.11.2003 was only a reply to the legal notice sent by the Respondent/Plaintiff and a mere mention of a

letter dated 16.08.2002 therein was not enough, as the Appellants/Defendants were required to actually send the same to the Respondent/Plaintiff, which they failed to do. The best piece of evidence that the Appellants/Defendants had in their favour was the computerized list of winners to prove that Respondent/Plaintiff's name was shown against the fourth prize. However, as noted by the Courts below, no certificate was filed under Section 65B of the Indian Evidence Act, 1872, to prove the list, knowing very well how the document was required to be proved, in law. The alleged signatories to the list were not produced as witnesses and it was at much later stage that the Appellants/Defendants woke up from their deep slumber and sought permission before the Appellate Court to lead additional evidence. This application, in my view, was rightly dismissed by the Appellate Court. Appellants/Defendants, in their wisdom, and surely on legal advice, summoned the Director of the Company who conducted the draw of lots, but DW-2, in his deposition, only identified the first page of list, which admittedly, did not bear the name of the Respondent/Plaintiff. In order to prove that the Respondent/Plaintiff had won the fourth prize, the onus was on the Appellants/Defendants to prove the authenticity of the entire list filed on record, allegedly reflecting the name of the Respondent/Plaintiff against the fourth prize, which they failed to do.

29. I also find merit in the plea of the Respondent/Plaintiff that even if the letter dated 14.08.2002 mentions the prize as 5 Grams coin, the error cannot inure to the advantage of the Appellants/Defendants. The reason to agree with the Respondent/Plaintiff is simple. A perusal of the

advertisement published in the newspaper shows that against the third prize, it was mentioned “Sonata Gold coin from Tanishq weighing 100 Grams each” whereas against the fourth prize, it was mentioned “Gold Coin from Tanishq weighing 5 Grams each”. I may now refer to the relevant contents of the letter dated 14.08.2002 as under :-

“On behalf of Hyundai Motor India Limited, I take pleasure in informing you that you have been chosen to receive the third prize of a ‘5 gram-Sonata Gold Coin’ in our recently concluded “WIN A SONATA GOLD WORLD CUP CONTEST”.

Thank you for reposing your confidence in a Hyundai product and I am sure that same is supposed to reach you by 31st August 2002.

30. It is apparent that the letter refers to “third prize” followed by the word “Sonata”, which was the third prize. It is not the stand of the Appellants/Defendants that the word “Sonata” is a typographical error or a misprint. Therefore, even by this logic, when majority of the contents of the letter are in consonance with the advertisement qua the third prize, benefit of interpretation must yield in favour of the Respondent/Plaintiff to hold that the error was of the number ‘5’.

31. The judgments relied upon by the Appellants/Defendants, in my view, do not support their case, as the fact situations were completely different therein. In Anathula Sudhakar (supra), Plaintiff had filed a suit for permanent injunction to restrain the Defendant from interfering in the possession of the suit property, claiming to be owners of the property. Defendants, per contra, had resisted the claim on the ground that they had

purchased the property from a third party, under a registered sale deed. The title of the Plaintiff to the suit property was clearly in dispute and in that context the Supreme Court held as follows :-

“21. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or

render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) *Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”*
(emphasis added)

32. It is clear from a bare reading of the judgment that where a cloud is raised over the Plaintiff's title, a suit for injunction simplicitor cannot lie. Having said that, the Supreme Court in the same judgment observed that persons having clear title and possession, suing for injunction should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler, vexatiously or wrongfully makes a claim. Court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer the Plaintiff to

a more comprehensive declaratory suit. In fact, these observations of the Supreme Court favour the Respondent/Plaintiff as the Appellants/Defendants herein by making a bald, vexatious and unsubstantiated statement in the reply to the legal notice are depriving the Respondent/Plaintiff of the prize won by him in the year 2002.

33. Similarly, in the case of Rajeev Metals (supra), as rightly noticed by the First Appellate Court, the document in question was a general notice issued by a Government Authority to all the home buyers and the existence/issuance of the notice was never in dispute and in these circumstances, Court held that a declaration should have been sought by the Plaintiff. In stark contrast to the said fact, in the present case, the letter dated 16.08.2002 was strongly disputed by the Respondent/Plaintiff and both the Courts below in a concurrent finding, have held that the Appellants/Defendants failed to prove its existence and dispatch.

34. In the case of Sarjiwan Singh (supra), an injunction suit simplicitor was filed restraining the Defendant from taking steps for recovery of the amounts claimed in the electricity bill, without seeking a relief of declaration for holding the electricity bill to be invalid. In that context, Court had held that the Plaintiff should have sought the relief of declaration.

35. In view of the above, I find no infirmity with the impugned judgments and the substantial question of law raised by the Appellants/Defendants is answered in favour of the Respondent/Plaintiff and against the Appellants/Defendants for all the aforesaid reasons.

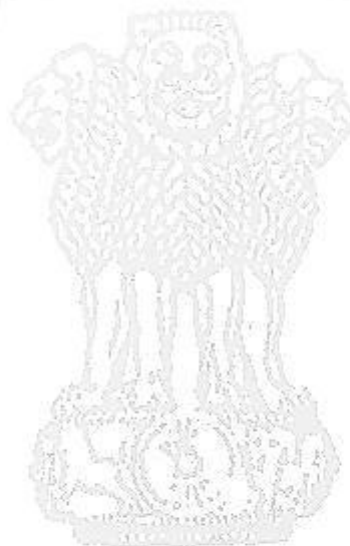
36. Respondent/Plaintiff had innocently applied for taking part in a contest and was awarded the third prize way back in the year 2002. The Appellants/Defendants instead of giving the benefit of the prize to the Respondent/Plaintiff, have entangled him in a long-drawn litigation for over 19 years.

37. Accordingly, the appeal and the pending application are dismissed with costs of Rs. 25,000/- in favour of the Respondent/Plaintiff.

APRIL 22, 2021

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JYOTI SINGH, J



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