



2024:DHC:6377-DB



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

% *Date of decision: 01.08.2024*

+ **MAT.APP.(F.C.) 281/2023**

SANJEEN SAHNI

.....Appellant

Through: Mr Akshay Chandra with Mr Neeraj Gupta, Mr Utkarsh Bhanu and Mr Vishal Tanar, Advocates.

versus

MANMEET SAHNI

.....Respondent

Through: Mr Pradeep Narula with Mr Krishna Kumar, Advocates.

+ **MAT.APP.(F.C.) 282/2023**

SANJEEN SAHNI

.....Appellant

Through: Mr Akshay Chandra with Mr Neeraj Gupta, Mr Utkarsh Bhanu and Mr Vishal Tanar, Advocates.

versus

MANMEET SAHNI

.....Respondent

Through: Mr Pradeep Narula with Mr Krishna Kumar, Advocates.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

Signature Not Verified

Digitally Signed By: TARUN
RANA

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RAJIV SHAKDHER, J.: (ORAL)

CM APPL. 49418/2023 *[Application filed on behalf of the appellant seeking condonation of delay of 34 days in filing the appeal]* in **MAT.APP.(F.C.) 281/2023**

CM APPL. 49422/2023 *[Application filed on behalf of the appellant seeking condonation of delay of 34 days in filing the appeal]* in **MAT.APP.(F.C.) 282/2023**

1. These applications have been filed on behalf of the appellant seeking condonation of delay in filing the above-captioned appeals.
2. According to the appellant, there is delay of 34 days each in filing the above-captioned appeals.
3. The learned counsel who appears on behalf of the respondent says that he would have no objection if the delay is condoned.
- 3.1 It is ordered accordingly.
4. The delay in filing the above-captioned appeals is condoned.
5. Accordingly, the applications stand disposed of.

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6. These appeals are directed against the judgment and order dated 15.07.2023, passed by the family court. *Via* the impugned judgment, the family court disposed of the applications filed under Order XII Rule 6 and Order VII Rule 11 of the Code of Civil Procedure, 1908 [in short “CPC”].
- 6.1 Insofar as the application preferred by the respondent under Order XII Rule 6 of the CPC is concerned, it revolved around the restorative relief sought



by him with regard to the AUDI Q5 vehicle bearing registration No.DL-7CK-7633 [hereafter referred to as “vehicle”]. The respondent in effect, wanted restoration of the vehicle which was in the possession of the appellant.

6.2 As far as the other application preferred by the respondent (under Order VII Rule 11 of the CPC) is concerned, it is, in effect, a mirror image of the application preferred by him under Order XII Rule 6 of the CPC. *Via* the application lodged under Order VII Rule 11 of the CPC, respondent sought, in a nutshell, dismissal of the counter-claim preferred by the appellant for registration of the above-mentioned vehicle in her name. In view of the conclusion arrived at by the family court concerning the application preferred under Order XII Rule 6 of CPC, the application preferred by the respondent under Order VII Rule 11 was allowed, and consequently, the counter-claim instituted by the appellant was dismissed.

6.3 Therefore, the core dispute obtaining between the parties veers around the vehicle over which both claim rights.

7. The record shows that the vehicle purchased was a second hand used vehicle, which was bought for Rs.20 lakhs.

8. The appellant claims that the purchase price of the vehicle was partly funded by her father. It is the stand of the appellant that out of Rs.20 lakhs, funds amounting to Rs. 15 lakhs were provided to the respondent by her father for the purchase of the vehicle.

8.1 Furthermore, it is also the appellant’s stand that over time, she has maintained the vehicle and had spent, approximately, Rs.3.45 lakhs towards its maintenance.



9. The family court allowed the respondent's application under Order XII Rule 6 of CPC, as noticed above, based on the following rationale set forth in the impugned judgment:

"Coming to the facts of the present case, it is not a disputed fact and the same is rather clearly admitted by the defendant that the concerned vehicle is registered in the name of plaintiff. Ownership follows the registration. The defendant has challenged the case of the plaintiff on the ground that substantive amount of the purchase price of the car i.e. Rs. 15,00,000/- out of Rs.20,00,000/- was paid out of the funds deposited in the account of plaintiff by the father of the defendant and that she has also incurred Rs. 3,45,000/- on the repair of the car. The defense taken by the defendant is clearly sham and bogus and seems to have been taken just to frustrate the case of the plaintiff. Even if it is admitted for a while that the amount of Rs. 15,00,000/- was deposited in the account of plaintiff by the father of the defendant, the same does not entitle the defendant to seek ownership of the car. If any such amount was actually paid to the plaintiff by the father of the defendant, a recovery can only be sought for the said amount and that too by the father of the defendant and not by the defendant. There is no just explanation coming on record for not handing over the possession/keys of the car concerned to the plaintiff and the defendant has not been able to show any valid triable issue in the matter. The mutual dispute of the parties can be taken care of in separate proceedings under the provisions of Hindu Marriage Act or otherwise but there is no justification for the defendant to hold the possession of the car owned by the plaintiff."

10. Insofar as the application preferred by the respondent under Order VII Rule 11 of the CPC was concerned, as alluded to above, it was allowed, based on the following observations:

"In view of above circumstances, the counter claim filed by the defendant is also found to be not maintainable as the same does not disclose any valid cause of action for granting the relief of mandatory injunction in favour of the defendant/counter claimant by directing the plaintiff to transfer the Ownership of the car in her name."



With these observations, the counter claim filed by the defendant is dismissed/rejected u/O VII R 11 CPC by allowing the application filed by the plaintiff. The case file of counter claim be attached with the main file of civil suit no. 20/2021.”

11. In sum, the consequence of the application under Order XII Rule 6 of the CPC being allowed was that the suit for mandatory injunction preferred by the respondent stood decreed. The appellant was directed to handover the possession of the vehicle to the respondent.

11.1 However, as regards the claim for damages, the suit action has been set down for trial.

12. Against this backdrop, Mr Akshay Chandra, learned counsel, who appears on behalf of the appellant submitted that the impugned judgment is unsustainable in law for the following reasons:

(i) Firstly, the relief claimed in the suit is untenable in law. For this purpose, our attention was drawn to Sections 7 and 8 of the Specific Relief Act, 1963 [in short, “SRA”].

(ii) Secondly, the family court has wrongly taken recourse to the provisions of Order XII Rule 6 of the CPC since the appellant had made no admission with regard to the ownership of the vehicle. In this context, the argument advanced is that since substantial funds i.e., Rs.15 lakhs out of Rs.20 lakhs paid for purchase of the vehicle was provided by the appellant’s father, the matter ought to have proceeded to trial *qua* the issue concerning ownership.

(iii) Thirdly, since an alternate and equally efficacious remedy was available to the respondent i.e., institution of a suit action to claim delivery of the vehicle



as against restoration, the instant action was improperly framed, hence, the family court could not have passed a decree in favour of the respondent. In this context, reliance was placed on Section 41(h) of the SRA.

13. On the other hand, Mr Pradeep Narula, learned counsel, who appears on behalf of the respondent, submitted that the impugned judgment and order need not be disturbed. The contention was that there was, in fact, no dispute concerning the ownership of the vehicle as has been found by the family court.

13.1 It is submitted by Mr Narula that since the vehicle was owned by the respondent and was in the wrongful possession of the appellant, the restorative relief concerning the vehicle was sought via a mandatory injunction route.

14. As regards the other contention concerning provisions of SRA, Mr Narula says that it can have no impact on the outcome in the instant appeals as no reference is found concerning those provisions either in the written statements or in the grounds taken in the appeals.

15. We have heard the learned counsel for the parties.

16. This is a matter where there is much ado about an asset which has, perhaps, passed its depreciable life. The vehicle over which the couple is quarrelling is 2011 make, which was bought by the respondent in 2013.

17. Today the vehicle is 13 years old. The value of the vehicle after depreciation would be nominal. However, parties have chosen to cross swords not only in the family court but even in this court.

17.1 That said, what needs to be examined briefly is whether the contentions of the appellant are germane insofar as the facts obtaining in the present case are concerned.



18. The principal argument of the appellant is that the suit action has been wrongly framed. According to Mr Chandra, the respondent/plaintiff could not have filed a suit for mandatory injunction, whereby a direction was sought concerning restoration of the vehicle.

18.1 The argument was that, in effect, the family court has granted delivery of a specific movable property (i.e., the vehicle), without noticing that it ought to fall in one of the clauses referred to in Section 8 of the SRA.

19. Insofar as this submission is concerned, one cannot quibble with the proposition that when delivery of a specific movable property is sought, the claim should fall in one of the clauses referred to in Section 8 of the SRA. That said, the difficulty with this argument is that the appellant did not make any assertion with regard to this contention, either in the written statement or in the appeal.

19.1 Concededly, there is no reference to the provisions either in a narrative form or otherwise in the appeal or in the written statement filed by the appellant.

19.2 That said, the suit action, if read holistically (although the relief sought in the plaint could have been more properly framed), in effect, seeks delivery of the vehicle i.e., the article in specie. The appellant/defendant was in possession of the vehicle in a fiduciary capacity. Broadly, the ingredients of Section 8 of the SRA lay embedded in the suit action.

19.3 In any event, this contention, which may have otherwise had some weight, cannot be considered by us at this stage. Had an objection been raised at an appropriate stage, remedial measures could have been taken by the



respondent/plaintiff.

20. As regards the other contention concerning part-consideration of the vehicle being paid by the father of the appellant and hence the matter ought to have been tried, in our opinion, is flawed. The family court, in our view, has correctly dealt with the submission. Since the money, admittedly, was not paid by the appellant but by her father, the only person who could have, if at all, claimed any right in the vehicle was the father of the appellant.

21. The vehicle, undisputedly, was registered in the name of the respondent. The presumption in law [which is unrebutted] would be that the respondent is the owner of the vehicle. Therefore, the family court, after taking into account these aspects, has correctly allowed the respondent's application under Order XII Rule 6 of the CPC.

22. The other contention advanced on behalf of the appellant is that the respondent had an alternate and equally efficacious remedy available to him. In support of this plea, reliance is placed on Section 41(h) of the SRA.

22.1 This contention cannot be considered by us at this stage. Firstly, in the written statement there is no reference to Section 41(h) of the SRA. Secondly, in the appeal, there is a fleeting reference to Section 41(h) of the SRA, without any articulation as what was the equally efficacious remedy available to the respondent/plaintiff which he had failed to avail.

22.2 If the unexpressed intention was to advert to Section 8 of the SRA, the contention, in our opinion, would be tenuous because substantially the suit action, as alluded to above, was for delivery of the article in specie i.e., the subject vehicle.



22.3 Therefore, this contention advanced on behalf of the appellant being untenable, is rejected.

23. As regards the decision taken by the family court concerning the application preferred under Order VII Rule 11 of the CPC, as indicated above, it was a logical sequitur to the decision taken by it concerning the application filed by the respondent/plaintiff under Order XII Rule 6 of the CPC.

24. The relief sought by way of a counter-claim by the appellant/defendant was that the vehicle should be registered in her name. This relief could have been given only if the family court had concluded that the respondent/plaintiff had wrongly obtained the registration of the vehicle in his name.

25. Thus, for the foregoing reasons, we are not inclined to interfere with the impugned judgment and order. The appeals are, accordingly, dismissed with costs of Rs.5,000/-.

25.1 The costs will be deposited with the Delhi High Court Legal Services Committee within one week from receipt of a copy of the order passed today.

25.2 Proof of costs will be placed on record.

26. List the matter before the concerned Registrar on 31.08.2024 for compliance with regard to the directions issued with respect to costs.

RAJIV SHAKDHER, J

AMIT BANSAL, J

AUGUST 1, 2024/tr