

## Vijay Sareen Vs Daewoo Motors India Ltd.

**Court:** Delhi High Court

**Date of Decision:** Feb. 22, 2011

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Section 96

**Hon'ble Judges:** Valmiki J Mehta, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

Valmiki J Mehta, J.

This matter is on the Regular Board of this Court since 3.1.2011. Today, this matter is effective item No. 6 on Regular Board. None appears for the Appellant and it is 12:30 pm. I have therefore perused the record and am proceeding to dispose of the matter.

2. The challenge by means of this Regular First Appeal u/s 96 of the Code of Civil Procedure, 1908 is to the impugned judgment and decree dated

2.5.2001 whereby the suit of the Appellant/Plaintiff for recovery of damages of Rs. 2,26,400/- was dismissed by the Trial Court, and which

damages were claimed by the Appellant/Plaintiff for alleged illegal detention of a petroleum tanker of the Appellant/Plaintiff by the

Respondent/Defendant.

3. The defence of the Respondent/Defendant in the Trial Court was that the Appellant/Plaintiff was guilty of theft of petroleum products because in

the tanker, another chamber had been made whereby, the entire contents of the tanker were not being off-loaded at the premises of the

Respondent, and which would not have come to light, except by sheer chance of the security staff of the Respondent/Defendant noticing that the

diesel was leaking from the outlet pipe of the tanker and which doubt resulted in an inspection and it was found that one chamber of the tanker was

full of diesel.

4. The impugned judgment and decree has been passed because the Plaintiff did not turn up for cross-examination in spite of various opportunities,

and therefore, there being no evidence on behalf of the Appellant/Plaintiff, the suit was dismissed.

5. It has been contended in memo of appeal that the adjournments were earlier taken for compromise and otherwise on genuine grounds and

therefore the Trial Court was not justified in closing the evidence vide order dated 2.5.2001. In order to appreciate this argument, it is necessary to

reproduce the order sheets from 29.8.2000 to 2.5.2001 and which read as under:

29.8.2000: Present: Proxy counsels for the parties.

No P.E. present. Date requested.

In the interest of justice last opportunity for P.E. on

11.10.2000.

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17.11.2000: Present: Counsels for the parties.

No P.E. present. Date requested. Not opposed.

In the interest of justice last opportunity for P.E. on

2.1.2001.

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3.1.2001: Present: As before.

File taken up today as 2.1.2001 was declared a holiday.

No P.E. present. Another date requested. Not opposed.

In the interest of justice last opportunity for P.E. on

12.2.2001.

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21.3.2001: Present: Counsels for the parties.

No P.E. present. An application for adjournment filed, on the ground that PW-1

(pltf's mother) is to be operated for Cataract today. On this ground adjournment

not opposed. In the interest of justice last opportunity for P.E. on

2.5.2001.

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2.5.2001: Present: Counsels for the parties.

No P.E. present. Even PW.1 is not present for his cross-examination and date requested for P.E. Adjournment strongly opposed. Today it is last

opportunity for P.E. No steps taken. It was last opportunity even for 12.11.2000. As such there is no justification for adjournment of the matter

for P.E. Hence, P.E. close. Ld. counsel for Defendant Sh. S.K. Choudhary Adv. made a statement recorded separately. In view of the closure of

the evidence of the Plaintiff he does not want to lead evidence on behalf of the Defendant. Arguments heard. Vide my separate judgment of even

date, the suit of the Plaintiff is dismissed with no order as to cost. Decree sheet be prepared accordingly and file be consigned to the R.R.

6. The aforesaid order sheets reproduced show that no evidence was led on 29.8.2000, 17.11.2000, 3.1.2001, 21.3.2001 and finally on

2.5.2001. In the facts of the present case, therefore, I do not find any illegality or perversity of the Trial Court in closing the evidence of the Plaintiff

as per its order dated 2.5.2001.

7. Since there was no evidence on behalf of the Appellant/Plaintiff before the Trial Court, the suit has been rightly dismissed. I do not find any

illegality or perversity in the impugned judgment and decree which calls for interference by this Court in appeal. The appeal, being misconceived, is

therefore dismissed, leaving the parties to bear their own costs.