
(1998) 01 P&H CK 0196

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2942 of 1979

M/S Jindal Commercial College, Bhatinda

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 12-01-1998

Acts Referred:

Citation : (1998) 01 P&H CK 0196

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : S.P. Gupta, with Mr. K.G. Sehajpal, for the Appellant; S.K. Bhanot, DAG, Punjab, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—This is Plaintiffs second appeal.

2. Plaintiff had filed a suit for recovery of Rs. 1435/-(sic) plus Rs. 90/- i.e. Rs. 1525/- being the hire charges of Remington typewriter for the period from 21.11.1972 to 30.4.1976 and also suit for mandatory injunction to the effect that the Defendant be ordered to hand over the said typewriter in an upto date running condition as per condition of supply. According to the Plaintiff, it gave one Remington typewriter to the Executive Engineer, Public Works Department (Building and Roads), Division No. 2, Bhatinda, on hire on 21.11.1972. To start with, the hire charges were settled at Rs. 30/- per month. Subsequently, with effect from 1.10.1974, these charges were enhanced to Rs. 45/- per month. Further (sic) according (sic) to the Plaintiff, typewriter was stolen from the custody of the hirer. But shortly, thereafter, it was found and recovered. No amount whatsoever on account of the hire charges has been paid to the Plaintiff and also the typewriter has not been returned to it. Hence, the suit.

3. Defendant in the written statement asserted that the typewriter was stolen on 1.1.1973 and, therefore, relationship of the supplier and the hirer between the parties came to an end. It was also contended that according to the terms and

conditions of the contract vide which the typewriter was given on hire, Plaintiff was not entitled to the hire charges because it was stipulated therein that if typewriter is lost by the hirer or got damaged while in custody of the hirer, then the hirer would pay Rs. 1200/-

4. On the pleadings of the parties, the following issues were framed by the trial Court:

(1) Whether it was agreed between the parties that the repair charges of typewriter would be borne by the department and that, when returned to the Plaintiff, it would be returned in a working condition? OPP

(2) Whether the hire charges of the typewriter with effect from 1.10.1974 were agreed to and fixed at Rs. 45/- per month between the parties? OPP

(3) Whether it was stipulated between the parties that in case of loss and damage of the typewriter, the Defendant would be liable to pay Rs. 1200/- to the Plaintiff? OPP

(4) Whether the typewriter in question was stolen and was recovered in a damaged condition ? If so, to what effect? OPD

(5) Relief.

5. Trial Court decreed the suit. In appeal, the judgment and decree of the trial Court was modified to the extent that the Defendant was directed to make the payment of Rs. 310/- i.e. hire charges for the period from 21.11.1972 to 1.1.1973 and also directed the Defendant to return the typewriter to the Plaintiff. Hence, the present second appeal.

6. It is contended by the learned Counsel for the Appellant that the Plaintiff is entitled to hire charges for the period the typewriter remained in the custody of the Defendant and, therefore, the judgment and decree of the first Appellate Court deserves to be modified to that extent. I find no merit in this contention of learned Counsel for the Appellant.

7. It is not in dispute that the typewriter was given on hire on the terms and conditions contained in Exhibit P-1. One of the conditions in Exhibit P-1 was that if the typewriter was to be lost by the hirer or got damaged while in hirer's custody, then the hire would pay Rs. 1,200/-. It is the admitted case of the parties that the typewriter was lost on 1.1.1973 on account of theft and the same was recovered sub-sequently, while the case of theft was pending in the Court, Plaintiff was asked to take the typewriter on Superdari but he did not do so. Per force, the hirer got the typewriter released on Superdari and thereafter it was kept by the hirer as Superdar as per the direction of the Court. Plaintiff was called upon to pay Rs. 250/- needed for repair of the typewriter but the Plaintiff failed to get the typewriter repaired or pay the expenses therefore. It is also not in dispute that subsequently the typewriter was not used by the hirer during the period it remained with him as Superdar. It has rightly been held by the first

Appellate Court that the Plaintiff is not entitled to the hire charges for that period. Consequently, no interference is called for in the finding recorded by the Appellate Court. This appeal is accordingly dismissed.