

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

CM (M) No. 165/2023

CM No. 4465/2023

Caveat No. 1408/2023

Pronounced on : 22.08.2023

Surjeet Singh

..... Appellant/petitioner(s)

Through: -

Mr. Danish Majid Dar, Advocate with

Ms. Ahra Syed, Advocate.

V/s

Sheikh Behzad Khalid & others

..... Respondent(s)

Through: -

Mr. M.A.Makhdoomi, Advocate with

Mr. Abdul Manan, Advocate.

CORAM: HON'BLE MR JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

1. The respondent No.1 herein, plaintiff before the trial court, filed a suit with the averments that the petitioner herein and the respondent No.2 had friendly relations with each other and are dealers. The plaintiff paid Rs. 22 lacs to the defendant No.2 who is also partner of defendant No.1. The defendants in pursuance to the payment made handed over vehicle (**Fortuner**) bearing registration No. DL8CZ-6778 to the plaintiff which remained with the plaintiff till 1st September, 2022 when the defendants tried to take away the vehicle from the parking slot at Mughal Darbar, Residency Road, Srinagar but failed in their attempt. The plaintiff also relied upon a receipt while advancing his case before the trial court.
2. The respondent No.1/plaintiff having failed to get the vehicle transferred in his name filed the suit seeking transfer of the same from the defendants and also restraining the defendants from interfering with the possession of the vehicle.
3. The petitioner herein did not file written statement and instead filed an application for vacation of interim directions passed in the suit.

4. The trial court passed interim directions in the application filed for interim relief and vide order dated 08.10.2022 made the interim directions of status quo absolute.
5. The petitioner herein aggrieved by the order of the trial court filed appeal before the court of 4th Additional District Judge, Srinagar. The appellate court dismissed the appeal and upheld the order of the trial court. It may be mentioned herein that during the course of proceedings before the appellate court the court had directed the Police Station, Ram Munshi Bagh to recover the vehicle from the respondent No.1/plaintiff and keep the same in Police Station under safe custody till further orders. The court later on modified the order during appeal and directed the vehicle to be handed over to the petitioner herein. The court while deciding the appeal directed the petitioner herein to hand over the vehicle in favour of the respondent No.1/plaintiff.
6. The present petition has been filed under Article 227 of the Constitution of India for setting aside the order of the trial court as well as the appellate court.
7. The petition under Article 227 of the Constitution cannot be moved only for the reason that the orders passed by the trial court and the appellate court are not to the liking of a party against whom the orders have been passed. The orders cannot be set aside on the drop of a hat. Not only that even a mistake of fact or law cannot be ground to entertain the petition and grant the relief to the petitioner unless there is manifest miscarriage of justice emanating from the impugned orders. There can be no dispute with this proposition of law in view of the judgment of the Hon'ble Apex Court reported in (2010) 8 SCC, 329 titled "Shalini Shyam Shetty and another v. Rajendra Shankar Patil".
8. The argument raised by the learned counsel for the petitioner is that the so called amount paid by the plaintiff and the reliance placed on the receipt by the plaintiff only reveals that the payment has not been made to the petitioner herein but to the respondent No.2 who is one of the defendants in the suit. It is also submitted that the petitioner herein is the registered owner of the vehicle and, therefore, he is entitled to possess the vehicle till the matter is disposed of. The orders passed by the trial court

and the appellate court are not in consonance with law is the precise submission of the petitioner.

9. The respondent No. 1/plaintiff has contested the present petition. It is argued that the petition is not maintainable as the findings of the two courts cannot be challenged in the present petition more so when the disputed questions of fact are raised and that there is no prima facie illegality in the orders of both the courts below which may amount to miscarriage of justice. The vehicle was with the plaintiff at the time of filing of the suit cannot be denied and, therefore, the order whereby the petitioner has been directed to handed over the vehicle to the plaintiff cannot be faulted with.
10. The perusal of the trial court order as well as of the appellate court reveals that both the courts have considered the arguments raised by the petitioner herein and gave plausible reasons while deciding the application for interim relief and the appeal respectively.
11. The courts have taken a certain view with regard to the receipt regarding payment of amount of Rs.22 lacs on which the petitioner has laid stress during the course of arguments. The view taken by the courts below cannot be disturbed by this Court in the exercise of its supervisory powers.
12. The petitioner herein is a registered owner of the vehicle in question and is, therefore, entitled to the same for aforesaid reason also is the plea of the petitioner which does not carry weight. The petitioner being registered owner of the vehicle cannot be the only criteria to hold that the petitioner is to be held entitled to the vehicle. In civil proceedings, the court has to take into consideration various factors which are brought on record to come to a tentative finding while deciding the interim application. The plaintiff has sought the relief in the plaint on the ground that he had paid the amount for the vehicle which was in possession for the last three years before the petitioner tried to take possession of the vehicle though unsuccessfully and causing harassment to the plaintiff. What prevented the petitioner herein to lay claim from 2019 till 2022 is one of the factors which has also been taken note of by the courts below while deciding the interim applications.

13. Learned counsel for the petitioner has also argued that the petitioner had filed a complaint with regard to the vehicle in question. However, that by itself does not cement the case of the petitioner in the case in hand so far as determination of application for interim relief is concerned.
14. The Court does not find the orders impugned being palpably perverse which require correction by this court in the present petition. The appellate court directing the petitioner herein to handover the vehicle to the plaintiff also while dismissing the claim of the petitioner in appeal does not call for any interference.
15. The present petition being without merit stands dismissed. However, as the right of the parties qua the vehicle are yet to be determined in the trial it is in the fitness of things to direct that the plaintiff shall not dispose of the vehicle during the pendency of the suit and shall also file an undertaking before the trial court to the effect that he will be liable to compensate the defendants for the depreciation of the vehicle which occurs during the pendency of the suit in case the plaintiff fails in the suit or any other direction that may be passed by the trial court qua the vehicle on the conclusion of the trial.
16. Disposed of.

SRINAGAR
22.08.2023
Pawan Chopra



(PUNEET GUPTA)
JUDGE

Whether the order is speaking : Yes/No
Whether the order is reportable : Yes/No