

RCS No.31/16.

Bajrang Vs. Javedkha

ORDER BELOW EXH.5.

1. In short the plaintiff's case is as under:-

The plaintiff purchased vehicle No.MH-30-AB-2841 Tata Ace loading auto and he is a owner of the said vehicle. The plaintiff had taken loan from Chola Mandalam Finance Company in the year 2013. The plaintiff had to repay Rs.10,000/- per month to the said company. Chola Mandalam Finance Company, Akola is having loan over the said vehicle. The plaintiff was unable to drive the said vehicle, and therefore, he was intended to sell said vehicle to the defendant. The defendant agreed to repay Rs.10,000/- per month to the said finance company. The plaintiff believed on the defendant and agreed to sell said vehicle for consideration of Rs.3,76,000/- on 27-05-2015 in presence of Dhananjay Nare, Prashant Korde and Gajanan Siraskar. The defendant only paid Rs.26,000/- cash to the plaintiff and agreed to refund Rs.10,000/- per month in 35 installments to Chola Mandalam Finance Company. On 27-05-2015 the plaintiff executed agreement of sale. The plaintiff believed that the defendant will repay amount of Chola Mandalam Finance Company and thereby the vehicle was given into the possession of the defendant. The defendant did not pay any installment from 27-05-2015. On 13-09-2015 the plaintiff asked the defendant about the installments but the defendant stated that the plaintiff sold auto to him and therefore, he will not

pay the installments. Therefore, the plaintiff lodged the report at police station and also sent notice on 01-10-2015 to the defendant. The plaintiff had issued notice on 27-01-2016 by R.P.AD. and asked the defendant to refund amount of Rs.3,50,000/- with interest to Chola Mandalam Finance Company or to give said amount to the plaintiff. He also informed to the defendant that, if he is unable to pay the said amount, he shall pay Rs.10,000/- per month from 27-05-2015 as a rent of Auto till giving actual possession of the said Auto. But the defendant did nothing.

2. The defendant has not filed say on the application.

3. Heard learned counsel for the plaintiff. Following points arise for my determination and my findings against each of them are recorded as under.

Sr.No.	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the plaintiff has made out prima-facie case?	No
2.	Whether balance of convenience lies in favour of the plaintiff?	No
3.	Whether irreparable loss and injury would be caused to the plaintiff if temporary injunction is refused?	No
4.	What order?	As per final order.

REASONSAs to Point Nos. 1 to 3 :-

4. Heard learned counsel for the plaintiff. He has vehemently argued that, the plaintiff is a owner of the vehicle which is a subject matter of this suit. He further argued that the plaintiff had taken loan from Chola Mandalam Finance Company and purchased the Auto. Said company is having charges over the Auto. It appears from the pleading of the plaintiff that during the continuation of the loan transaction, he executed agreement of sale with defendant to sell said property to the defendant for consideration of Rs.3,76,000/-. The plaintiff also submitted that the defendant has paid Rs.26,000/- cash to him and also agreed to pay remaining amount (installments) to Chola Mandalam Finance Company. Thus, it indicates that during the existence of loan transaction, the plaintiff had entered into an agreement of sale with defendant to sell the Auto. Record also discloses that the plaintiff accepted an amount of Rs.26,000/- from the defendant and thereby handed over possession to the defendant. It means that the plaintiff on the basis of some documents handed over the possession of the vehicle to the defendant. What would be the effect of said transaction is a matter of merit. But, at this stage it appears that, the possession of the vehicle is transferred by the plaintiff to the defendant.

5. Now at this stage the plaintiff submitted that the defendant has not paid the installments to Chola Mandalam Finance Company and thereby it caused injury to his interest and thus, he is claiming the possession of the

said vehicle. Once it appears that the vehicle is handed over to the defendant, it means that the defendant possesses the said vehicle on the basis of certain documents. So also record discloses that the plaintiff received Rs.26,000/- from the defendant. Merely on the ground that the defendant had not paid installments to Chola Mandalam Finance Company, it does not mean that the plaintiff is having prima-facie case for seeking back the possession of the vehicle. Thus, the plaintiff has not made out prima-facie case.

6. The plaintiff himself submitted that it was not possible for him to drive the vehicle and thereby he entered into agreement of sale to sell suit property to the defendant during the existence of loan transaction. This shows that the plaintiff was not interested since beginning in the vehicle and therefore, he transferred said vehicle by entering into agreement of sale in favour of the defendant. This act of the plaintiff shows that no such balance of convenience lies in his favour.

7. The plaintiff further submitted that he will suffer irreparable loss and injury if injunction refused. Record discloses that when the defendant refused to pay installments to Chola Mandalam Finance Company, thereafter the plaintiff filed this suit against the defendant. It is submitted that the plaintiff had taken loan from Chola Mandalam Finance Company. During existence of the loan transaction he agreed to sell said property. The defendant only entered into an agreement of sale with the plaintiff. This cannot mean that if the defendant failed to repay installments, the plaintiff will suffer irreparable loss and injury to his interest. Thus, there is no satisfactory

ground on record to disclose that the irreparable loss and injury will be caused to the plaintiff if temporary mandatory injunction refused. Thus, my findings to point Nos.1 to 3 is in the negative. Hence, I pass following order.

ORDER

1. Application is rejected.
2. No order as to costs.

Dt/-10-08-2016.

(N.R.Wankhade)
Civil Judge (J.D.)Akot.

Certificate

I affirm that the contents of this PDF file are same word for word as per original order.

Name of Steno : G.S.Bobade

Court Name : Civil Judge(J.D) & J.M.F.C Akot.

Date : 10-08-2016

Signed by Presiding

Officer on : 10-08-2016

Uploaded on : 16-08-2016

