

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. No.22 of 1994

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree passed by the learned Additional District Judge, Sambalpur in Money Appeal No.1/2 of 1990-92 confirming the judgment and decree dated 27.10.1989 and passed by the learned Sub-Judge, Deogarh in Money Suit No.8 of 1998.

Laxman Kumar Guru

....

Appellant

-versus-

Akhila Chandra Behera

....

Respondent

**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):**

For Appellant - Mr. A. Routray
(Advocate)

For Respondent - Mr. R.D. Mohapatra
(Advocate)

**CORAM:
MR. JUSTICE D.DASH**

Date of Hearing : 11.10.2022 : Date of Judgment:20.10.2022

The Appellant by filing this appeal under Section 100 of the Code of Civil Procedure (for short called as the 'Code') has assailed the judgment and decree passed by the learned Additional District Judge, Sambalpur in Money Appeal No. 1/2 of 1990-92.

By the same, the appeal filed by the present Appellant under Section 96 of the Code in assailing the judgment and decree passed by the learned Subordinate Judge, Deogarh in Money Suit No.8 of 1998 have been confirmed. The Respondent as the Plaintiff had filed the above noted suit seeking a decree for realization of 13,200/- from the Appellant (Defendant). The suit having been decreed directing the

Appellant (Defendant) to pay a sum of Rs. 13,200/- to the Respondent (Plaintiff) with pendente lite and future interest at the rate of 6% per annum till realization; this Appellant being the aggrieved Defendant having carried the First Appeal wherein he has also been unsuccessful. Hence, the present Second Appeal.

2. For the sake of convenience, to avoid confusion and bring in clarity, the parties hereinafter have been referred to as per the position assigned to them in the Trial Court.

3. The Plaintiff's case is that he had entered into an agreement with the Defendant for sale of a Mini Truck for a sum of Rs. 20,000/-. For the purpose, the Plaintiff had paid a sum of Rupees 10,000/- as advance to the Defendant. The Plaintiff was given the custody of said Mini Truck which then was not in a running condition. It is stated that the Defendant as required under the agreement thereafter, did not take any step for transfer of the ownership of the said Mini Truck in favour of the Plaintiff. When the matter stood thus some outsiders came and forcibly took away the Truck. It was then learnt by the Plaintiff that the Defendant was not the owner of the said Mini Truck and had executed the agreement only to make an unlawful gain and in this way had taken a sum of Rs. 10,000/- from the Plaintiff. The Plaintiff therefore, filed the suit for realization of sum of Rs. 10,000/- and compensatory interest to the tune of Rs.3,200/-.

4. The Defendant in his written statement has taken the plea that the Plaintiff was the driver of the said Mini Truck and as such he was aware as to who was the owner of the said vehicle; particularly that the Defendant was not the owner. It is also stated that the Plaintiff was aware that the Mini Truck was under hypothecation and had been

hypothecated to a Financial Institution. It is stated that the Plaintiff was using the said Mini Truck having taken its custody from the Defendant for his benefit and as such he in turn is liable to pay damage at the rate of Rs. 250 /- per day for a period of 40 days, when the said Mini Truck was in his possession.

5. The Trial Court on the above rival pleadings having framed eight issues; upon examination of the evidence and their evaluation has found that the Plaintiff had not used the vehicle in question from 22.08.1985 to 01.10.1985. It has next been found that the Plaintiff had paid a sum of Rs. 10,000/- to the Defendant under that agreement Ext.1. Having said as above, the Trial Court has held that the Plaintiff is not entitled to pay any damage for the period from 22.08.1985 to 01.10.1985 at the rate of Rs. 250/- as claimed by the Defendant. It has further been held that since for that period, the Plaintiff was not in a position to ply the vehicle, the Defendant is liable to pay a compensatory interest at the rate of 12% per annum from 11.09.1985 till the filing of the suit which comes to Rs. 3,200/-.

6. The Defendant being aggrieved by the above judgment and decree passed by the Trial Court having filed the First Appeal has failed in that attempt to set aside the judgment and decree passed by the Trial Court which have been confirmed in the First Appeal in toto.

7. This Appeal has been admitted to answer the following substantial question of law:-

“Whether the agreement for sale Ext.1 has been misconstrued by the Courts below in passing the decree for realization of Rs.13,200/- to be paid by the Appellant (Defendant) to the Respondent (Plaintiff) with pendentelite and future interest at the rate 6% per annum?”

8. Heard Learned counsel for the Appellant. None appeared on behalf of the Respondent despite opportunity.

9. Keeping in view the submissions made carefully gone through I have read the judgments passed by the Courts below.

10. As regards misconstruction of the agreement Ext.1, here it is seen that the parties are not in dispute that they had entered into an agreement Ext.1 concerning the transfer of the Mini Truck. The said document in clear terms states that the Plaintiff had paid a sum of Rs. 10,000/- to the Defendant. Although, the Defendant examined as D.W.1 has denied the factum of receipt of said sum, the Courts below have rightly refused to accept the version of the Defendant on the face of the recital of the agreement Ext. 1 that it is the Defendant who had received the said amount of Rs. 10,000/- from the Plaintiff. The agreement carries the signature of the Defendant who is not an illiterate person and as it is not clearly pleaded or proved that the same has been fraudulently obtained from him. The Plaintiff besides tendering evidence as P.W.1 has examined other three witnesses who have corroborated his version about the payment of said amount of Rs. 10,000/- by him to the Defendant. It is further admitted that pursuant to the said agreement, the Plaintiff had taken the vehicle to his custody and for that reason, the Defendant has come to claim damage from the Plaintiff for that period which the Courts below have concurrently found as not the entitlement of the Defendant upon discussion of evidence and their evaluation by assigning very good reasons with which this Court finds no such infirmity.

It is also admitted during that period, the vehicle remained in custody of the Plaintiff in an idle condition and while it was thus lying,

the same had been taken away by the personnel of the Financial Institution with which the vehicle had been hypothecated. Thus the Defendant having received the amount of Rs. 10,000/- when has not been able to discharge all his obligations under that agreement Ext.1, so as to enable the Plaintiff to fulfill his further obligation of payment of the rest amount of Rs. 10,000/-, dependant upon the discharge of the obligation by the Defendant; the Courts below are found to have committed no error in holding that the Defendant is liable to pay a sum of Rs. 10,000/- to the Defendant.

However, it is seen that the award of compensatory interest in the facts and circumstances of the case, had not been so agreed upon by the parties under that agreement in that particular eventuality happening. Moreover, the Plaintiff here says to have taken the luxury of taking vehicle to his custody without the change of ownership in the Registration Certificate and that too in an idle condition to lie under his possession as such without any run on the road.

In such state of affairs, this Court is of the considered opinion that the decree passed by the Courts below to that extent of Rs. 3,200/- over and above the principal sum of Rs. 10,000/- cannot sustain. So, to this extent the Courts below are found to have misconstrued the agreement and thus in the obtained fact situation, it was not permissible for the Courts below to take a general view that the Plaintiff is entitled to the compensatory interest to the tune of Rs. 3,200/- merely on account of such failure on the part of the Defendant to perform his obligations under the agreement when it was very much known the Plaintiff that said discharge of the obligations by the Defendant under the agreement was dependent upon other factors being favourably satisfied.

11. In that view of the matter, this Court holds that the judgment and decree passed by the Courts below are liable to be modified to the extent that the Plaintiff is entitled to receive a sum of Rs. 10,000/- from the Defendant with pendentelite and future interest at the rate of 6% per annum till realization. Accordingly, it is held that the Plaintiff is entitled to a decree of recovery of a sum of Rs. 10,000/- from the Defendant with pendentelite and future interest at the rate of 6% per annum till realization.

The substantial question of law being accordingly answered, the judgments and decrees passed by the Courts below are hereby modified to the extent as indicated above.

12. In the result, the Appeal is allowed in part to the extent as aforesaid.

There shall, however, be no order as to cost.

(D. Dash),
Judge