The Central Finance And Housing Co. Ltd. vs British Transport Co. And Ors. on 15 July, 1953

Equivalent citations: AIR1954ALL195, AIR 1954 ALLAHABAD 195

JUDGMENT

Beg, J.

1. This judgment disposes of two second appeals, namely, second appeal No. 774 of 1948, & second appeal No. 584 of 1948. Both the second appeals arise out of a common judgment. The circumstances in which these second appeals arise are briefly given below;

2. It would appear that on 2-6-1941, the plaintiff in this case viz. the Central Finance and Housing Company Limited entered into an agreement with defendants 1 and 2 regarding a bus. Defendant 1 is Babu Singh and defendant 2 is Sardar Singh. Babu Singh and Sardar Singh are styled as 'hirers' in this agreement. Defendant 3 is Bhupal Singh and he signed the agreement as a guarantor. Babu Singh and Sardar Singh are the persons to whom the bus is stated to have been hired under the said agreement and the agreement itself js described as a hire purchase agreement. Under the said agreement Babu Singh and Sardar Singly the alleged hirers of the bus, were liable to pay the hire of the bus by twelve instalments starting on. 1-7-1941 and ending on 1-6-1942. The total amount of the instalments to be paid by the hirers was Rs. 1320/-. One of the conditions of the said agreement was that if the hirers made any default in the payment of any of the instalments, it would be open to the Central Finance and Housing Company Limited to terminate the agreement and to take possession of the bus.

3. The present suit was brought by the Central Finance and Housing Company Limited as plaintiff on the allegation that there was a default on the part of the hirers in the payment of instalments and, accordingly, the plaintiff terminated the said agreement by means of a letter dated 18-3-1942. The plaintiff, therefore, filed the suit out of which this second appeal arises praying for a decree of Rs. 560/- with 'pendente lite' and future interest against defendants 1 to 3. This amount represented the amount of unpaid instalments which had already fallen due, the interest on the said instalments and some other expenses which the plaintiff had incurred in this connection upto 18-3-1942, the date of the termination of the agreement. It was further alleged by the plaintiff that defendant 1 parted with the bus in favour of defendant 4 viz. the British Transport Company Limited, which was running the bus on hire and was liable along with other defendants for damages for withholding the said bus upto the date of the suit. These damages were assessed by the plaintiff at Rs. 740/- and he claimed a decree against all the four defendants in respect of this amount. Further the plaintiff claimed a decree for possession of the bus valued at Rs. 1000/- against all the defendants in his favour. The

plaintiff also claimed future profits at the rate of Rs. 100/- per month against the aforesaid defendants and stated that the Court-fee on the same shall be paid in the execution department.

4. Defendant 1 pleaded in defence that he had given the bus to defendant 4 at the instance of the plaintiff, and the plaintiff was, therefore, not entitled to any relief against him.

5. The real contest in the case was, however, raised by defendant 4. The main plea taken by him was that the agreement in question was in fact a sale in favour of defendants 1 and 2 and was not a hire purchase agreement at all.

6. The trial Court decreed the plaintiff's suit in toto except that the sum of Rs. 5607-was reduced to Rs. 450/-. Defendant 4 filed an appeal against the said judgment and decree of the trial Court. The plaintiff also filed a cross-objection on the ground that the trial Court should not have fixed the price of the bus and that it should have been done in the execution proceedings. The lower appellate Court dismissed the cross-objection of the plaintiff and allowed the appeal of defendant 4 holding that the agreement in question was a sale and not a hire purchase agreement. The appellate Court, accordingly, set aside the decree of the Munsif and ordered that the plaintiff's suit should be decreed for an amount of Rs. 1268/6/- due upto 1-12-1947, and for proportionate costs on Rs. 985/-, and the amount due upto the date of the suit. The above amount was decreed against all the four defendants mentioned above.

7. Dissatisfied with the said judgment, the plaintiff has filed an appeal in this Court. This appeal is second appeal No. 774 of 1948. Defendant 4 has also filed an appeal against the said judgment and this appeal is second appeal No. 584 of 1948.

8. I shall first take up second appeal No. 774 of 1948 which has been filed on behalf of the plaintiff. The sole question that has been argued before me by the learned counsel for the appellant in this appeal relates to the interpretation of the agreement of 2-6-1941. The learned counsel has argued that the conclusion of the trial Court that the agreement in question operates and as a sale is erroneous. He has strenuously contended that on a proper interpretation of the said deed, it is a hire purchase agreement. On the other hand, the learned counsel for the respondents has argued that the finding of the trial Court on this point is correct; and, in spite of all the appearance of a hire purchase agreement, the agreement in question is really a sale deed.

9. The principles governing the interpretation of such deeds are well-known and have been enunciated in a number of cases vide --'Bhimji N. Dalai v. Bombay Trust Corporation', AIR 1930 Born 306 (A); -- 'Manikchand Pranjiwan v. Berar Motor Supply Co.', AIR 1938 Nag 18 (B) and -- 'Mahabali Prasad v. H. N. Palmer', AIR 1932 All 607 (C).

10. In determining the question as to the nature of such an agreement, the Court should not be led away merely by the ostensible appearance given to the transaction by the words used by the parties, but should make an attempt to go behind the phraseology for the purpose of ascertaining the real intention of the parties. In other words, it is not the garb with which the parties choose to clothe the transaction that should guide the Courts, but it is the spirit permeating the transaction that should

be the determining factor of its real nature. It is not the form in which the transaction is presented by the parties but the real substance of it that has got to be ascertained by the Court. In its endeavour to do it, the Court should dissect the transaction, scrutinise its legal implications and bear in mind the legal consequences that would ensue from it. In other words, the real nature and the essence of the transaction has got to be discovered. In order to arrive at a conclusion, the agreement has got to be looked at as a whole. The conclusion arrived at by the Court should be the cumulative result of the totality of circumstances emerging from the agreement. As the Court tries to ascertain the real nature of the transaction, the Court should take into consideration all the circumstances of the case. It cannot be said that any one particular circumstance provides an acid test in the case.

Thus, for example, where it is apparent that as a result of the agreement, the transferee has eventually to pay the entire purchase price, it may be a circumstance indicating that the transaction was meant to be a sale. On the other hand, if the transferee is given a right to terminate the agreement, that may be an important circumstance indicating that the transaction was intended to be a hire purchase agreement. That again, however, may not be a conclusive test, as the right to terminate the transaction might itself have been put into the agreement for the purpose of giving it the appearance of a hire purchase agreement. The question would be whether the right given to the hirers was a 'bona fide' conferment of such a right or merely a 'mala fide' insertion of a condition as a part of the attempt to delude the Court into thinking that the transaction in question was a hire purchase agreement and not a sale. Viewing the transaction in question in the light of the above principles, I have come to the conclusion that the transaction in question is in reality a transaction of sale, in spite of the fact that the parties have been at pains to hide that fact.

11. The learned counsel appearing for the appellant invited my attention to the use of the word 'owner' to describe the plaintiff com-pa,ny that had transferred the bus, to the use of the word 'hirer' to describe the persons who were allowed the use of the bus, and the use of the similar other words in the agreement which would indicate that the agreement in question was a hire purchase agreement. As mentioned by me above, the mere use of such words cannot convert a transaction that was really a sale into a hire purchase agreement. The true essence and the real nature of the transaction has got to be seen and ascertained. The sheet-anchor of the appellant's learned counsel's argument, however, has been Clause 11 in which a right appears to have been given to the hirer to terminate the agreement. According to his argument, the insertion of Clause 11 and the conferment therein of a right to terminate the agreement is the deciding -factor in the case and must necessarily lead to the conclusion that the agreement in question was a hire purchase agreement and not a sale.

I would have been inclined to agree with him, if I had found that the right to terminate given therein to the hirer was a genuine and a 'bona fide' conferment of the said right. On the other hand, a close scrutiny of the conditions and the restrictions with which this right to terminate has been hedged round shows that the right conferred therein is merely a fiction and not a fact.

12. Learned counsel has argued that the right to terminate conferred under Clause 11 of the agreement is an absolute right. A perusal of Clause 11, however, does not bear out this contention. According to Clause 11, the right can be exercised only if the vehicle is surrendered in the same order

and condition in which it was hired "fair wear and tear excepted". This would mean that if the vehicle met an accident and was damaged, the hirer's right to terminate the agreement would be lost. The right to terminate cannot, therefore, be considered to be an absolute right available to the hirer in every case.

13. The most important circumstance in connection with the so-called right to terminate contained in Clause 11 is that, according to the said clause, if the hirer chooses to terminate the agreement, he "shall pay to the owner the stipulated amount of hire upto the date of the said agreement including the apportioned hire without any broken period of the month plus Rs. 1500/-as compensation for depreciation in the value of the vehicle."

In this connection it should be borne in mind that the total amount payable by the hirer adding up all the twelve instalments comes to Rs. 1320/- only. After payment of the said amount of Rs. 1320/-, according to Clause 12 of the said agreement, the hirer would become the absolute owner of the vehicle. Thus the value of the vehicle as assessed by the parties themselves at the time was at the most Rs. 1320/-. In the plaint itself, the plaintiff valued it at Rs. 1000/- only. If, however, the hirer chose to terminate the agreement, he would not only have to deliver the bus for what it is worth, but further pay Rs. 1500/- an amount which would exceed the price or the value of the bus itself. In addition to that, he would further forfeit the amount of any instalment or instalments that had already been paid by him to the so-called owner.

The absurdity of this situation will be appreciated if it is remembered that in Clause 12 of the agreement it is laid down that where the hirer has already paid a number of instalments, it would be open to the hirer to pay the remaining amount of unpaid instalments with a rebate that might be allowed Jo him by the owner for advance payment of the entire amount; and, on such payment, he would become the absolute owner of the property. Thus under the said agreement if the hirer wanted to terminate the agreement, he -would be saddled with much higher liability than the one imposed on him to entitle him to become an absolute owner of the vehicle. No person possessing a grain of common sense could think of availing himself of it. The so-called compensation for depreciation exceeds the price of the bus itself. When confronted with this position, the appellant's learned counsel had to concede that the position, created was an absurd one and the only reply that he could give was that the mention of Rs. 1500/- in para 11 was a mistake. It is nobody's case that para 11 or any part of it was a result of mistake. It appears to me quite clear that the clause giving a right of termination to the hirer was so framed as to make the right illusory. It was deliberately shoved into the agreement for the purpose of giving it a deceptive appearance and concealing the fact that the transaction in question was an out and out sale.

14. It may further be mentioned that "the position taken up by the learned counsel for the appellants was not that the condition regarding payment of Rs. 1500/- was invalid being in the nature of a penalty. On the other hand, he cited -- 'Halsbury's Laws of England', Para 775 (Vol. XVI Second Edition 1935) in support of his contention that conditions of this character can be validly imposed in such contracts. Taking into consideration all the circumstances of the case, I find myself in agreement with the interpretation placed on the agreement by the lower appellate Court and have no hesitation in holding that the transaction in question is a transaction of sale and not of hire

purchase. In this view of the matter, second appeal No. 774 of 1948 must be dismissed.

15. The other appeal which is before me is second appeal No. 584 of 1948. This appeal has been filed by defendant 4. As mentioned above, the lower appellate Court has decreed the amount of Rs. 1268/6/- against all the four defendants. In this second appeal, the learned counsel for defendant 4 has argued that this amount cannot in law be decreed against defendant 4. Having heard the learned counsel for the appellant, I am of opinion that his contention must be accepted. It is obvious that defendant 4 was not a party to the agreement of 2-6-1941, and there was no privity of contract between him and the plaintiff. The bus is alleged to have been hired to him by 'defendants 1 and 2 and he was a third party so far as the aforesaid agreement was concerned. He could not, therefore, be made liable under the said contract. The plaintiff could only have claimed this amount by way of lien, but that right of lien would subsist only so long as the plaintiff had possession of the bus. Once the plaintiff had delivered possession of the said bus, the lien would disappear under Section 49, Sale of Goods Act. The learned counsel for the respondents in this appeal could not support this part of the judgment and had to concede that if the transaction was held to be a sale, the judgment of the lower appellate Court could not be sustained. This appeal must, therefore, be allowed.

16. The net result of the conclusions arrived at by me above is that second appeal No, 774 of 1948 is dismissed with costs and second appeal No. 584 of 1948 is allowed with costs.

17. Learned counsel for the appellant prays for leave to appeal to a Division Bench. The permission asked for is allowed.