

(2012) 01 DEL CK 0160

In the Delhi High Court

Case No : Regular First Appeal No. 603 of 2003

Shri Dal Chand Tanwar

APPELLANT

Vs

M/s. Muthoot Leasing and Finance Ltd.

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Citation : (2012) 187 DLT 104

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Rajiv Garg, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This Regular First Appeal filed u/s 96 of the Code of Civil Procedure, 1908 impugns the judgment dated 31.3.2003 of the Trial Court dismissing the suit filed by the appellant/plaintiff for recovery of possession of the vehicle and for damages.

2. The facts of the case are that the appellant/plaintiff approached the respondent/defendant for financial assistance for purchase of a Tata Truck Model No.407 on hire-purchase basis. This financial assistance was granted to the appellant/plaintiff and who was to repay the amount in installments of Rs.8875/- per month. The appellant/plaintiff is stated to have paid the installments till 11.5.1996 as on which date 5 installments were in arrears. The respondent/defendant on account of breach of the terms of the Hire Purchase Agreement in not paying the installments due re-possessed the vehicle on 13.5.1996. The appellant/plaintiff thereafter filed the subject suit alleging that since he used to earn about Rs.1,000/- per day by use of the truck because he was plying the vehicle for Thomsons Press (India) Ltd. and M/s. Puran Chand & Sons, etc., and which earnings ceased due to the illegal re-possession of the vehicle. It was alleged that the action of the re-possession of the vehicle was illegal because no notice was served prior to taking re-possession.

3. The respondent /defendant contested the suit and stated that the appellant/plaintiff was liable to make payment of Rs. 3,19,500/- in terms of the Hire Purchase Agreement dated 20.3.1995. It was stated that there was a delay of more than 200 days even in making payment of the first installment and the second installment which was to be paid on 20.4.1995 was paid between 21.10.1995 to 18.12.1995. It was stated that at no point of time any of the installments were paid on time, and therefore, the respondent/defendant was constrained to issue a notice dated 19.3.1996 informing the appellant/plaintiff that in case the due installments were not paid, necessary action will be taken in terms of the Hire Purchase Agreement. The respondent/defendant confirmed the factum of re- possession of the vehicle vide its letter dated 13.5.1996. By this letter dated 13.5.1996, the appellant/plaintiff was once again asked to clear the dues but which failed to yield any result and therefore the vehicle was said to have been transferred/sold for recovery of the dues.

4. After completion of the pleadings, the Trial Court framed the following issues:-

"1. Whether the plaintiff is entitled for repossession of truck model 407, which was taken away by the defendant from the plaintiff on the ground of non-payment? OPP

2. Whether the suit of the plaintiff is liable to be rejected under Order VII Rule 11 as alleged in the preliminary objection? OPD

3. Relief.

Additional Issue

1. Whether the suit of the plaintiff is barred by limitation? OPD."

5. The respondent/defendant proved the hire purchase agreement as Ex.PW1/D1, the notice dated 19.3.1996 as Ex.DW1/4, and the letter informing the taking of possession dated 13.5.1996 as Ex.DW1/2. Other reminders with respect to non-payment of the due installments were also proved as Ex.DW1/7 and Ex.DW1/8.

6. In terms of para 9 of the Hire Purchase Agreement, Ex.PW1/D1, the respondent/defendant/hirer on breaches being committed of the Hire Purchase Agreement, including of failure to pay installments, could forthwith re-possess the vehicle.

7. The Trial Court while dealing with issue no. 1 has held that since the contract was only of a hire purchase, and the vehicle was owned by the respondent/defendant, therefore, an owner is always entitled to re?possess the vehicle in view of the entitlement in terms of the clauses of the Hire Purchase Agreement. Of course, the Trial Court has fallen into an error in referring to the judgment in suit No. 61/2001 titled as M/s. Shiv Financial Service vs. M/s. Muthoot Leasing & Finance Ltd. & Anr. dated 31.1.2002 to hold that the issue of title was res judicata against the appellant/plaintiff, however, this wrong finding cannot take

away the fact that the appellant/plaintiff had committed breach of Hire Purchase Agreement and over 5 installments were due when the respondent/defendant took possession of the vehicle after serving the notice dated 19.3.1996, Ex.DW1/4. Therefore there is no illegality committed by the respondent/defendant in taking possession of the vehicle under the agreement.

8. Learned counsel for the appellant placed reliance upon the Division Bench judgment of this Court in the case of Dr. Amitabh Varma Vs. Commissioner of Police and Others, . This judgment laid down the procedure for the Finance Companies to be complied with before taking physical possession of the financed/loaned/hire purchased vehicles. One of the requirements of the procedure was that a notice must be given to the borrower only whereafter the vehicle can be re-possessed, and which was alleged to be breached in the facts of this case making the action for re-possession illegal. Firstly, in my opinion, this judgment by its very nature is prospective in operation and thus cannot be applied retrospectively, and which becomes clear from para 28 thereof. The judgment is dated 23.10.2002 and therefore it cannot apply with respect to re-possession of the subject vehicle, which in this case was done much earlier on 13.5.1996. Secondly, the judgment does not apply because I have already referred to the fact that a notice dated 19.3.1996, Ex.DW1/4 was in fact given to the appellant/plaintiff that in case the dues are not cleared, necessary action will be taken in terms of the Hire Purchase Agreement. The necessary action under the Hire Purchase Agreement included taking of re-possession of the vehicle. Therefore, even on facts the judgment in the case of Dr. Amitabh Varma (supra) does not apply because the notice was in fact given.

9. Since the appellant/plaintiff had failed to comply with the terms of the Hire Purchase Agreement, therefore the vehicle was rightly seized, and thus there would not arise any issue of payment of damages, and which relief has also been dismissed by the Trial Court.

10. In view of the above, I do not find any merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs.