
(2010) 11 KAR CK 0124

In the Karnataka High Court

Case No : Regular First Appeal No. 472 of 2005

Sri Narasingh and Smt. Sharada Bai

APPELLANT

Vs

Apple Credit Corporation Ltd.

RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Citation : (2010) 11 KAR CK 0124

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : B.V. Rama Moorthy and K.V. Venkatesh, for the Appellant; Srivatsa Associates, for the Respondent

Final Decision : Allowed

Judgement

Subhash B. Adi, J.—Though this matter was treated as part heard, none appears for the Respondent. Therefore, the matter is taken up for final disposal.

2. This is a Defendant's appeal against the judgment and decree in OS 15667/99 dated 5.1.2005 on the file of the XXVI Addl. City Civil Judge, Bangalore.

3. Parties will be referred to as per their ranking in the trial Court.

4. The suit is one for recovery of a sum of Rs. 77,344/- together with interest @ 36% P.A. The case of the Plaintiff is that 1st Defendant entered into an hire purchase agreement on 3.7.1997 to purchase a Maruti 800 car bearing Registration No. KA-18-M-2972 corrected as No. KA-04-N-6820 and same was delivered to the Defendant. Defendant was required to pay monthly installments OH hire purchase @ Rs. 7239/- for a period of 36 months. He had also executed a demand promissory note in favour of the Plaintiff interalia agreeing to pay Rs. 2,60,604/-, Since the Defendant committed default, Plaintiff issued a notice dated 11.7.1998. As the amount was not paid in terms of the hire purchase agreement, Plaintiff took possession of the vehicle and sold the same to third party on 3.6.1999 for a sum of Rs. 1,40,000/- and the sale amount was adjusted to the amount due from the Defendant. Calculating the amount, Plaintiff alleges

that Defendant is still due in a sum of Rs. 73,344/- and prays for decree for recover of money with interest @ 36%.

5. On issue of summons 1st Defendant appeared and filed written statement admitting that he had entered into hire purchase agreement on 3.7.1997 to purchase Maruti-800 car. He admitted that he was to pay Rs. 7239/- each month for 36 months between 3.8.1997 to 3.5.2000. However, it is the case of the Defendant that he had paid installments on 11.7.1998 for Rs. 14,500/- and 24.7.1998 another Rs. 14,478/-. He also alleged that he had paid Rs. 1,33,248/- as per Ex.D.1. According to the Defendant, that he had paid amount in excess to the amount due and alleged that he is not liable to pay the said amount.

6. On the basis of the pleadings, the trial Court framed the following three issues:

(1) Whether Plaintiff proves that the Defendants 1 and 2 owe to it a sum of Rs. 77,344/- in respect of Maruti 800 bearing No. KA-18/M-2972?

(2) Whether rate of interest claimed by the Plaintiff is excessive?

(3) What Decree or Order?

7. On behalf of the Plaintiff, Sri S M Manjunath, was examined as PW1 and Exs.P. 1 to P. 6 were marked in his evidence. 1st Defendant got examined himself as Dw1 and produced Ex.D.1 to D.17. The trial Court relying on Ex.P.2 - hire purchase agreement, resolution of the board of directors - Ex.P. 1 and Ex.P.3 on demand promissory note for Rs. 2,60,604/- and notice Ex.P.4 - the quotation, Exs.P.5 and 6, decreed the suit for Rs. 49,911/- with 18% interest. The trial Court disallowed the claim of the Plaintiff insofar as Rs. 27,433/- as regards to the delayed payment. It is against said judgment and decree, Defendant is in appeal.

8. Learned Counsel for the 1st Defendant submits that Ex.D.1 is the evidence for having paid Rs. 1,33,248/- and Exs.D.2 and 5 evidences payment of Rs. 14,500/- each and at the time of hire purchase agreement Defendant had deposited Rs. 65,000/-. He has relied on the cross examination PW.1 where in a specific suggestion was made to pay interalia stating that, in view of the payment as per Exs.D.1, 2 and 5, there is no amount due and the vehicle is sold without notice to him for Rs. 1,40,000/-. If these amounts are adjusted to the amount due, 1st Defendant is not in due to the Plaintiff.

9. In the light of the submissions made above, the following points arise for consideration before this Court:

(1) Whether the Plaintiff had made out a case for recovery of Rs. 77,344/-?

(2) Whether the judgment and decree of the trial Court warrants for interference?

10. Plaintiff in support of his case has produced Ex. P. 1 - the board resolution which may not be very relevant. Ex.P.2 is a hire purchase agreement is also not in dispute. Ex. P.3 - the on demand promissory note is also not in dispute.

However, the Defendant has specifically alleged that when he had made payment of Rs. 1,33,248/- and Rs. 14,500/- as per Ex.D.2 and Rs. 14,500/- as per Ex.D.5. It is also his case that he had made payment of Rs. 65,000/- at the time of entering into hire purchase agreement. In his evidence he has produced these documents. However, the Plaintiff has not produced accounts extract or any document to show as to how the amount is paid instead has produced the hire purchase agreement and the on demand promissory note. When the Defendant has produced the document to evidence that he had made certain payment and it is not also in dispute that in addition to this the vehicle was sold Rs. 1,40,000/-, the trial Court only on the ground that Defendant had made 2 or 3 defaults in making the payment of installment, has decreed the suit. There is no reason as to why Exs.D.1, 2 and 5 are not considered and there is also no document to evidence what was the amount due to the Plaintiff. To prove the claim Plaintiff ought to have produced the statement of accounts. However, no statement of account is produced and the evidence produced by the Plaintiff by themselves do not prove as to the exact amount due by the Defendant. Considering the same, I find the trial Court has omitted to consider the relevant document on record and that the matter required to be remanded for reconsideration.

11. In the circumstances, the following order is passed:

Appeal is allowed. The judgment and decree of the trial Court is hereby set-aside. The trial Court is directed to reconsider the entire evidence and give proper finding and dispose of the suit within three months from the date of receipt of a copy of this order.