(1987) 11 MAD CK 0005

In the Madras High Court

Case No : App. No. 1057 of 1980 and Cross Objections

Messrs. Mercantile Credit Corporation Ltd., Trichi APPELLANT

Vs

V. Amaravathi and Others RESPONDENT

Date of Decision : 17-11-1987

Acts Referred:

Citation : (1987) 11 MAD CK 0005

Hon'ble Judges : S.A. Kader, J

Bench : Single Bench

Advocate : K. Raman and Varadarajan, for the Appellant; T. R. Rajaraman, for the Respondent

Judgement

S.A. Kader, J.—The appeal arises out of the judgment and decree of the court of the Subordinate Judge, Trichi in O.S. 812 of 1978. The

plaintiff, who has succeed in part is the appellant. The suit is to recover money due on hire purchase agreement. The plaintiff is a company

registered under the Indian Companies Act carrying on hire purchase business. The first defendant hired a Fargo lorry 1977 model, bearing

registration No. TMC 6669 from the plaintiff company under a hire purchase agreement dated 20.12.1979 agreeing to pay hire charges of Rs.

59,840 in 23 monthly installments of Rs. 2,500 each and the 24th installment of Rs. 2,340. The defendants 2 and 3 stood as guarantors. They have

also executed a promissory note for the said sum of Rs. 59,840, as collateral securities. The first defendant paid Rs. 16,000 only towards the

installments on various dates belatedly. No further payment has been made in spite of repeated reminders orally and in writing. The first defendant

failed to take proper care of the vehicle. He allowed it to be seized by the Transport authorities for non-payment of quarterly tax. The plaintiff paid tax arrears of Rs. 6,000 and took possession of the vehicle on 4.1.1977 in a very bad condition. On 27.1.1977 a notice was issued by the plaintiff

to all the defendants calling upon them to pay the amounts due to the plaintiff and informing them that on failure to pay the vehicle would be sold

without further notice. There was no response from the defendants. The plaintiff, therefore, invited quotations by publication in newspaper and sold

the vehicle to one Noordeen of Chicdambaram on 27.12.1977 for Rs. 25,000. After adjusting the sale proceeds there is still a balance of Rs.

33,671-20 due from the defendants and the suit is laid therefore.

2. The first defendant denied that the plaintiff is a company registered under the Indian Companies Act and disputed the authority of the person

who has signed the plaint. The first defendant also denied that he entered into a hire purchase agreement with the plaintiff and signed any agreement

therefore or any promissory note as collateral security. The case of the first defendant is that at the instance of her husband the second defendant,

she purchase the lorry in question from one K.K. Mani for Rs. 55,000. He paid to him a cash of Rs. 16,500 and approached the plaintiff through

defendants 1 and 2 for a loan. At the instance of the plaintiffs clerk the defendant put her signature in several papers and printed forms which were

blank. None of the papers were ever read over or explained to her. The agreement is, therefore, not legally enforceable. The first defendant was

plying this lorry for nearly a year, but, due to heavy competition it could not be run profitably. The Motor Vehicles Inspector seized the vehicle in

the last week of December 1976 for non-payment of tax and left it at the police station in Palani. The defendants 1 and 2 made up the money and

paid the tax. The plaintiff''s representative got the receipt from this defendant and took possession of the vehicle without the knowledge or consent

of the defendants 1 and 2. Subsequently, they refused to deliver the vehicle on the ground that they were in arrears. The vehicle was then in a good

and road-worthy condition and was easily worth Rs. 60,000. It is denied that this defendant paid Rs. 16,000 only and there is balance. The

promissory note is barred by time. It is not true that quotations were called for by the plaintiff and the vehicle was sold only to Rs. 25,000 to

Noordeen. It is a stage managed affair. The interest claimed at 18 per cent per annum is excessive and usurious. This defendant is an agriculturist entitled to the benefit of the Act IV of 1938, as amended. She therefore prayed for the dismissal of the suit.

3. The second defendant adopted the written statement of the first defendant.

4. The third defendant contended that he was a broker, who brought about the agreement between the plaintiff and the defendants 1 and 2 for

advancing loan on the lorry in question. He was asked by the plaintiff to sign as a witness and he signed only as a witness. There was no intention

on the part of the defendant to become a debtor along with the defendants 1 and 2.

5. The plaintiff filed a reply statement denying the averments of the defendants.

6. On the above pleadings, the following issues were framed for trial.

1. Whether the defendants are not liable to pay the suit amount for all the reasons stated in the written statement ?

2. Whether the sale of the vehicle is correct and binding on the defendants?

3. Whether the suit is barred by limitation as contended in the written statement?

4. To what amount is the plaintiff entitled to ?

5. To what relief is the plaintiff entitled?

Additional issues

1. Whether the plaintiff has no right to sue and is the suit not maintainable for the reasons set out in para 3 of the written statement of the first

defendant?

2. Whether the first defendant is an agriculturist and is entitled to the benefits of the Tamil Nadu Act IV of 1938, as amended by the Tamil Nadu

Act 8 of 1973?

7. The learned Subordinate Judge found on additional issue that the suit was maintainable, and on additional issue No. 2, the first defendant was

not an agriculturist entitled to the benefits of Act 4 of 1938. He also held that the suit was not barred by time. But, the court below found that the

sale of the vehicle was not proper and not binding on the defendants. He also found that the vehicle was worth Rs. 50,000 gave credit to the sum

of Rs. 25,000 being the excess in the sale price out of the suit claim of Rs. 33,671.20, and found that the plaintiff was entitled to recover Rs.

8,671.20 and decreed the suit for the said sum of Rs. 8,671.20, with proportionate costs. Aggrieved thereby the plaintiff has come in appeal. The defendants have preferred cross objections.

8. The points that are urged before me and which arise for consideration are:-

1. Whether the plaintiff had a right to sell the vehicle?

2. Whether the sale of the vehicle for Rs. 25,000 is proper?

3. Whether the tax arrears of Rs. 6,000 was pair by the plaintiff or by the first defendant?

9. Point-1: Ex.A2 is the hire purchase agreement entered into between the plaintiff and the first defendant with defendants 2 and 3 as guarantors. It

is not urged before me that the first defendant signed only in blank forms and papers without knowing the contents thereof. We have, therefore, to

take Ex.A2 as a true agreement only entered into between the plaintiff and the first defendant with the defendants 2 and 3 as guarantors. Under

Ex.A2 the plaintiff as the owner of the motor vehicle bearing registration No. T.M.C. 6669 has agreed to let and the first defendant as hirer has

agreed to hire the vehicle for a total hiring charge of Rs. 59,840, to be paid in 24 monthly installments, Rs. 2,500 for first 23 installments and Rs.

2,340 for the last installment. After the payment of all the aforesaid sums by the hirer the hiring shall come to an end and the vehicle shall at the

option of the hirer becomes her property and the owner shall assign and make over all his right, title and interest in the name of the hirer and until

such payments as aforesaid have been made, the vehicle shall remain the absolute property of the owner, viz., the plaintiff. It is also laid down that

the hirer shall be at liberty at any time during the continuance of this agreement to terminate the hiring by returning the vehicle to the owner free of

all expenses but, this shall be without prejudice to any claim the owner may have against the hirer in respect of the agreement. The vehicle shall be

registered in the name of the owner and the hirer shall not mortgage pledge, hypothecate, hirer or otherwise deal with the vehicle, shall not part

with the possession of the vehicle or remove it out of Tiruverumbur without the express permission of the owner. The hirer has acknowledged that

he holds the vehicle as bailee of the owner and shall not have any proprietary right or interest as purchaser until she shall have exercised her option

of purchase as hereinbefore and shall have paid the whole amount due under this agreement.

10. As pointed out by the Supreme Court in Sundaram Finance Ltd. v. State of

Kerala 1966-2-S.C.R. 828, the hire purchase agreements are of

two kinds -(1) When the owner is unwilling to look to the purchaser of goods to recover the balance of the price and the financier, who pays the

balance, undertakes the recovery. In this form goods are purchased by the financier from the dealer and the financier obtains hire purchase

agreement from the customer under which the latter becomes the owner of the goods on payment of all the installments of the stipulated hire and

exercising his option to purchase the goods on payment of a nominal price. (2) In the other form, the goods are purchased by the customer, in

consideration of executing hire purchase agreement and allied documents remain in possession of the goods subject to liability to pay the amount

paid by the financier and the financier obtains a hire purchase agreement which gives him a licence to seize the goods in the event of failure of the

customer to abide by the conditions of the hire purchase agreement. We have now to see to which of the two categories belongs Ex.A2 hire

purchase agreement.

11. Ex.A2 expressly recites that the plaintiff is the owner and the first defendant is only a hirer. Under condition No. 4, the hirer has acknowledged

that he holds the vehicle as bailee of the owner and shall not have any proprietary right or interest as purchaser until he shall have exercised his

option of purchase. The agreement provides for the registry of the vehicle in the name of the owner. But, in the instant case, the registry had stood

only in the name of the first defendant. It is explained that for the purpose of proper management and of plying of the vehicles, the registry was

allowed to stand in the name of the first defendant. But, the fact of registration by itself in one name or another may not be determinative of the

ownership of the vehicle as pointed out by the Supreme Court in K.L. Johar and Co. Vs. The Deputy Commercial Tax Officer, Coimbatore III,

There is one important clause in Ex.A2 agreement, which, in my view, is decisive of the matter. That is condition No. l under which the hirer is

given the liberty any time during the continuance of this agreement to terminate the hire by returning the vehicle to the owner free of all expenses to

the owner. This option given to the first defendant is indicative of the fact that she is only a hirer and it is open to her to exercise, her option to

terminate the agreement and return the vehicle or purchase it on payment of the installments. If the first defendant was the owner of the vehicle,

there was absolutely no necessity for such a term. On the terms of Ex.A2, I hold, therefore that this agreement falls under the first category and that

the plaintiff is the owner of the vehicle and the second defendant is only a hirer. It follows that when the hirer defaults to pay the installments it is

open to the plaintiff"" to seize the vehicle and sell the same.

12. Assuming that Ex.A2 represents only a loan transaction, that the plaintiff is only a financier and the first defendant has taken the loan on the

security of her vehicle, the agreement provides for the seizure of the vehicle by the plaintiff under certain circumstance, one of which is the default in

the payment of installments. The plaintiff was, therefore, well within its rights in seizing the vehicle when the first defendant defaulted to pay the

arrears of installments. After seizing the vehicle the plaintiff cannot be expected to keep it in a show room and wait for the first defendant to come

and pay the money and take back the vehicle. In law, the plaintiff is bound to minimise the loss and the only way open to him to dispose of, the

vehicle. In the case on hand, after paying the arrears of quarterly tax and taking possession of the vehicle, it has issued Ex.A1 notice dated

27.1.1977 to the defendants 1 to 3 calling upon them to make the payment due to the plaintiff within a week and informing that the vehicle would

be sold in default thereof for the best available price and after adjusting the sale proceeds towards the dues, the plaintiff will be constrained to file a

suit for recovery of the balance. There has been no response to this notice. The plaintiff has, therefore, made a publication in Dinamalar calling for

tenders for the purchase of the vehicle under Ex.A17 dated 15.2.1977 and sold it to the highest tenderer. In the circumstances it cannot be said

that the plaintiff had no right to sell the vehicle. The point is found against the first defendant.

13. Point-2: Under Ex.A17 publication in Dinamalar dated 15.2.1977, the plaintiff has called for tenders in person for the purchase of this vehicle.

Ex.A18 is the tender for Rs. 20,000. Exs.A19 and A20 are tenders for Rs. 18,001 each. Ex.A92 for Rs. 24,000 and Ex.A91 for Rs. 25,000. The

plaintiff has accepted the highest offer and sold the vehicle to Noordeen under Ex.A66 delivery letter. The contention of the defendant is that the

vehicle would be worth Rs. 60,000 and the sale by the plaintiff to Noorudeen is a make-believe affair. The learned Subordinate Judge has found

that the vehicle was worth Rs. 50,000 as it was insured for the said amount. It is explained that for previous years also the vehicle has been insured

for Rs. 50,000 and for the same amount the insurance policy has been taken for the current year. Hence the mere fact that the vehicle has been

insured for Rs. 50,000 cannot lead to the conclusion that it would be worth Rs. 50,000. The fact remains that the plaintiff has, by publication in a

daily, called for tenders and the highest tender was Rs. 25,000 only. The contention of the learned counsel for the respondents is that these tenders

are not sent by post. There is no cover or postal seal and they cannot be accepted as true. It must be remembered that under Ex.A17 publication

calling for tenders, the parties have been asked to meet the plaintiff in person. Hence, these tenders must have been presented in person. There is

nothing to cast aspersion on these tenders and the sale by the plaintiff of the vehicle to Noorudeen for Rs. 25,000. It is significant to note that under

Ex.A67, the plaintiff has given notice to all the defendants informing them of the sale of the vehicle for Rs. 25,000 and calling upon the defendants

to pay the balance. These notices have been served upon the defendants 1 and 2 under Exs.A68, and A69 postal acknowledgements while the

notice to the 3rd defendant had been returned unserved. The defendants 1 and 2 have-not sent any reply disputing the validity of the sale or the

sufficiency of the amount for which the vehicle has been sold. It is only for the first time in the written statement they have come forward with the

case that the price fetched by the sale is poor. In the circumstances, I hold that the vehicle has been properly sold for Rs. 25,000 and the plaintiff is

not liable to give credit to another sum o f Rs. 25,000 as ordered by the court below.

14. Point-3: The first defendant failed to pay the monthly tax due under the Motor Vehicles Act, and the vehicle was, therefore, seized by the

Motor Vehicles Inspector. The case of the plaintiff is that it paid Rs. 6,000 being the arrears and got the vehicle from the Department. According

to the defendants 1 and 2, they paid the amount and the plaintiff is, not, therefore, entitled to add this sum of Rs. 6,000 in their claim against the

defendants. P.W. 2 is the Collection clerk in the plaintiff''s company and it is his evidence that he obtained a draft for Rs. 6,000, paid it before the

Regional Transport Officer and took release of the vehicle. The second defendant, who has been examined as D.W. 1, would say that he

borrowed Rs. 6,000 from one Pakkiasami of Kumarapuram and gave the amount to one Subramaniam employed in the plaintiff concern for paying

the tax and releasing the vehicle. But, he has not obtained any receipt from the said Subramaniam. If the defendants 1 and 2 had this amount, they

could have themselves paid the amount before the Regional Transport officer and taken release of the vehicle. There was no necessity for them to

hand over the money to the plaintiff''s representatives. The falsity of this claim is also exposed by the fact that in the written statement of the first

defendant in para 12 the first defendant has stated that she and her husband made up the money, paid the tax and showed the receipt to the

plaintiff''s representative and believing in the representation of the plaintiff''s representative the receipt was handed over to him. The present case

that the amount was paid to the plaintiff''s representative is an improvement, which falsifies the whole case. I have no hesitation in agreeing with the

court below that it is the plaintiff who has paid Rs. 6,000 towards the arrears of vehicles tax and taken possession of the vehicle. This point is also

found against the respondent.

15. No other point is urged before me. In the result, the appeal is allowed, the judgment and decree of the court below are modified and the suit is

decreed as prayed for with costs throughout. The cross objections fails and is dismissed, but without costs.