



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

RSA-3030-2018 (O&M)

Date of Decision: 05.03.2025

COL. HARCHARAN SINGH BAJWA (RETD.)

...APPELLANT

VERSUS

M/S ASHOKA TRACTORS AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Tejinder Pal Singh, Advocate
for the appellant.

VIKRAM AGGARWAL, J (ORAL).

This is plaintiff's appeal against the judgment and decree dated 15.12.2017 passed by the Court of learned Additional District Judge, Shaheed Bhagat Singh Nagar, dismissing the appeal filed by the plaintiff against the judgment and decree dated 28.09.2015 passed by the Court of learned Additional Civil Judge (Senior Division), Shaheed Bhagat Singh Nagar vide which the suit for recovery filed by the plaintiff was dismissed.

2. For the sake of convenience, parties shall be referred as per their original status.

3. The plaintiff (Col. Harcharan Singh Bajwa) filed a suit for recovery of Rs.5,23,250/- by way of refund of the payment made to defendants No.1, 2 and 5 on account of purchase of a Sonalika Tractor Model DI 750 III for a sum of Rs.3,50,000/-. It was the case of the plaintiff that he intended to purchase a Tractor for which, defendants No.1, 2 and 5 solicited him to purchase Sonalika Tractor Model DI 750 III for a sum of Rs. 3,50,000/-. It was assured that a brand new tractor would be delivered to him. The plaintiff paid Rs.90,000/- in cash on 27.09.2004 and Rs.2,60,000/-

by way of bank draft dated 06.10.2004 issued by defendant No.6 (Allahabad Bank) from whom the plaintiff had taken a loan. However, the Tractor was not delivered to the plaintiff. Upon taking up the matter with defendants No.1, 2 and 5, they took a stand that they had delivered the Tractor to defendants No.3 and 4. As per the plaintiff, there was no occasion for defendants No.1, 2 and 5 to deliver the Tractor to defendants No.3 and 4. Accordingly, refund of a sum of Rs.5,23,250/- alongwith interest @ 18% per annum was sought.

4. It was averred that initially a consumer complaint had been filed by the plaintiff, which was dismissed on 03.10.2005 on the ground of the complaint involving intricate questions of law and facts which could not be determined in a summary procedure and the plaintiff was held entitled to invoke the jurisdiction of the Civil Court. The plaintiff preferred an appeal before the State Consumer Disputes Redressal Commission, Punjab, Chandigarh, but the same was also dismissed on the same ground on 05.12.2005.

5. A complaint was also made to the police as a result of which, FIR No.04 dated 11.01.2007 was registered under Sections 406, 408, 420 and 120-B IPC.

6. The defendants opposed the suit. In the written statement filed by defendants No.1 and 2, preliminary objections as regards locus standi, cause of action, limitation etc. were raised. On merits, the stand taken was that the Tractor had duly been delivered to defendants No.3 and 4 vide delivery challan dated 05.07.2004 which was duly thumb marked by defendants No.3 and 4. A confirmation letter dated 05.07.2004 was also issued by defendants No.3 and 4 under thumb impressions. Forms No.21 and 22 and a bill dated 07.10.2004 were issued to the plaintiff through the banker

(defendant No.6) (Allahabad Bank). It was also averred that the Tractor had also been got insured from the National Insurance Company.

7. Defendants No.3 and 4 also took a similar stand that the possession of the Tractor had been delivered to them under the instructions of the plaintiff. It was averred that they had been cultivating the land of the plaintiff and were his tenants. They were using an old Tractor bearing Registration No. PB-04B-1787 which they were the owners of. It was the plaintiff who had suggested that they should replace the Tractor with a new Tractor. The plaintiff assured that he would arrange a loan from the bank in his name and accordingly they paid Rs.90,000/- in cash to defendants No.1 and 2. The balance amount was arranged by the plaintiff by way of a loan and accordingly, the Tractor was delivered to them. It was averred that they had even paid the installments of the loan and were getting the Tractor repaired from defendants No.1 and 2 as per requirement.

8. Defendant No.5 filed a separate written statement stating that it had no relation and dealing with the plaintiff.

9. From the pleadings of the parties, following issues were framed:

“1. Whether the plaintiff is entitled to recover the suit amount of Rs.5,23,250/- from the defendants? OPP

2. Whether the suit is not maintainable? OPD

3. Whether the plaintiff has got no locus standi to file this suit? OPD

3-A Whether the suit of the plaintiff is bad for non-joinder of necessary parties i.e. Allahabad Bank, S.B.S. Nagar? OPD

4. Relief.”

10. Parties led their respective evidence.

11. The trial Court dismissed the suit filed by the plaintiff and the appeal against the said suit was also dismissed, leading to the filing of the present appeal.

12. I have heard learned counsel for the appellant/plaintiff.

13. Learned counsel for the appellant/plaintiff has submitted that both the Courts erred in dismissing the suit filed by the plaintiff. It has been submitted that the loan was sanctioned on 06.10.2004 and it is not understandable as to how the Tractor was delivered on 05.07.2004 prior to the payment of Rs.90,000/- and sanction of loan. Even Forms No.21 and 22 were given on 07.10.2004. Learned counsel submits that there was no delay on the part of the plaintiff, for, he had initially approached the Consumer Court in early 2005 itself but he was non-suited whereafter he filed an appeal which was also dismissed. Learned counsel submits that both the Courts did not consider the matter from the correct perspective and erroneously dismissed the suit and the appeal.

14. I have considered the submissions made by learned counsel for the appellant but find the same to be devoid of merit.

15. Purely findings of facts have been recorded by both the Courts which cannot be interfered in second appeal unless the findings are found to be perverse. Both Courts found that the Tractor had been delivered to defendants No.3 and 4 and that the installments of the loan were also being paid. Still further, the witness PW-2 Pawan Kumar, who appeared on behalf of the Allahabad Bank stated that no complaint had ever been filed by the plaintiff with them stating that the Tractor had not been delivered to him. The plaintiff while appearing as a witness also submitted that he had got the Tractor insured. It is not understood as to if the delivery had not been given to the plaintiff, why he got the Tractor insured and paid the loan amount

also. It also came on record that the plaintiff had given his land on lease but he denied that he had given the same on lease to defendants No.3 and 4. The defendants, on the other hand, produced the delivery challan dated 05.07.2004 as Ex. D-1 which had been issued by defendant No.1 in favour of defendants No.3 and 4. They also produced on record the writing as Ex. D-2 as per which, the Tractor had been delivered to them. The bill (Ex. D-3) and hypothecation letter (Ex. D-4) were also produced on record. Under the circumstances, the Courts rightly came to the conclusion that the delivery of the Tractor had been handed over to defendants No.3 and 4 with the consent of the plaintiff. I do not find absolutely any illegality in the said findings of facts recorded by both the Courts warranting interference in second appeal.

In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

05.03.2025
Prince Chawla

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No