IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO.465 OF 2013

Appellant : M/s. Khandelwal Automobiles,
Authorised Dealer of M/s. Balaji Tempo Limited,
Tirupati Chambers, Holy Cross Convent Road,
Akola

– Versus –

Respondent : 1) Vishnudas Bankatlal Laddha,
Aged 43 years, Occ. Business,
R/o Amrut Nagar, Behind Milk Scheme, Akola,
Tq. & Dist. Akola.

~~2) Force India Limited,~~
~~Akrudi Pune, Bombay Road, Akrudi,~~
~~District Pune.~~

As per Registrar (J)'s order dated 05/09/2013, matter is dismissed against Respt.No.2.

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Mr. Viren Joshi h/f Mr. N.A. Gaikwad, Advocate for the Appellant.
Mr. R.D. Bhuyarkar, Advocate for the Respondent.

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CORAM : M.W. CHANDWANI, J.
DATE : 1st OCTOBER, 2024.

ORAL JUDGMENT :

Heard the learned Counsels for the parties.

02. Correctness of the order dated 29/01/2010 passed by the learned Civil Judge Senior Division, Akola in S.C.S. No.211/1997, thereby decreeing the suit and directing the appellant to pay an amount of Rs.46,163/- to the respondent along with interest at the rate of 12% per annum from 30/03/1994, till realization of the amount, is questioned in this second appeal.

03. The appellant made an unsuccessful attempt before the learned District Judge, Akola to get the decree set aside.

04. The second appeal was admitted on the following substantial questions of law :

> ***(1)*** *Whether the decree passed in favour of respondent No.1 can be sustained considering the fact that suit was filed for recovery of amount that was actually paid by the appellant towards excise duty?*
>
> ***(2)*** *Considering the stipulation in the quotation that price prevailing on the date of delivery would be applicable, whether decree could have been passed in favour of respondent No.1?*

05. The contention of the appellant is that the respondent was interested in purchasing a vehicle i.e. Bajaj Tempo-Trax. Accordingly, the appellant on 19/11/1993 issued a quotation of Rs.2,22,419/- including taxes for the said vehicle. The said amount was paid by the respondent on 02/02/1994 by Demand Draft. It was agreed that the vehicle will be delivered within 3 to 4 weeks. Further contention of the appellant is that 20 days thereafter, the budget was declared and the excise duty on the vehicle was increased to the extent of 40% on the vehicle and therefore, the appellant demanded an amount of Rs.46,163/- towards increase of excise duty. The

respondent paid the said amount under protest and thereafter delivery of the vehicle was given to him.

06. However, the learned trial Court decreed the suit filed by the respondent for recovery of Rs.46,163/- which, according to the learned Counsel for the appellant, was paid towards increase in excise duty. The learned Counsel for the appellant vehemently submitted that increase in taxes is not the fault of the appellant. In the quotation, it was specifically mentioned that prices at the time of delivery will be considered and at the time of delivery of the vehicle, i.e. on 04/04/1994, the excise duty was increased up to 40%. Therefore, the appellant was right in taking the amount towards increase in excise duty. The learned trial Court has not considered this aspect and decreed the suit and the appellate Court as well, without considering this position, dismissed the appeal filed by the appellant.

07. *Per contra,* the learned Counsel for the respondent vehemently submitted that nothing has been placed on record to show that excise duty was increased to the extent of 40%. Even otherwise, once the proposal is accepted by the respondent, it becomes an agreement and therefore, the appellant has to perform his part as per the agreement i.e. the quotation. It is further submitted that the vehicle was to be delivered within three weeks i.e. on or before 25/02/1994, whereas the budget was declared thereafter. The

appellant should not have demanded the excess amount of Rs.46,163/-. The amount paid by the appellant was under protest. He supported the judgment of the trial Court as well as the appellate Court and sought rejection of the appeal.

08. I have gone through the findings of the trial Court as well as the appellate Court. Both the courts below have given concurrent findings that nothing has been produced on record to show that in the budget declared in the month of February, 1994, excise duty was increased to the extent of 40%. It is also a matter of record that an application before the learned trial Court came to be filed by the respondent for issuance of notice to the appellant during the trial for production of relevant documents, Circulars or Government Resolutions pertaining to increase of excise duty to the extent of 40% in the month of February, 1994. In spite of the direction given by the trial Court, the appellant failed to produce any documents in support of it's defence. Therefore, I do not find any perversity in the findings of the learned trial Court as well as the appellate Court. The courts below were right in holding that the factum of increase of excise duty has not been proved by the appellant and drawing an adverse inference against the appellant. Therefore, no substantial question of law arises in this appeal. The impugned judgment and decree passed by the learned trial Court and confirmed by the appellate Court does not require any interference.

09. Hence, the appeal stands dismissed. The decretal amount deposited by the appellant is permitted to be withdrawn by the respondent along with accrued interest thereon. There shall be no order as to costs.

(M.W. CHANDWANI, J.)

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