

(2011) 09 BOM CK 0047
In the Bombay High Court
Case No : First Appeal No. 95 of 2002

Halona Builders and Others	Vs	APPELLANT
State of Goa and Others		RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, Order 41 Rule 33
Customs Act, 1962 — Section 126
Goa, Daman and Diu Motor Vehicles Tax Act, 1974 — Section 15, 8, 8(2)
Motor Vehicles Act, 1939 — Section 3 I, 3(1)

Citation : (2012) 4 BomCR 759 : (2012) 281 ELT 385 : (2012) 1 MhLj 627

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : P.S. Lotlikar, for the Appellant; Guru Shirodkar, Government Advocate, For respondent Nos. 1 and 2 and C.A. Ferreira, Assistant Solicitor General, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Lavande, J.—Heard learned Counsel for the parties. By this appeal, the appellants take exception to the judgment and decree dated 3rd May, 2001 passed by the Civil Judge, Senior Division, Panaji in Special Civil Suit No. 26/1988/B insofar as it refuses the relief of compensation to the plaintiffs as against respondent Nos. 1 and 2.

2. The appellants are the plaintiffs in the above suit filed against the defendants seeking the following relief"s :

(1) For an order or mandatory injunction directing the defendants to have the registration of the suit vehicle done in favour of the plaintiff.

(2) For an order directing the defendants, jointly and severally to pay Rs. 10,000/- per month to the plaintiff from 1-3-1987 till actual registration along with interest at the rate of 18 %."

(3) Costs and advocate's fees such other relief's as this Honourable Court may be pleased to grant in the circumstances of the case.

3. The parties shall be hereinafter referred to as per their status before the trial Court.

4. Briefly, the facts leading to filing of the present appeal are as under :

Plaintiff Nos. 2 to 5 are the partners of plaintiff No. 1 Firm registered with the Registrar of Firms at Panaji, Goa. The plaintiffs purchased a Truck bearing No. 3386 in public auction held by defendant No. 4 on 3rd June, 1986 by paying full amount for which the plaintiffs had bidden. The said truck was registered in the name of Antonio Pereira with Directorate of Transport, Panaji and was under hire purchase agreement with Union Bank of India, Panaji branch. The said truck was seized by Customs Authorities on 30th August, 1982 on the ground that contraband was being carried in the said truck. On 11th June, 1985, the truck was confiscated in favour of Government of India. The truck was handed over to the plaintiffs "as is where is" basis.

5. By letter dated 5th February, 1987, the Directorate of Transport was requested to register the vehicle in the name of plaintiff No. 1. By reply dated 23rd March, 1987, the Directorate of Transport had informed that the Customs Authorities have informed that the vehicle was seized by them on 30th August, 1982 and that transferee is liable to pay the outstanding taxes. It was also stated that the vehicle could not be transferred unless no objection certificate was produced from the Union Bank of India, Panaji since the vehicle was under hire purchase agreement with the bank.

6. Aggrieved by the action of the Directorate of Transport refusing to register the vehicle in the name of plaintiff No. 1, the plaintiffs filed the suit on 23rd February, 1988 and claimed the above relief's. On behalf of defendant Nos. 1, 2 and 4 separate written statements were filed opposing the claim of the plaintiffs.

7. On the basis of the pleadings, the following issues were framed :

(i) Whether the plaintiff proves that it is a partnership firm registered under No. 113/87?

(ii) Whether the plaintiff proves that it is entitled to a mandatory injunction directing the defendants to have the registration of the suit vehicle done in favour of the plaintiff?

(iii) Whether the plaintiff prove that the defendants are jointly and severally liable to pay a sum of Rs. 10,000/- for a month along with 18 % p.a. from 1-3-1987 till the vehicle is registered in the name of plaintiff No. 1?

(iv) What relief? What order?

8. In Special Civil Suit No. 26/1988/B, the plaintiffs examined plaintiff No. 2 as the only witness who produced some documents in support of the plaintiffs' case

and the plaintiffs closed the evidence. On behalf of defendant Nos. 1 and 2, one Manuel Afonso-DW1 was examined.

9. Upon appreciation of the evidence led by the parties, the trial Court partly decreed the suit and granted prayer No. 1. However, the relief of compensation was rejected. The trial Court held that the financier has lost its right under hypothecation after the vehicle was confiscated by defendant No. 4 and stood vested in the Central Government. The trial Court further held that no cogent evidence was led by the plaintiffs to prove the damages to which the plaintiffs were entitled and consequently, rejected the prayer for compensation.

10. Mr. Lotlikar, learned Counsel appearing for the appellants/ plaintiffs submitted that the trial Court having granted first relief, ought to have granted the compensation in favour of the plaintiffs inasmuch as on account of no registration of the vehicle by defendant Nos. 1 and 2, the plaintiffs were deprived of their right to ply the vehicle, thereby causing loss to the plaintiffs. Mr. Lotlikar further submitted that the finding by the trial Court that NOC from the bank was not required since the bank had lost its right under hypothecation agreement, has reached finality and the same cannot be disturbed in appeal and having regard to this finding, the trial Court ought to have granted relief of compensation. Learned counsel further submitted that although the plaintiffs had not led cogent evidence to prove the exact amount of compensation, the trial Court ought to have allowed the claim for compensation by granting nominal damages in view of the fact that respondent Nos. 1 and 2 had failed to register the vehicle in the name of plaintiff No. 1 on the ground that taxes were due from the original owner and also on the ground that NOC from bank was not obtained. In support of this submission, Mr. Lotlikar placed reliance upon the following judgments :

(i) In Re: Dusari Veerraju and Another, . (ii) Yarlagadda China Rattayya and Another Vs. Donepudi Venkataramayya and Others, .

11. Per contra, Mr. Shirodkar, learned Government Advocate appearing for respondent Nos. 1 and 2 supported the impugned judgment and order and submitted that the finding of the trial Court that NOC from the financier was not required after vehicle vested in the Central Government is unsustainable and can be reversed in appeal in terms of the provisions of Civil Procedure Code. Mr. Shirodkar further submitted that since the plaintiffs had not paid the taxes due in respect of the vehicle and had not obtained NOC from the bank with whom the vehicle was hypothecated, respondent Nos. 1 and 2 were justified in not registering the vehicle in the name of plaintiff No. 1. He, therefore, submitted that the appeal as against respondent Nos. 1 and 2 is liable to be dismissed.

12. Mr. Ferreira, learned Assistant Solicitor General appearing for respondent Nos. 3 and 4 pointed out that in the appeal, relief is only claimed against respondent Nos. 1 and 2 and, therefore, submitted that no relief can be granted against respondent Nos. 3 and 4.

13. I have carefully considered the rival submissions, perused the record and the judgments relied upon.

14. In view of rival submissions, the following point arises for determination in the appeal :-

(i) Whether the trial Court erred in not awarding compensation in favour of the appellants/plaintiffs and if yes, to what compensation, the plaintiffs are entitled ?

15. Perusal of the impugned judgment discloses that the trial Court held that defendant Nos. 1 and 2 were bound to register the vehicle in favour of plaintiff No. 1 although taxes in respect of the vehicle were not paid and although no objection certificate from the financier was not obtained. Insofar as the aspect of submission of NOC from the financier is concerned, provisions of section 3 I-A(1) to (4) of the Motor Vehicles Act, 1939 ("The Act" for short) are relevant. They read thus :

31-A - Special Provisions regarding motor vehicles subject to hire purchase agreement. - (1) Where an application for registration of a motor vehicle which is held under a hire-purchase agreement is made, the registering authority shall make an entry in the certificate of registration regarding the existence of the said agreement.

(2) When the ownership of any motor vehicle registered under this Chapter is transferred and the transferee enters into a hire-purchase agreement with any person, the registering authority shall on receipt of an application from the parties to that agreement, make an entry as to the existence of such hire-purchase agreement in the certificate of registration.

(3) Any entry made under sub-section (1) or sub-section (2), may be cancelled by the registering authority on proof of the termination of the hire-purchase agreement by the parties concerned.

(4) No entry regarding the transfer of ownership of any motor vehicle which is held under a hire-purchase agreement shall be made in the certificate of registration except with the written consent of the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into a hire-purchase agreement.

16. Bare perusal of the above provisions makes it clear that when the vehicle is under hire purchase agreement, the registering authority has to make an entry in the certificate of registration regarding existence of such an agreement and the same has to be cancelled only upon proof of termination of hire purchase agreement by the parties thereto. Sub-section (4) clearly provides that no entry regarding the transfer of ownership of motor vehicle which is held under a hire purchase agreement shall be made in the certificate of registration except with the written consent of the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into a hire purchase agreement. This provision clearly mandates the

registering authority to obtain NOC from the financier in case the vehicle is held under a hire purchase agreement. In my considered opinion, the trial Court is absolutely wrong in law in holding that once the vehicle was seized by the Customs Authorities and stood vested in the Central Government in terms of section 126 of the Customs Act, the financier loses its right under the agreement of hypothecation. Insofar as the submission of Mr. Lotlikar that this finding has reached finality and as such, cannot be disturbed in appeal is concerned, I find no merit therein. Order XLI, Rule 22 of CPC clearly provides that in an appeal preferred by the appellant, the respondent, without filing appeal may not only support the decree, but the respondent is entitled to urge that the finding against him in the Court below in respect of any issue ought to have been in his favour. Merely because the trial Court has recorded such a finding in favour of the plaintiffs for the purpose of grant of first relief, this fact by itself would not deter this Court from disturbing the said finding, if the finding is contrary to law. This is subject to rider that the appellant in his appeal cannot be placed in a worse condition than what he is. In other words, even if the finding given while granting a relief in favour of the plaintiffs is wrong, in appeal preferred by the appellant against the decree partly refusing another relief the appellant cannot be put in worse condition. In the present case, the appellants/ the plaintiffs are aggrieved by the refusal by the trial Court to grant relief of compensation and as such, for the purpose of finding out whether the plaintiffs are entitled to the said relief, this Court as an Appellate Court is entitled to find out if the findings given by the trial Court, are sustainable in law. Moreover, Order XLI, Rule 33 of CPC gives power to the Appellate Court to pass any decree and make any order which ought to have been passed or made and to pass or make such further decree or order as the case may require. The said rule also provides that this power may be exercised by the Court notwithstanding the fact that the appeal is only as to the part of the decree and the appellate Court is entitled to exercise such power in favour of any of the respondents or parties although such respondents or parties may not have filed any appeal or objection. Thus, having regard to the above referred provisions of Civil Procedure Code, I find that the submission of Mr. Lotlikar that the above finding has reached finality is unsustainable in law. No doubt, u/s 126 of The Customs Act, once the vehicle is seized by the Customs Authorities, the vehicle stands vested in the Central Government, but this fact by itself would not be sufficient to hold that the hypothecation agreement in respect of the vehicle entered into with the financier stands terminated. If the interpretation sought to be put by the trial Court is accepted, the financier, without having any opportunity of being heard, would be deprived of its right to claim the amount in terms of the hire purchase agreement in respect of the vehicle. Such an interpretation, in my considered opinion, is opposed to all canons of interpretation and, therefore, in my considered view, the finding of the trial Court on this aspect, is unsustainable in law and is liable to be set aside. Therefore, in my considered opinion, the Directorate of Transport was perfectly justified in not registering the vehicle in the name of plaintiff No. 1 when admittedly the plaintiffs had not given NOC from the financier in respect of the

vehicle.

17. There is one more aspect which clearly disentitles the plaintiffs from claiming compensation. Section 8 of the Goa, Daman and Diu Motor Vehicles Tax Act, 1974 ("The Act of 1974" for short) provides that if the tax in respect of any motor vehicle remains unpaid by any person liable for the payment thereof, and such person before having paid the tax has transferred the ownership of such vehicle or has ceased to be in possession or control of such vehicle, the person to whom the ownership of the vehicle has been transferred or the person who has possession or control of such vehicle shall be liable to pay the said tax to the Taxation Authority. Sub-section (2) of section 8 of The Act of 1974 provides that nothing contained in this section shall be deemed to affect the liability of the person to pay the said tax of the person who has transferred the ownership or has ceased to be in possession or control of such vehicle. In the present case, pursuant to the auction held by the Customs Department, plaintiffs came in possession of the vehicle and as such, if they wanted to use the vehicle, they were bound to pay the taxes after having come in possession of the vehicle.

18. Section 15 of The Act of 1974 provides that notwithstanding the provision of the Motor Vehicles Act, 1939, if the tax or any installment thereof due in respect of a transport vehicle is not paid within the prescribed period, the validity of the permit for the vehicle shall become ineffective from the date of expiry of the said period until such time as the tax is actually paid. Therefore, in terms of section 15 of The Act of 1974 since admittedly the taxes in respect of the vehicle in question were due, the validity of the permit of the said vehicle had become ineffective. Consequently, therefore, the plaintiffs could not have used the transport vehicle. Therefore, on this count also the claim for compensation made by the plaintiffs is unsustainable in law.

19. Indisputably, the amount of Rs. 31,934/- towards goods tax and further claim of Rs. 14,000/- towards the road tax was outstanding in respect of the vehicle when the application for transfer of the vehicle in the name of plaintiff No. 1 was made on behalf of the plaintiffs. The trial Court in the judgment in paragraph No. 36 has rightly observed that the plaintiffs ought to have paid the taxes claimed by the Department under protest. In my considered opinion, in view of the admitted position that NOC from the financier was not obtained at the time of seeking transfer of the vehicle in the name of plaintiff No. 1, no fault can be found with respondent No. 2 in not transferring the vehicle in favour of plaintiff No. 1. No doubt, the trial Court granted the relief prayer clause (1) and defendant Nos. 1 and 2 are not aggrieved by the said order since there is no financial liability imposed by grant of the said relief. But mere fact that defendant Nos. 1 and 2 have not challenged that part of the decree by itself would not be sufficient to grant relief of compensation in favour of the plaintiffs solely on the ground that the relief of registration of vehicle in favour of the plaintiffs has been granted by the trial Court.

20. For the reasons aforesaid, I find that the judgment and decree passed by the

trial Court insofar as it rejected the prayer for compensation cannot be faulted. No doubt, Mr. Lotlikar is right in contending that even in the absence of cogent evidence having been led by the parties a Civil Court can grant nominal damages, relying upon the judgments in the cases of Yarlagadda China Rattayya and Dusari Veerraju and another (*supra*). However, in the present case, once the action of respondent No. 2 in not transferring the vehicle in favour of plaintiff No. 1 is found to be in accordance with law, no question of granting relief of compensation against defendant Nos. 1 and 2 arises. In view of the above, I do not find any merit in the present appeal. Consequently, the appeal stands dismissed with no order as to costs.