

**S. No.114**

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

**\*\*\*\***

**RSA No.2291 of 2022 (O&M)**

**Date of Decision:16.11.2022**

**Shri Ram City Union Finance Ltd. and others**

**.....Appellants**

**Vs.**

**M/s Reliable Motors Railway Road**

**.....Respondent**

**CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA**

**Present:- Mr. Vinod Kumar Arya, Advocate for the appellants.**

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**DEEPAK GUPTA, J.**

The suit titled 'M/s Reliance Motor vs. Shri Ram City Union Finance Limited & Others' bearing CNR N: PBROB0-000017-2018, for recovery filed by the plaintiff (respondent herein) was decreed by Ld. trial Court on 07.11.2019. Appeal (CNR N: PBRO01-005389-2021) filed by the defendants (appellants herein) was dismissed by the first appellate court on 10.08.2022. Thus, there is concurrent finding in favour of the respondent-plaintiff. Aggrieved by these concurrent findings, present appeal has been filed by the defendants. To avoid confusion, parties shall be referred as per their status before learned trial Court.

2. Plaintiff is authorized dealer of Hero Moto Corporation Ltd., previously known as Hero Honda Motor Limited. Defendant No.2 is a finance company; whereas defendant No.1 is its branch office dealing in Punjab, Himachal and Jammu and Kashmir; whereas defendant No.3 is dealing the business of defendant No.2 in the Northern India including Chandigarh, UP and Haryana etc.

3. According to the plaintiff, it had agreed to hypothecate new two wheeler vehicles to the third party through defendants, who had assured to

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make remaining payment of invoice of the new sold vehicles. From 19.03.2013 to 15.07.2013, the defendants financed almost 39 two wheeler vehicles, which were sold by the plaintiff to the third party. The defendants had agreed to make payment of the invoice amount excluding the margin money. It was alleged that an amount of ₹2,20,591/- was outstanding against the defendants, which they failed to pay despite various requests and demands. Even the legal notice dated 09.10.2015 sent to the defendants failed to bear any fruits. With these submissions, plaintiff sought decree for recovery of ₹3,05,889/- (₹2,20,591/- as principal amount plus ₹85,298/- as interest) against defendants.

4. Defendants filed written statement alleging that an exaggerated list of the sold vehicles had been produced by the plaintiff by including the fake names at Sr. Nos.23, 38 and 39. Preliminary objection was also raised that Courts at Nangal had no jurisdiction to entertain the suit.

5. The case was at the stage of filing reply to the application for directing the defendants to place on record the original agreement in question, when nobody appeared for the defendants on 16.05.2019 and so, they were proceeded ex parte.

6. After considering the ex-parte evidence produced by plaintiffs, suit for recovery of claimed amount of ₹3,05,889/- along with interest @ 6 % per annum from the date of filing of the suit till realization, was decreed by Ld. Trial court.

7. Aggrieved defendants filed appeal, which has been dismissed by the learned Additional District Judge, Rupnagar on 10.08.2022.

8. In this second appeal filed by the defendants, it is contended that learned First Appellate Court failed to consider the contention of the appellants

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that their earlier Law Officer had resigned from the job without disclosing the status of the case and the next date of hearing. It is only after the appointment of the New Law Officer that appellants- defendants inquired about the status of the case and came to know about the ex parte decree passed by the trial Court. After getting the certified copies thereof, the appeal was filed. It is submitted further that one opportunity is required to the appellants- defendants for proving their case after setting aside the ex parte order.

9. After considering submissions of learned counsel for the appellants, I find no merit in the appeal.

10. It is conceded by learned counsel for the appellants- defendants that after passing of the ex parte judgment and decree dated 07.11.2019 by the trial Court, no application was ever moved by the defendants under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree. After coming to know of the ex parte judgment and decree, defendants preferred to file appeal instead of moving application under Order 9 Rule 13 CPC. Once it is so, the First Appellate Court was required to decide the appeal on the basis of evidence available on record. In these circumstances, the appellants before this Court cannot be allowed to plead that their earlier Law Officer had left the job and they later on came to know about the ex parte judgment and decree and that one opportunity is required to be given for setting aside the ex parte judgment and decree.

11. Besides, perusal of the judgment passed by the trial Court as well that by the First Appellate Court reveal that testimony of Kuldeep Singh, the sole proprietor of the plaintiff was taken into consideration apart from the counter bills and counter receipts Ex.P.1 to Ex.P.79 besides the notice sent to the defendants showing the balance amount. Correspondence between the parties was also taken

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into consideration and it is based upon the said evidence that Court came to the conclusion that claimed amount was outstanding. There was no rebuttal on the part of the defendants, who had been proceeded against ex parte.

12. In view of the above, I find no illegality in the findings recorded by the Courts below. Holding the appeal to be meritless, the same is dismissed.

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| <b>November 16, 2022</b>  | <b>( DEEPAK GUPTA )</b> |
| <b>renu</b>               | <b>JUDGE</b>            |
| Whether Speaking/reasoned | Yes/No                  |
| Whether Reportable        | Yes/No                  |