Shri S.N. Gupta Vs Shri Mohd. Shakil and Others

Court: Delhi High Court

Date of Decision: Feb. 8, 2002

Hon'ble Judges: S.N. Kapoor, J

Bench: Single Bench

Advocate: Sanjay Gupta and Rajnish Gaur, for the Appellant;

Final Decision: Allowed

Judgement

S.N. Kapoor, J.
Heard.

2. Learned Counsel for the petitioner pointed out the admissions made in response to para 3 & 4 of the plaint by the respondent/defendant for

want of specific denial. The averments made in para 3 & 4, of the plaint read as follows:-

3. That defendant No. 1 has taken a loan of Rs. 75,000/- form defendant No. 2 for the purchase of the above car and which amount inclusive of

interest, was to be paid by defendant No. 1 18 monthly Installments of Rs. 5,670/- each to the said defendant. At the time when the above

agreement was entered into between the plaintiff and defendant No. 1, the defendant No. 1 had already paid 5 Installments.

4. That as per the above agreement, it was agreed between parties that the remaining Installments which were 13 in number for Rs. 5,670/- will be

paid directly by the plaintiff to defendant No. 2. In terms of the agreement, the plaintiff gave a sum of Rs. 50,000/- to defendant No. 1 in cash on

14th October, 1992 and addition to it also gave his cheque No. 205543 dated 14th October, 1992 drawn on ANZ Grindlays Bank, Kamla

Nagar for Rs. 40,000/- to the defendant No. 1. The remaining amount of Rs. 25,290/- payable to defendant No. 1 was also paid by the plaintiff

vide his another Cheque No. 220559 dated 16th October, 1992 drawn on ANZ Grindlays Bank, Kamla Nagar, Delhi and thus the entire sale

consideration amount payable to defendant No. 1 was paid by the plaintiff.

3. Para 3 & 4 have been replied to as mentioned below:-

3. That the contents of para No. 3 of the plaint are admitted to the extent that the defendant No. 1 took a loan from the defendant No. 2 which

was payable of Rs. 5,670/- each. The contents of the rest of the para are denied and it is further submitted that the defendant No. 2 had no

knowledge of any contract between had no knowledge of any contract between the plaintiff and the defendant No. 1.

4. That the contents of the para No. 4 of the plaint are wrong and vehemently denied.

4. It is submitted by learned Counsel that in absence of any specific denial of para 4 relating to payment of Rs. 50,000/- to defendant No. 1 and

cheques to defendant/respondent No. 2. It is submitted that the receipt of the payment through account payee cheques has not been denied by

respondent No. 2. It is further submitted that defendant No. 2 has also filed another suit again principal to disclose anything which is due from

defendant No. 2. The negotiate the liability of defendant No. 1 in relation to the vehicle in question, it is submitted on this basis that once defendant

No. 2 has accepted the amount though account payee cheques and does not claim any amount further from respondent No.1, Mr. Abdul

Rasheed, who entered into an agreement with respondent NO. 2 to take the vehicle under the higher purchase agreement.

5. It is further submitted that for the sake of argument, if it is accepted that Mr. Mohd. Shakil could not transfer the vehicle on the date when he did

transfer. Now, after entire payment, the vehicle would belong to Mr. Mohd. Shakil and consequently the respondent has no right to interfere with

the possession of the vehicle. Though whatever right the respondent had as owner of the vehicle might have been extinguished after full payment.

Learned Trial Court has failed to consider right of Mohd. Shakil and of the petitioner after payments in equity to retain possession of the vehicle,

while refusing to grant injunction.

6. Having heard the learned Counsel and having gone through the record, it appears the learned Trial Court was justified to a certain extent that

respondent No. 1. Mr. Mohd. Shakil, could not transfer the vehicle without there being any consent and permission of the respondent No. , being

the owner, for there was no privity of contract to be considered. But when specific averment about the payments made through crossed-cheques

were not denied, then position became different. The petitioner contacted the respondent for no-objection certificate, the respondent failed to give

in writing. But it is submitted they agreed to do so earlier while receiving the payment. It appears that the respondent by their conduct have put the

petitioner in a circumstance adverse to his interest. Section 115 of the Evidence Act would be applicable if these facts are ultimately proved. The

respondent did not interfere with the possession despite the delivery of the possession by respondent No. 1 on 14th October, 1992. The petitioner

filed the suit only on 31st August, 1994 when the entire payment was made. No objection was given by respondent No. 1 for transfer of the

vehicle on 31st August, 1994. Apprehending that the defendant may interfere with petitioner''s possession over the vehicle the present suit was

filed. It may be mentioned that in response to para 6 the respondent No. 2 did not specifically deny that the last Installment was paid by the

appellant to respondent No. 2 on 16th August, 1993. This para also does not indicate that any amount still remains payable and due against

respondent No. 1 Mohd. Shakil. Supposing for the sake of arguments, it is accepted that the possession was handed-over against the terms of the

contract between Mohd. Shakil and respondent No. 2, after the payment has been made to Mohd. Shakil as well as to respondent No. 2 by

cheques or otherwise, then at least the appellant is entitled to right in equity to retain the possession so long the amount of Installment paid by them

is not paid back by respondent No. 2. In any case, it is a triable issue to be decided after recording evidence. The petitioner has thus prima facie

equitable right to retain the possession of the vehicle. Thus, it appears that there is a prima facie case in favor of the appellant. As regards balance

of convenience, Mr. Shakil has apparently transferred his right title and interest in the vehicle to the petitioner. Entire payment of all the Installments

has been made to the respondent. The respondent would have at the most a technical right as against substantial right in equity to retain possession

of the vehicle, even if one ignores the principle of estoppel. Consequently, balance of convenience lies in his favor. Since now the appellant has

prima facie acquired an equitable right to retain possession, the respondent can not claim to have any right to take possession of the vehicle without

compensating the appellant in respect of the amount of Installment received by No. 2 from the appellant through crossed-cheques, he is likely to

suffer irreparable loss in absence of temporary injunction prayed for.

7. Consequently, the appeal is allowed and the respondent No. 2 is restrained from interfering with the possession of the vehicle in question

without paying back the amount received from the appellant through crossed-cheques till final disposal of the matter by the learned Trial Court.

None of these prima facie observations made hereinabove shall come in the way of submissions of either of the parties during trial and the view

which might be taken by the learned Trial Court ultimately.

8. The appeal is disposed of accordingly.