
(2012) 01 DEL CK 0353

In the Delhi High Court

Case No : Regular First Appeal No. 731 of 2003

Shri Hari Kishan Gupta

APPELLANT

Vs

The Motor and General Finance Ltd. and Others

RESPONDENT

Date of Decision : 20-01-2012

Acts Referred:

Citation : (2012) 01 DEL CK 0353

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : B.L. Wali, for the Appellant;

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular First Appeal (RFA) filed u/s 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 17.5.2003 dismissing the suit of the appellant/plaintiff who had claimed various reliefs of declaration, permanent injunction and recovery of moneys. Learned counsel for the appellant, at the outset itself, confines the relief claimed in the appeal to a decree for money against defendant No. 2/respondent No.2.

2. The brief facts of the case are that the appellant/plaintiff got financed a vehicle from respondent No.1 being Tata (D) 709 Model 1996 bearing registration No. DL-1LC-2329. The plaintiff had to pay a sum of Rs.4,22,000/- to the respondent No.1-financing company in 34 monthly installments of Rs.12,500/- each commencing from 22.8.1996. The appellant/plaintiff after receiving possession of the vehicle paid certain installments to respondent No.1. The plaintiff, thereafter, sold the vehicle to respondent No.2/defendant No.2 on 4.2.1998. The appellant/plaintiff claims to have sold the vehicle for Rs.3,25,000/- and is stated to have received only Rs.50,000/-. One of the reliefs in the subject suit was, therefore, for recovery of Rs.2,75,000/- along with interest from the buyer of the vehicle namely the defendant No.2/respondent

No.2 and the defendant Nos. 3-6 who are alleged to have stood as guarantors for payment of balance amount of Rs.2,75,000/-.

3. A joint written statement was filed by defendant Nos. 2-5. In the said written statement the defence which was taken up was that the total amount for sale of vehicle was paid to the appellant/defendant under sale receipt dated 4.2.1998.

4. The relevant issue with respect to claim for moneys by the appellant/plaintiff against the defendants, was issue No. 4 framed by the trial Court, and, which reads as under:-

4. To what amount if any the plaintiff is entitled against defendants No.2 to 6? OPP.

5. Learned counsel for the appellant has drawn my attention to the cross-examination of defendant No.2 to show that defendant No.2 admits that complete amount of the sale of vehicle was not paid to the appellant/plaintiff. I may note that in the receipt, Ex.PW1/1 dated 4.2.1998, no price is mentioned and it is only mentioned that the vehicle has been sold to defendant No.2/ respondent No.2. A reading of the cross-examination of defendant No.2 is very instructive and conclusive against the said defendant and which shows that the defendant No.2, admitted that he had not paid the complete price to the appellant/plaintiff. I am reproducing the relevant portion of the cross-examination of respondent No.2 below:-

The transaction regarding sale purchase of the truck in question took place in the first or second month, 1998. Only one document was prepared i.e. on the letter head of Dr. Umesh Gupta, which was in the name of Gupta Nursing Home, and the amount of Rs.50,000/- was paid, which was mentioned in that document. Only one document was executed at that time, which is Ex.PW1/1, which bears my signatures at point-A. At the time of execution of this document Dr. Umesh Gupta, Sh. Kailash Chand Gupta, Shri Narender Kr. Gupta and Sh. Lekh Raj Sharma and I were present. After execution of Ex.PW1/1, only power of attorney was executed after the accident has occurred. Vol. this power of attorney was executed on 11.3.98. The total sale consideration of the vehicle was agreed as Rs.3 lacs. It is wrong to suggest that the sale consideration agreed was Rs.3,25,000/-. It is correct that on 4.2.98 the possession of the vehicle was delivered to me. It is correct that it was agreed between Plaintiff and me that the responsibility of the vehicle upto 4.2.98 would be that of the Plaintiff and thereafter I will be responsible about this vehicle. It is wrong to suggest that I was to make balance payment of the remaining installment after 4.2.98 to the defendant No.1. Vol. infact I had given the balance payments to the Plaintiff Hari Kishan after one and a half month from 4.2.98 so I was not required to pay any installments to the defendant No.1. I had paid Rs.2,50,000/- after 11/2 month from 4.2.98 to the Plaintiff. This payment was made by me in cash. No writing was done regarding this payment.

(underlining added)

A reference to the aforesaid cross-examination shows that whereas certain amounts would have been paid to the appellant/plaintiff at the time when the receipt, Ex.PW1/1 dated 4.2.1998 was entered, the balance payment was to be made by defendant No.2/respondent No.2 to the finance company and which is the balance part of the consideration. Therefore, if this balance price is not paid by respondent No.2/defendant No.2 to the finance company-defendant No.1/respondent No.1 then the appellant/plaintiff will be entitled to the recovery of this balance amount inasmuch as there is an Award against the appellant/plaintiff which has achieved finality and which Award has been passed by the Arbitrator in favour of the respondent No.1-finance company.

A reading of the cross-examination shows that respondent No.2/defendant No.2 admitted to have paid Rs. 50,000/- to the plaintiff and later on states that he had paid Rs.2,50,000/- to the appellant/plaintiff after 11/2 months from 4.2.1998, however, that payment was made in cash and there is no written evidence of this payment.

6. Since the defendant No.2/respondent No.2 has no proof of making payment of Rs.2,50,000/-, therefore, the appellant/plaintiff has succeeded in proving that the amount of Rs.2,50,000/- was infact due to him. In fact, defendant No.2/respondent No.2 would be liable to pay the balance amount of Rs.2,75,000/-, inasmuch as in reply given in para 4 of the written statement to para 4 of the plaint (where the total price which is mentioned as Rs.3,25,000/-) it has not been specifically denied by respondent No.2/defendant No.2 that the price was not Rs. 3,25,000/-. I, therefore, hold that the appellant/plaintiff will be entitled to a sum of Rs.2,75,000/- from respondent No.2/defendant No.2, however, since there are no documents which are filed and exhibited showing that respondent Nos. 3-6/defendant Nos. 3-6 stood as guarantors, no decree can be passed against them.

7. In view of the above, the present appeal is accepted. Impugned judgment is set aside to the extent of granting a decree in favour of the appellant/plaintiff and against defendant No.2/respondent No.2 for a sum of Rs.2,75,000/- along with interest @ 12% per annum simple from 1.4.1998, till the filing of the suit and thereafter till payment i.e. pendente lite and future interest will also continue to remain at 12% per annum. The appellant is also entitled to costs of the appeal being the Court fees paid by the appellant. Decree sheet be prepared. Trial Court record be sent back.