(1989) 02 BOM CK 0023

In the Bombay High Court

Case No : First Appeal No. 16 of 1987

Dasharath Narahari Narvekar — APPELLANT

Vs

Syndicate Bank — RESPONDENT

Date of Decision : 24-02-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 31A, 31A(5A)

Citation : (1989) 66 CompCas 45

Hon'ble Judges : G.F. Couto, J

Bench : Single Bench

Advocate : S.S. Kantak, for the Appellant; J.P. Mulgaokar, for the Respondent

Final Decision : Allowed

Judgement

Dr. G.F. Couto, J.—This appeal is directed against the judgment and decree dated October 30, 1986, whereby the learned Civil Judge, Senior Division, Mapusa, dismissed the suit for damages filed by the appellant.

2. The suit has been filed on the ground that the respondent-bank advanced a sum of Rs. 1,20,000 to the appellant by way of a loan for the purchase of a second-hand Leyland bus bearing registration No. GDS-1512, somewhere in the year 1978. The respondent-bank filed a civil suit in the Court of Civil Judge, Senior Division, Mapusa, being Special Suit No. 179 of 1983, for recovery of money arising out of the said transaction. The said suit is pending and inspite of this pendency, the appellant paid to the bank more than Rs. 35,000 on the said account ; that the delay in the payment of the amount to the bank was due to various factors beyond the control of the appellant, namely, want of a permanent permit to ply the said bus, accident and frequent breakdowns. He, therefore, requested the bank to compromise the suit. He submitted a proposal whereby he suggested that the interest be reduced. The bank however, did not agree. In the meanwhile, on the expiry of his temporary permit, the appellant applied for renewal on October 31, 1985, to the Regional Transport Authority. However, he was refused the permit on the grounds that the respondent had requested in

writing not to grant any permit without a No-objection Certificate being obtained from the bank. This refusal of the permit due to the acts of the respondent caused a loss of Rs. 200 per day for a period of 61 days to the plaintiff. Hence, the suit.

3. The suit was resisted on several grounds, particularly that no fraud has been committed by the bank and that the granting or refusal of the permit was within the jurisdiction of the Regional Transport Authority. However, the writing of the letter dated July 15, 1985, was specifically admitted.

4. By his impugned judgment dated October 30, 1986, the learned Civil Judge, Senior Division, Mapusa, dismissed the suit accepting the stand taken by the respondent-bank inasmuch as they contended that by virtue of Section 3lA(5A) of the Motor Vehicles Act, it was for the Regional Transport Authority to grant or not to grant the permit. Therefore, if the grievance of the appellant is genuine, he ought to have sought redress against the said authority and not against the respondent.

5. Mr. S. S. Kantak, learned counsel appearing for the appellant, after taking me through the impugned judgment, submitted that the learned judge failed to appreciate that had it not been for the aforesaid letter dated July 15, 1985, the Regional Transport Authority would have renewed the permit under Clause (ii) of Sub-section (5D) of Section 31A of the Motor Vehicles Act. In fact, as has been done before, the Regional Transport Authority would not have raised the question of production of a No-objection Certificate issued by the bank. Learned counsel further submitted that in spite of the letter dated July 15, 1985, the Regional Transport Authority renewed the permit for a period of four months, but with a warning that the permit would not be renewed again if the No Dues Certificate as required by the bank was not produced. Naturally, since the appellant was still owing some money to the bank, it was a foregone conclusion that the appellant would not be able to produce the said certificate as he did not produce it, and on that basis alone, failed to get a renewal of his permit. These facts clearly establish a link between the refusal of the permit and the said letter and, therefore, undoubtedly, the said letter is a tortious act which had visited the appellant with adverse civil consequences. The appellant claimed a compensation of Rs. 21,760 for damages with interest at the rate of 12% per annum. The only evidence is the one of the plaintiff himself. In the light of these circumstances, the learned trial judge should not have dismissed the suit but on the contrary, ought to have decreed it.

6. Mr. Mulgaokar, learned counsel appearing for the respondent bank however, contended that no tortious act was committed by the bank. He submitted that under Sub-section (5A) of Section 31A of the Motor Vehicles Act, the applicant was bound to annex to his application for renewal of the permit a No-objection Certificate of the bank. He did not do it, nor did he produce any evidence to show that he has applied for such certificate to the bank. Therefore, the letter written by the bank to the Regional Transport Authority was inconsequential specially

when it was for the said authority to grant or not to grant the permit in spite of the certificate having not been produced by virtue of Clause (i) of Sub-section (5B) of Section 31A of the Act. In this context, the learned Judge was entirely correct in dismissing the suit. The link between the said letter and the refusal of the permit had not been established and in the absence of this link, obviously, the plaintiff/appellant could not succeed in his suit.

7. It is not controverted that the bus GDS-1512 had been purchased by the appellant on hire purchase basis and that the civil suit had been filed by the respondent-bank for recovery of dues arising out of that transaction against the appellant and sureties. It is not also denied that the appellant was plying the said bus on the Panjim-Mapusa line on temporary permits and that these permits had been renewed from time to time. Finally, it is not denied that on July 15, 1985, the bank manager wrote a letter to the Regional Transport Officer, stating that the bus GDS 1512 was hypothecated with the bank and that the loan account of the appellant was highly irregular. It was further requested that a No Dues Certificate be required to be produced by the appellant before the issuance of a permit to him. It has come in the evidence of the plaintiff that after the issuance of this letter, the Regional Transport Officer granted a temporary permit, but at the same time, warned the appellant that fresh renewal could be granted to him only if he produced a No dues Certificate from the bank. He was not able to produce such certificate and, therefore, the said permit was not granted to him. This statement was not challenged in cross-examination and, therefore, stands. The result of the above facts is that a link has been established between the aforesaid letter dated July 15, 1985 written by the bank manager to the Regional Transport Authority and the refusal of the renewal of the permit.

8. But, the question which arises is whether the said letter constitutes a tortious act which makes the appellant entitled to compensation. Mr. Mulgaokar submitted that there is no such tortious act, but in truth, it is not so. Sub-section (5A) of Section 31A of the Motor Vehicles Act provides that the registered owner shall, before applying to the appropriate authority, for the renewal of a permit, make an application to the person with whom the registered owner has entered into a hire-purchase agreement (such person being referred to in the said section as the financier) for the issue of a no objection certificate. Therefore, it is clear that the owner of a vehicle purchased under a hire-purchase agreement or under hypothecation, who wishes to apply for the renewal of a permit to ply the vehicle has to document his application with a no objection certificate issued by the financier. In turn, Sub-section (5D) provides that on receipt of an application for the renewal of any permit under the said Section 31 A, the appropriate authority may, subject to other provisions of the Act, (1) in a case where the financier had refused to issue the certificate applied for, after giving the applicant an opportunity of being heard, either renew, or refuse to renew the permit ; and (2) in any other case, renew the permit. Nowhere does Section 31A require the financier to require the Regional Transport Authority to obtain from the applicant a no dues certificate or, for that matter, even a no objection certificate.

Therefore, it is rather strange that the manager of the respondent thought it proper to write the letter dated July 15, 1985, bringing to the notice of the concerned authority that the bus GDS 1512 was hypothecated, that the appellant was highly irregular in the payment of the loan and that the Regional Transport Authority ought to ask a no dues certificate issued by the financier before issuing the permit. This attitude and conduct of the bank manager becomes more suspicious and symptomatic in the background of the suit filed by the bank against the appellant for recovery of dues as regards the said bus. It is also to be noted that although Sub-section (5A) of Section 31A of the Motor Vehicles Act merely speaks of a no objection certificate, the bank manager went to suggest that a no dues certificate be required to be produced by the appellant when obviously, the bank would never be able to issue that certificate precisely because the appellant had not paid all the amounts due by him to the bank. All these circumstances give force to the case of the appellant that the said letter was written by the bank manager, for ulterior purposes, more particularly, to force him to agree with the case of the bank as advanced in the suit. The evidence, therefore, clearly shows that the act of the bank manager was tortious inasmuch as the letter was not required to be written by law and was highly improper and also inasmuch as, contrary to what is laid down in the Motor Vehicles Act, a suggestion has been made to require the appellant to produce a "no dues" certificate. This act of the bank manager naturally had caused the non-renewal of the permit of the appellant.

9. The appellant claimed in the plaint a compensation of Rs. 21,760 stating that his net earnings per day were of Rs. 200 and that he had suffered that loss for a period of 68 days. He also claimed an amount of Rs. 7,480 as loss suffered on account of payment of salaries of driver, conductor and cleaner and further amount of Rs. 680 as loss on account of insurance premium and road tax. In his evidence however, the appellant corrected his claim bringing it to Rs. 200 of net profit per day. If the net profit was of Rs. 200 obviously, that was the income accrued to him after deducting all the expenses including the salary of the driver, cleaner and conductor and the taxes. No further evidence was adduced and, therefore, the compensation for damages that can be granted to the appellant is of Rs, 13,600 with interest thereon, from the date of the filing of the suit till payment.

10. Accordingly, this appeal succeeds and consequently, the impugned judgment and decree dated October 30, 1986, are hereby quashed and set aside. The suit filed by the appellant is decreed and the respondent bank is directed to pay an amount of Rs. 13,600 to the appellant with interest at the rate of 12% per annum from the date of the filing of the suit till payment. Costs by the respondent.