(1998) 03 BOM CK 0051

Bombay High Court (Goa Bench)

Case No: First Appeal No. 91 of 1989

Bhagwant Narayan Tendulkar and others		APPELLANT
	Vs	
Goa Co-operative Marketing and Supply Federation Ltd.		RESPONDENT

Date of Decision: March 4, 1998

Acts Referred:

- Contract Act, 1872 - Section 73
- Sales of Goods Act, 1930 - Section 19, 20, 25

Citation: (1998) 4 ALLMR 671 : (1998) 3 BomCR 735 : (1998) 2 MhLj 703

Hon'ble Judges: R.M.S. Khandeparkar, J; R.K. Batta, J

Bench: Division Bench

Advocate: A.S. Salkar, for the Appellant; Nitin Sardessai, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R.K. Batta, J.
The appellant had filed a suit for declaration and compensation. Brief facts leading to the filing of the suit are:-

The appellant had entered into an agreement dated 28-2-69 for purchase of three second-hand trucks bearing registration Nos. GDT-6229, GDT-6230 and GDT-6233 belonging to the respondent for a total consideration of Rs. 1,32,000/- which was to be paid in monthly installments of Rs. 4,500/- each. In pursuance of the said Agreement, the appellant paid two advance installments and took possession of the said trucks. On 1-3.73 one of the said trucks namely truck No. GDT-6229 met with an accident. All the three trucks were comprehensively insured for Rs. 40,0007- and the insurance continued in the name of the respondent. Accordingly, the Insurance Company settled the insurance

claim in respect of the said truck No. GDT-6229 at Rs. 32,000/- on total loss basis and the said amount was paid to the respondent somewhere in the month of May, 1970. The appellant laid claim to this amount of Rs. 32,000/- but the respondent adjusted the said amount against the installments which were due as on that date. Since the appellant did not pay the balance installments, the respondent initiated proceedings u/s 91 of the Co-operative Societies Act for recovery of the balance due under the said Agreement. It appears that during the pendency of this litigation, the appellant paid a sum of Rs. 65,000/-. However, still balance was due from the appellant and he stopped making any payment of installments after April, 1973. The Registrar''s nominee passed an Award for Rs. 51,712.64 in favour of the respondent which was challenged by the appellant before the erstwhile Judicial Commissioner''s Court which set aside the said Award on the ground that the Award was passed without jurisdiction. The appellant''s case further is that from 11th November, 1974 till the filing of the suit he could not obtain inter State permits and, as such, he plied the two trucks locally. However, the respondent informed the Transport authorities vide letter dated 9-3-76 not to issue any permit in favour of the appellant. According to the appellant himself an amount of Rs. 66,500/- was balance amount due out of the total consideration which was to be paid and after deducting this amount he sought compensation from the respondent on the ground that on account of refusal of the respondent from signing the application for permits, he suffered monthly loss of Rs. 1,500/- and this is a recurring toss. He therefore claimed total compensation of Rs. 1,62,500/- after deducting the amount of Rs. 66,500/- which was due and payable to the respondent. The appellant also claimed further compensation at the rate of Rs. 2,000/- per month from 14-8-77 till the disposal of the suit. In addition, the appellant also sought declaration that he be declared absolute owner of trucks bearing Nos. GDT-6230 and GDT-6233 from the date of execution of Agreement dated 28-2-69.

2. The respondent resisted the suit on the ground that the ownership of the said trucks remained with them and it had been agreed in the said Agreement that permits in respect of the said trucks would remain in the name of the respondent and it is only after full payment of Rs. 1,32,000/- that the ownership of these trucks will be transferred to the appellant in terms of Clause (6) of the Agreement. The respondent further claimed that since the appellant had failed to pay the installments with effect from December, 1969 and had fallen in arrears, the insurance amount of Rs. 32,000/- was adjusted against the installments payable as well as against the insurance premium. Their case further is that as on May, 1970, even after adjustment of the said amount of Rs. 32,000/- a sum of Rs. 18,000/- was payable as installments in respects of the two trucks besides insurance amount of Rs. 2,264/-. Their case further is that since the appellant was in arrears, they were justified in not signing the application for permits in respect of the said trucks and that it is the appellant who has himself to be blamed to the situation in which he has landed.

3. The trial Court after recording evidence of either side, dismissed the suit which is subject matter of challenge in this appeal.

4. Learned Advocate Shri A.S. Salkar, appearing on behalf of the appellants, has submitted that the Agreement in question is not hire purchase agreement, but it is Agreement to sell; that in terms of section 20 of the Sale of Goods Act the property in the goods namely trucks had passed to the appellant when the possession was delivered to him on the date of the Agreement and irrespective of whether the installments were paid by the appellant or not the appellant had become absolute owner of the trucks as on 18-2-69 itself. It was also urged by him that on account of refusal of the respondent in signing the application for permits, the business of the appellant was affected, as a result of which the appellant suffered heavy loss for which he must be compensated. In support of his argument regarding passing of property, reliance has been placed by learned Advocate for the appellants on two judgments of the Apex Court in Damodar Valley Corporation Vs. State of Bihar and Others, and K.L. Johar and Co. Vs. The Deputy Commercial Tax Officer, Coimbatore III, . There cannot be any dispute in respect of the propositions laid down by the Apex Court in the said judgements.

5. On the other hand, learned Advocate Shri N. Sardessai, appearing on behalf of the respondent, has submitted that the Agreement of sale in question was conditional and in case of failure of compliance of conditions prescribed, in the Agreement, the trucks in question were to revert back to the respondent for the purpose of auction for realisation of the amount in default. It was also submitted by him that the arrangement under the said Agreement was that the possession of the trucks would be handed over to the appellant, but the ownership as well as insurance in respect of the said trucks was to continue with the respondent and the ownership was liable to be transferred only upon payment of the amount due under the said Agreement. Relying upon section 25 of the Sale of Goods Act, it has been urged that taking into consideration the intention of the parties, as reflected in the Agreement, the property in the goods had not passed to the appellant and had remained with the respondent, but only by way of working arrangement the possession of the trucks was handed over to the appellant. He, therefore, contends that the order of the trial Court does not suffer from any infirmity on facts or in law and, as such, the appeal is liable to be dismissed with costs.

6. We have examined the record with reference to the contentions advanced by the rival parties. It is no doubt true that the Agreement in question though styled as hire purchase agreement, cannot be strictly treated as hire purchase agreement as such and this proposition has not been challenged by the learned Advocate for the respondent. However, what has to be ascertained from the transaction between the parties is the intention of the parties as to when the property in the goods namely the trucks would pass to the appellants. Section 19 of the Sale of Goods Act provides that where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. It further provides that for the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. It further provides that unless a different intention appears, the rule contained in

sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. It has been pointed out by the Apex Court in M/s, Damodar Valley Corporation v. The State of Bihar (supra) that for the purpose of determining as to in which category a particular contract comes under, the Court will look at the substance of the agreement and not at the mere words describing the category. Therefore, the intention of the parties has to be ascertained from the agreement in question. The agreement was to the effect that the appellant had agreed to purchase the said three trucks for a total amount of Rs. 1,32,000/- which was to be paid in 30 installments of Rs. 4,500/- each. Two advance installments were paid at the time of the execution of the agreement and the third installment was due and payable on 5th June, 1969 and thereafter the installments were payable by 5th of every month. For non-payment of installments, penal interest was also contemplated as well as interest on unpaid balance. The appellant was entitled for remission of total interest if the entire amount of Rs. 1,32,000/- was paid within a period of one year from the date of Agreement. Clause (6) of the Agreement is an important condition of the Agreement which provides that only after the completion of payment of all installments and interest the appellant shall apply to the proper authority to transfer the ownership of the said trucks. This means that the ownership of the trucks under the said Agreement remained with the respondent, and the same was to be transferred only on payment of the entire amount. Clause (7) provided that on payment of Rs. 66,000/- one of the trucks could be transferred in favour of the appellants. The Agreement also provided that in case of failure of two consecutive installments the respondent had right to take possession and to sell it by auction. Second part of Clause (14) provides that any damage, accident, confiscation of the said trucks will be the sole responsibility of the appellant. Clause (19) provides that the appellant shall keep the trucks always in good condition and Clause (20) enjoins that the respondent shall sign necessary papers for the purpose of transfer of the said trucks.

7. A reading of the above conditions clearly points out that as a workable arrangement under the said Agreement, the possession of the trucks was handed over to the appellant and, in fact, the property in the trucks had not passed on to the appellant. The Agreement in question is a conditional contract wherein right to dispose of the trucks was reserved by the respondent and the ownership of the said trucks was to pass to the appellant only on payment of the entire amount due. Section 20 of the Sale of Goods Act, upon which heavy reliance has been placed by the learned Advocate for the appellants would, therefore, not be attracted in the facts and circumstances of the case and it is section 25 of the said Act which would come into operation which provides that where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such a case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission, to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled. Therefore, in the light of the

Agreement between the parties, we do not find any merit in the submission of the learned advocate for the appellants that the property in the trucks had passed to the appellant on the date of execution of the said Agreement.

8. Section 26 of the Sale of Goods Act deals with risk which prima facie passes with the property which lays down that unless otherwise agreed, the goods remain at the seller''s risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer''s risk whether delivery has been made or not. Therefore, if the intention of the parties to the agreement was that the property in the trucks was to pass in favour of the appellant on the date of Agreement itself, then according to section 26 the risk in the property would also pass to the appellant and if it were so, there was no need or necessity to incorporate second part of Clause (14) whereby damage, accident, confiscation to the trucks was to be the sole responsibility of the appellant.

9. Admittedly, the appellant had not paid the installments due with effect from December, 1969 and one of the trucks had met with an accident on 1st March, 1970. The insurance of the trucks was continued in favour of the respondent and naturally the Insurance Company offered the insurance claim in respect of the said truck which was Rs. 32,000/- to the respondent on total loss basis. Since the appellant had not paid the installments due, the respondent was very well justified in adjusting the said amount of Rs. 32,000/- as against the installments due by the appellant. It is also an admitted position that the appellant had stopped paying installments from April, 1973 and prior to that some payments were made by the appellant. The appellant himself admits in the suit that an amount of Rs. 66,500/- was due to be paid to the respondent. During the pendency of this suit the appellant had sought permission to run the vehicle by filling an application in the trial Court. This permission was duly granted on the condition that the appellant deposited a sum of Rs. 75,000/- which was never deposited by the appellant. Since admittedly the appellant had stopped making payments from April, 1973 and he was in arrears of payment amounting to Rs. 66,500/-, the respondent was justified in not signing the application for transfer of permit in favour of the appellant. The record shows that it was on account of the conduct and attitude of the appellant that he is himself to be blamed for the state of affairs in which he had landed himself. The appellant certainly could not be declared to be owner of the trucks in these circumstances and the respondent cannot be held in any way liable or responsible for any loss of business, if any, suffered by the appellant for which he has to be solely blamed. The trial Court on proper appreciation of evidence in correct perspective had rendered findings against the appellant and we do not find any reason or justification to interfere with the said findings.

10. For the aforesaid reasons, we do not find any merit in this appeal and the appeal is hereby dismissed with costs.

11. Appeal dismissed.