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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 06.07.2022

+ RFA 279/2022

M/S DD MOTORS

..... Appellant

Through: Mr. Rohit and Mr. Siddharth
Bambha Advocates

versus

SHYAMJI SHRIVASTVA

..... Respondent

Through: None

CORAM:**HON'BLE MR. JUSTICE GAURANG KANTH****GAURANG KANTH, J. (ORAL)****CM APPL. 29464/2022 (Exemption)**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed off.

CM APPL. 29465/2022 (condonation of delay of 559 days in refiling the appeal)

3. For the reasons stated in the application, the same is allowed and the delay of 559 days in refiling the appeal is condoned.
4. The application stands disposed off.

RFA 279/2022 & CM APPL. 29463/2022 (stay)

5. None appeared on behalf of the respondent despite advance service of appeal to the respondent.



6. The present appeal is arising from the judgment dated 28.11.2019 passed by the learned Additional District Judge-06, West District Tis Hazari Courts, Delhi in CS No. 11601/16 titled as *Shyamji Srivastava vs. M/s. D. D. Motors* (“**impugned judgment**”). By the said impugned judgment, the Trial Court had partly decreed the suit filed by the respondent herein (original plaintiff).

The facts which are relevant for consideration of the present appeal are as follows:-

7. The respondent herein filed a suit against the appellant for recovery of damages to the tune of Rs.4,05,659/- along with *pendente lite* interest before the learned Trial Court. It is the case of the respondent that he purchased a Maruti EECO CNG 5-Seater (“**said vehicle**”) from the appellant based on an advertisement issued in the Hindustan Times dated 25.12.2010 for sale of Economy Radio Taxi. Based on the advertisement he deposited a sum of Rs.4,28,890/- with the appellant towards the cost of the said vehicle including Rs.17,659/- towards the registration charges. However, despite the receipt of the amount towards the registration charges, the appellant failed to deposit the complete registration charges with the statutory authorities and obtain the registration certificate of the said vehicle. Due to the omission of the appellant, the respondent was challaned and was made to pay a fine of Rs.3,000/- to the concerned Traffic Court. He also spent Rs.1,000/- towards legal fee. Subsequently, the respondent deposited the full fee towards registration of the said vehicle with the statutory authorities to obtain the registration certificate along with the vehicle permit for running the vehicle in the National Capital Region.



8. The respondent alleges that he suffered financial losses on the following counts:
- (i) Rs.3,52,500/- @ Rs. 1500/- per day as his daily earning on account of failure to ply the vehicle on the road from 22.07.2011 till 11.03.2012;
 - (ii) Rs.4,000/- towards fine and fee paid to advocate;
 - (iii) Rs.17,659/- towards excess payment made to the appellant for the registration purpose;
 - (iv) Rs.10,000/- being vehicle discount offered by the appellant; and
 - (v) Rs.8000/- being refund of excise claim received by the appellant in pursuance of the Central excise notification no. 64/2003-Central Excise.
9. The respondent filed a Consumer Complaint No. 134/12 under Section 12 of the Consumer Protection Act, 1986 before the District Consumer Forum, Sheikh Sarai, New Delhi. The consumer complaint was dismissed by the Consumer Forum vide order dated 25.02.2014 holding that the respondent herein is not a consumer. Subsequently, the respondent filed the suit for recovery of damages (from which the present appeal emanates) against the appellant.
10. The appellant filed a written statement and raised objections vis-à-vis maintainability of the said suit. The appellant alleged that the respondent has approached the learned Trial Court with unclean hands by concealing material facts. According to the appellant, the respondent filed a Consumer Complaint No. 378/2013 for the refund of excise claim and the said complaint is still pending adjudication before the Consumer Court. However, the respondent concealed the said fact in



his plaint. It is an admitted fact that the respondent purchased the said vehicle and paid Rs. 4,23,590/- towards the cost of the said vehicle which is inclusive of Rs.17,659/- towards the registration charges.

11. Based on the pleadings, the learned Trial Court framed the following issues:-

ISSUE No. 1:- Whether plaint is liable to be dismissed in view of preliminary objection no. 2 ? OPD

ISSUE No. 2:- Whether the present suit is liable to be dismissed in view of preliminary objection no. 3 ? OPD

ISSUE No. 3:- Whether the suit is liable to be dismissed in view of preliminary objection no. 7 ? OPD

ISSUE No. 4:- Whether the plaintiff is entitled for the relief claimed? OPP

ISSUE No. 5- Relief

12. The parties adduced evidence to substantiate their respective cases. The learned Trial Court, vide the impugned judgment dated 28.11.2019 decided Issue No. 1 to 4 in favour of the respondent and against the appellant and partly decreed the suit in favour of the respondent for a sum of Rs.58,000/- along with interest @ 6% p.a. from 07.01.2012.

13. Being aggrieved by the impugned judgment, the appellant is before this Court in the present proceedings.

Submissions of the appellant

14. Learned counsel for the appellant argued that the impugned judgment is perverse and based on irrelevant material. The respondent approached the learned Trial Court with unclean hands as the respondent has concealed the pendency of Consumer Complaint No.378/2013. Further



it is argued by the learned counsel for the appellant that there are material contradictions in the pleadings of the respondent before the learned Trial Court and the Consumer Forum. It is argued that the learned Trial Court has failed to give any reason for awarding refund towards the excise claim and refund of charges/expenses incurred in procuring the registration certificate.

15. It is further argued by the learned counsel for the appellant that the Trial Court has failed to provide any reasons for awarding Rs.32,000/- to the respondent under the head “loss of income” as admittedly the respondent was actually plying the vehicle and has not suffered any loss. With this plea, the appellant prays for setting aside of the impugned order.

Legal Analysis

16. Heard the arguments advanced by learned counsel for the appellant and examined the documents placed on record by the appellant. A perusal of the impugned judgment reveals that the learned Trial Court had partly decreed the suit by awarding the compensation under the following three heads:-

Refund towards excise claim	Rs. 8,000/-
Refund of charges/expenses incurred in procuring RC and permit-	Rs. 18,000/-
Loss of income	Rs 32,000/-

17. Concerning the refund of excise claim, it is an admitted position that the respondent was entitled for the refund of the excise duty in accordance with the Central Excise Notification No.64/2003-Central



Excise. It is the case of the appellant that the respondent failed to fulfill the formalities within the prescribed period of time to be eligible for the refund of the excise duty and hence he is not entitled for the said refund. It is the case of the respondent that he submitted all the relevant documents to the appellant and it was the duty of the appellant to process the said refund. The learned Trial Court specifically examined the plea of the appellant and stated as follows:-

“25. It is an admitted case of both the parties that plaintiff is eligible for refund of excise payment of Rs 8000/-. Although such refund as per ExPW1/26 is to be credited to manufacturer however benefit is being passed to consumer like driver which is apparent from stand taken in the Written Statement. In written statement, defendant stated that plaintiff did not approach the defendant for completing the requisite formalities for processing claim of excise refund. Once, the fact that plaintiff was eligible for refund of excise duties, then onus is on the defendant to inform and communicate to the plaintiff about the documents required by defendant for completing the necessary formalities if any, required from the end of plaintiff. Defendant did not place on record any document by which any letter was written to the plaintiff requiring him to furnish any document and if one contrast with the case of plaintiff, the stand of plaintiff is very clear that he is eligible for excise refund from defendant as he was assured and promised that plaintiff would be entitled for refund of excise claim. Defendant failed to communicate/take any steps for providing the benefit of excise refund to the plaintiff therefore, defendant is liable to make good of the loss incurred by plaintiff. Therefore, the plaintiff would be entitled for recovery of Rs. 8000/- from the defendant and for a driver, this small amount is indeed a factor for the purchase of a vehicle”



18. As rightly noted by the Trial Court, the appellant is required to fulfill the formalities for refund of the excise duty and take up the same with the statutory authorities. As and when the refund is released, the same is to be passed on to the respondent. Since it was the duty of the appellant to process the said refund with the Authorities concerned, the appellant was required to seek the relevant documents from the respondent. There is no correspondence which reflects that the appellant sought for any documents from the respondent. This clearly shows that the appellant has failed to undertake its duty and provide the benefit of the refund of the excise duty to the respondent. This Court concurs with the findings of learned Trial Court which is based on the evidence led by the parties and hence requires no interference.

19. The learned Trial Court while granting Rs. 18,000/- towards refund of charges/ expenses incurred in procuring the Registration Certificate and permit, *inter alia*, held as under:-

“29. One of the issue whether documents i.e., Registration Certificate and Permit were provided to the plaintiff or not by defendant and secondly, whether vehicle purchased by plaintiff was registered by defendant from Registering Authority. It is an admitted case of both the parties that plaintiff paid a registration charges of Rs. 17,659/- and once payment of Rs. 17,659/- is admitted by the defendant on account of the registration charges, then onus shifts on defendant to establish that the registration certificate or documents were supplied to the plaintiff. Reading of the plaint, written statement and evidence as led by the plaintiff would make it evident that no Registration Certificate/permit etc., were delivered by defendant to the plaintiff as no written acknowledgment was filed or any document was filed on behalf of defendant despite stand



taken by defendant that documents were provided to plaintiff. It is hard to believe that defendant which is a dealership engaged in sale of vehicle and providing other services to its consumer would not retain a piece of paper that documents such as RC of vehicle was provided to plaintiff.

30. Although defendant failed to provide Registration Certificate to the plaintiff however, one thing is quite clear that defendant did initiate some steps towards the registration of Vehicle which is evident from EX PW1/7 i.e., receipt issued by Transport Department, Delhi Administration which records that amount of Rs 1720/- was paid on behalf of plaintiff. Furthermore, when vehicle of the plaintiff was challaned by traffic police vide Ex PW1/13 it records the vehicle number as DL 1RT 1431 and a fine of Rs 3000/- was paid by plaintiff on 22.02.2012 vide Ex PW1/16 in which vehicle number was mentioned. Plaintiff had also filed the receipt vide Ex PW 1/17 which establishes that registration certificate was not handed over to the plaintiff and due to which the plaintiff was retaining the said receipt vide EX PW 1/17. However, merely handing over a receipt (Ex PW1/17) would not be sufficient as it is the duty of a dealer to provide registration certificate to the consumer as charges had been paid for availing the said facility. Hence, plaintiff would be entitled for the refund of the registration charges paid by him to the defendant. Furthermore, there is no reason for the plaintiff to obtain second registration certificate for his vehicle. It is pertinent to mention that a photocopy of registration certificate of vehicle bearing no. DL 1RT 1431 has been filed by the plaintiff but same is not part of the record which also mentions the date of registration of vehicle as 11.08.2011.

31. It is also the case of plaintiff that he was not provided permit of the vehicle defendant despite promise and payment of charges i.e., registration charges and as per defendant, permit of vehicle is to be arranged by an



owner for himself. Arguments raised on behalf of defendant does not have any merit, as scrutiny of the fact would show that in advertisement given by defendant in newspaper i.e., Times of India vide EX PW1/5, a positive representation was made to the effect that permit of vehicle would be provided.

32. Plaintiff is driver by profession and it cannot be logically expected that he would purchase a commercial vehicle sans permit unless sale of vehicle is bundled with permit and defendant had doled out the promise that he would be facilitating the permit for the commercial vehicle as apparent from Ex PW-1/5. Not only this, plaintiff raised grievance with regard to non-supply of documents in the feedback form as given to defendant vide Ex PW-1/27 and legal notice dated 07.01.2012 vide Ex PW1/30. In legal notice EX PW1/30 sent by plaintiff to defendant, plaintiff had raised grievance for non-supply of documents i.e., Vehicle insurance, meter and Topa Hari Patti, Certificate of fitness, Registration certificate and Delhi NCR permits. In the cross examination of plaintiff/ PW1, receipt of legal notice was not challenged by defendant. Plaintiff has made categorical assertion in the plaint and also in his deposition that despite payment, permit of vehicle was not provided to the plaintiff. Plaintiff was cross examined and he withstood the test of cross examination test by reiterating the facts as narrated in the plaint and evidence by way of chief. Ample Evidence on record both oral and documentary clearly suggest that since defendant failed to provide permit for the commercial vehicle bearing number DL 1RT 1431 and due to which PW-1 has to procure permit at his own level by spending time and money as evident from Ex .PW1/18, PW1/20, PW1/21, PW1/22 and PW1/23.

33. Once contemporaneous documents in the form of feedback from EX PW1/27 and legal notice, Ex PW1/30 were left unanswered by defendant and continued silence on the part of defendant to these contemporaneous document and its lack of explanation during the trial



raises a presumption that defendant provided deficient service to the plaintiff and have nothing to say in respect of the assertion made in the legal notice with regard to non-supply of documents. It would be profitable to rely upon the observations Santosh Mittal vs Sudha Dayal Criminal Appeal No. 1262 of 2013 dated 2.9.2014 in the context of legal notice, it was observed "Admittedly, no reply to the legal notice was sent by her thereby rebutting the allegations made by the complainant. As far back in the year 1980, in Kaluram v. Sita Ram, 1980 RCR Note 44, it was held by this Court that when serious allegations are made in a notice and defendant failed to send any reply, then the allegations are deemed to have been admitted."

34. Deposition of DW-1 i.e., Sh L. K Pandey on behalf of defendant also does not much help the defendant as he is not aware about the transaction pertaining to the case which is apparent from answer given by this witness in respect that he has no knowledge with regard to sale and purchase since he is working in Legal and HR Department. DW-I pleaded ignorance in response to specific question put to him as to when documents such as RC, permits were given to defendant. DW 1 failed to specify anything with regard to the receipt of notice vide EX PW1/30. It is also relevant to mention that defendant maintained total silence in its deposition with regard to the various complaint in form of feedback form and legal notice to the defendant."

20. As rightly noted by the learned Trial Court, it is an admitted position that the respondent paid Rs.17,659/- to the appellant towards registration charges. It is also an admitted position that the appellant applied for the said registration on 11.08.2011 by depositing Rs.1,720/-. It is the case of the appellant that its executives had handed over the registration certificate and other documents to the respondent. However, the respondent disputes this fact. According to the



respondent, the appellant did not procure the registration certificate and other permits and resultantly the respondent obtained the said documents from the concerned authorities on 14.03.2012 on deposit of the full amount towards the registration charges. The burden of proof was on the appellant to prove that it had handed over the registration certificate and other documents to the respondent. However, the appellant failed to discharge its burden and hence, the appellant is under the legal obligation to refund the amount they received from the respondent towards the registration charges. This Court finds no perversity in the findings of the Learned Trial Court and hence no interference is called for.

21. The learned Trial Court granted Rs. 32,000/- towards the loss of income. The findings of the learned Trial Court in this regard are as follows:-

“35. Plaintiff/ PWI deposed and pleaded that he suffered a loss of Rs. 3,52,500/- as he could not ply his vehicle for a period of 235 days (calculated @ 1500/- per day). No documents with regard to loss of income were placed on record in the evidence of plaintiff. More particularly in his cross examination dated 16.11.2017 in response to a specific question put by Ld. Counsel for defendant, plaintiff admitted that he did not file a receipt pertaining to his income, although he cleverly stated that enough pleadings has been made. Merely, pleading a fact is not sufficient unless sufficient evidence is brought on record. It was admitted by Plaintiff i.e. PWI that he was driving the vehicle in a compelling circumstances.”

36. In legal notice dated 07.01.2012, Ex PW1/30 pegged that loss of earning at the rate of Rs. 15000/- per month, meaning thereby that assertion with regard loss of income were grossly exaggerated in his plaint and evidence. Moreover, in his legal notice vide PW1/30,



plaintiff stated that defendant had promised that within a period one month i.e., by the last week of August, 2011 documents would be provided whereas plaintiff received RC and permit by 12.03.2012 by his own effort and money.

37. However, it cannot be said that absence of document would not limit the earning capacity of plaintiff as driving in Delhi and other parts without document exposes the driver of such a vehicle to number of risks such as fine and prosecution and without documents it is difficult to drive the vehicle in free manner. However, considering the fact that plaintiff/PWI had purchased the vehicle for making an earning and due to lack of document such as RC and permit he would be suffering loss of income.

38. Taking into the totality of the facts of the case into consideration, the loss of income would be @ of Rs. 5000/- per month from 01.09.2011 to 12.03.2012 which come out to be Rs. 32,000/-.

22. After examining the documents on record, this Court agrees with the reasoning given by the learned Trial Court. It is a well settled position of law that in the absence of sufficient evidence, the Court can take judicial notice of the amount to be awarded as damages. This Court finds the amount arrived at by the learned Trial Court i.e., Rs. 5,000/- per month, as reasonable and equitable and hence no interference is called for.

23. The learned Trial Court decreed the suit along with 6 % p.a. interest from 07.01.2012 (the date of legal notice) till the date of realisation. Regarding the grant of interest, the learned trial Court observed, *inter alia*, as under:-

“43. Plaintiff has claimed an interest @ 24% p.a. The interest claimed is on the higher side and considering the fact that in recent year the rate of interest has considerably lower down. It



would be just and proper if the plaintiff is granted interest @ 6% p.a. from the date of legal notice dated 07.01.2012 on the amount adjudged i.e., Rs 58000/-. In view of the above mentioned discussion, issue no. 4 is decided in favour of plaintiff and against the defendant.”

24.As per Section 34 of Code of Civil Procedure, 1908, the award of interest is a discretionary exercise based on equitable considerations. As reiterated by the Hon'ble Supreme Court in its recent judgment titled as ***Small Industries Development Bank of India vs. M/s SIBCO Investment Pvt. Ltd (2022 (3) SCC 56)***, two conditions need to be satisfied before awarding interest. First, the money should be wrongfully withheld from the rightful owner. Second, there should be equitable consideration for awarding the said interest. In the present case as discussed hereinabove, the money has been wrongly withheld from the rightful owner and hence the respondent is entitled for interest. The learned Trial Court rightly awarded the interest at the rate of 6% p.a. This Court finds no perversity in the said finding of the learned Trial court and is not inclined to interfere with said impugned order.

25.In view of above said discussion, there is no infirmity in the impugned judgment passed by the learned Trial Court.

26.Accordingly, the present appeal is dismissed. No order as to costs.

GAURANG KANTH, J

JULY 06, 2022

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