

(1988) 05 DEL CK 0024

In the Delhi High Court

Case No : Regular Second Appeal No. 206 of 1973

Rameshwar Lal Sharma

APPELLANT

Vs

Kohli Finance (P) Ltd.

RESPONDENT

Date of Decision : 09-05-1988

Acts Referred:

Citation : (1988) 35 DLT 324

Hon'ble Judges : D.P Wadhwa, J

Bench : Single Bench

Advocate : B.D. Sharma, S.K. Bagga and J.R. Goel, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) This regular second appeal is by the defendant against the judgment and decree dated 26.4.73 of the Addl. District Judge Delhi, whereby he allowed the appeal of the plaintiff and decreed the suit for Rs. 2,000.00 with costs and future interest at the rate of 6% per annum from the date of institution of the suit till realisation of the amount.

(2) The facts are not many. The parties entered into an agreement for sale of a bus chassis by the defendant to the plaintiff. An amount of Rs. 2,000.00 was given by the plaintiff to the defendant when the agreement was entered into. The plaintiff contends that this amount was given by way of advance or part-payment but the defendant contends that it was by way of earnest money. The contract of sale having fallen through the defendant claimed to have forfeited this amount. The plaintiff, however filed a suit for recovery of Rs. 6,000.00 . Rs. 2,000.00 being the refund of part-payment/advance and Rs 4,000.00 as damages suffered by it. The trial court dismissed the suit. In first appeal, the plaintiff confined its claim to refund of Rs. 2,000.00 only and, as noted above, its suit for this amount was decreed. Mr. Sharma. learned counsel for the appellant-defendant, has contended that circumstances showed, that the amount of Rs. 2,000.00 was given by way of earnest money and further that the breach was committed by

the plaintiff. He said of finding the lower appellate court that both the parties were guilty. of breach of the contract was not correct. In the circumstances Therefore, he said that the defendant was well within his right to forfeit the earnest money.

(3) At this stage, it will be appropriate to refer to some of the relevant facts. Ex. P-1 is a letter dated 17.12.1959 written by the defendant to the plaintiff for sale of a bus chassis for a consideration of Rs. 30, 935.00 . In this letter, the defendant said that the amount be paid to United Motors Jaipur, on his behalf where he had booked the bus chassis. He said after the whole of the amount had been paid, the plaintiff would be owner of the bus chassis. It appears that ultimately a vehicle was to be built on the bus chassis and that was to be financed by the plaintiff. Terms to that effect are mentioned in Ex. P-1. Ex. P-6 is a letter dated 2.1.1960 written by the plaintiff to United Motors, Jaipur. In this it was mentioned that a bus chassis was booked by the defendant, who was the hirer of the plaintiff, and that the plaintiff was sending a sum of Rs.29,000.00 by means of a bank draft. It was pointed out that a sum of Rs. 2,000.00 had already been deposited with the United Motors by the defendant. The price of the bus chassis was mentioned at Rs. 30,935.00 . With this letter dated 7.1.1960 (Ex. P-7) of the defendant to the United Motors, Jaipur, was also sent wherein United Motors were requested to deliver the bus chassis to the plaintiff. There is another letter (Ex.P-2) dated 6.2.1960 written by the defendant to the plaintiff wherein the defendant confirmed that he had sold all his rights in the bus chassis for Rs. 30,935.00 to the plaintiff and that a sum of Rs. 2,000.00 was paid by him as advance to United Motors, Jaipur, at the time of registering the bus chassis in his name and that amount had since been received by the defendant from the plaintiff in cash on 6.2.1960 itself. The defendant in this letter also requested the plaintiff to pay the balance of Rs. 28,935.00 in his account to United Motors, Jaipur, who had been instructed by him to deliver the bus chassis to the plaintiff. It appears for some reason or the other, the bus chassis could not be delivered by the United Motors, Jaipur, to the plaintiff. By letter dated 5.4.1960 (Ex. Pw I/I), United Motors, Jaipur, informed the plaintiff that the bus chassis would be offered some time by 15th April 1960 but that the exact date of delivery would be intimated after some time. Then by letter dated "3.4.1960 (Ex. Public Witness 1/2), United Motors informed the plaintiff that the defendant had advised them that he was not getting his vehicle financed from the plaintiff and as such they were treating the subject as closed. The contention of the defendant is that the plaintiff refused to pay the enhanced excise duty which had been levied and which the plaintiff was to pay as required u/s 64A of the Sales of Goods Act 1930. Mr. Sharma referred to a letter dated 2.12.1959 (Ex. D-2) which was written by one Bhanwar Singh as a representative of the plaintiff to the defendant wherein it was mentioned that the amount of Rs, 2,000.00 would be given by the plaintiff to the defendant as advance deposit to be adjusted against the company price of the bus chassis at the time of its delivery. Mr. Goel, learned counsel for the respondent-plaintiff, however, said that no reliance could be

placed on this letter and it was rightly held not to have been proved by the courts below. In view of letters Ext. P-1, P-2, P-6, and P-7, which have been mentioned above, I do not think letter Ex. D-2 can be even referred to. The principal question that remains is if the amount of Rs. 2,000.00 was given by way of earnest money as alleged by the defendant or as part- payment or advance as alleged by the plaintiff. Considering the amount involved visa-vis the agreed price, Mr. Sharma said that it could only be earnest money. In support of his contention, he also referred to *Maula Bux Vs. Union of India (UOI)*, ; *Shri Hanuman Cotton Mills and Others Vs. Tata Air Craft Limited*, ; and *Bishan Chand v. Radha Kishan Das* 1. L.R. (Allahabad Series 489). But, in the facts and circumstances of the present case, I do not think the principles laid in these decisions are applicable, as I would agree with the learned lower Appellate Court that the amount of Rs. 2,000.00 cannot be said to have been advanced by way of earnest money. After having taken this view, it is not material for me to consider as to which of the parties committed breach of the contract. Section 64-A of the Sale of Goods Act 1930 would no doubt be applicable as contended by Mr. Sharma. It could not be disputed that as far as these vehicles were concerned no loss would have occasioned to the defendant as during those days it was seller's market, but then that question need not be gone into.

(4) I would, Therefore, dismiss this appeal, but leave the parties to bear their own costs.