

Devayani Sharma Vs. National Highways Authority of India,

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SooperKanoon Citation : sooperkanoon.com/712775

Court : Delhi

Decided On : Feb-14-2007

Reported in : 138(2007)DLT703

Judge : J.M. Malik, J.

Acts : Code of Civil Procedure (CPC) - Sections 151 - Order 39, Rules 1 and 2

Appeal No. : FAO 153/2005

Appellant : Devayani Sharma

Respondent : National Highways Authority of India, ;maharia Raj(Jv) Civil Engineer and Contractors and Rungta Irr

Advocate for Def. : Sandeep Sethi, Sr. Adv., ; Krishan Kumar and ; Divya Jain

Advocate for Pet/Ap. : Ginni J. Rautray, Adv

Disposition : Appeal dismissed

Judgement :

J.M. Malik, J.

1. The case of the appellant is that she is the sole proprietor of M/s Devayani Earth Work Contractor and had hired from Rungta Irrigation Ltd. i.e. respondent No. 3, a wheel loader JCB 430Z on a monthly charge of Rs. 1,10,000/-.

Thereafter, the appellant entered into an agreement for hire with Maharia Raj (JV) Civil Engineer & Contractors through Vinod Goyal respondent No. 2 on 15.07.2004, in pursuance of which the appellant handed over the physical possession of the loader in question to it on monthly rent of Rs. 1,10,000/-. Respondent No. 2 did not pay anything for use and occupation of the said loader. When the appellant went to take possession of the loader, it transpired that the same had already been seized by National Highways Authority of India, respondent No. 1. Under these circumstances, the appellant filed a suit for possession and for recovery of mesne profits against respondents No. 1 and 2. The appellant also moved an application dated 12.01.2005 under Order 39 Rules 1 and 2 read with Section 151 CPC, wherein she claimed relief to the effect that respondent No. 1 be directed to release interim custody of Loader JCB 430Z to the appellant. The Trial Court dismissed the said application on the following grounds:

Respondent No. 1 had advanced a sum of Rs. 40 crores to respondent No. 2 for the purchase of plant and machinery vide contract entered into between them on 31.05.2001. In the contract / letter it was mentioned that the equipment etc. belonging to respondent No. 2 at the site would be deemed to be the property of the employer i.e. respondent No. 1. The loader in question is admittedly owned by respondent No. 3. The appellant gave the same to respondent No. 2 on hire basis. The Ld. Trial Court found that no prima facie case was established in favor of the appellant to possess the Loader in question at this initial stage. The trial court opined that prima facie respondent No. 1 had lien over the plant, machinery including loader in question.

2. I have heard the counsel for the parties at length. In addition to the appeal which was filed in the court on 26.05.2006, the appellant also submitted few documents vide application dated 04.11.2006. One of the documents i.e. photocopy of the lease hire agreement dated 20.07.2005 goes to show that the lease hire agreement was entered into between Globe International hirer of the second part. It is surprising to note that this hire purchase agreement does not mention the name of the other party, signatures of the other party, engine No. and chassis No. of the Loader in question. However, another letter issued by Rungta Irrigation Ltd., respondent No. 3 has also been annexed. Its relevant portion runs

as follows:

It is stated that there is no dues from M/s. Globe International (Mr. Neeraj Sharma) regarding leasing of Escorts JCB Earth Moving Machine, Engine No. - MLEM 051578, Chassis No. - 43512, we have no objection to transfer of said machine to his name.

The learned Counsel for the appellant pointed out that engine No. - MLEM 051578 and chassis No. - 43512 pertain to the loader in question. Appellant has also filed on record invoice Annexure A-2 at page 16 of the appeal, which mentions the same engine No. and chassis No. and it appears to have been purchased by Rungta Irrigation Ltd.

3. However, it goes beyond the pale of my comprehension as to how the appellant has got the locus standi to file this case. She is a stranger to the contract entered into between Globe International and assumingly Rungta Irrigation Ltd. Appellant's counsel submitted that the appellant has filed an affidavit that her husband Mr. Neeraj Sharma is the proprietor of M/s Globe International. It is not understood as to how the affidavit filed by Devayani Sharma on behalf of her husband, can come to the rescue of this suit. As a matter of fact, the present suit should have been filed by M/s Globe International through its proprietor. The appellant has failed to show that her husband Mr. Neeraj Sharma has made an attempt to implead himself as a party in this case. There is no word or syllable or whisper in the plaint itself that Globe International has got any connection with this case. No attempt was made to get the pleadings amended in this respect. M/s Devayani Earth Work Contractor has got no privity of contract and thereforee has no locus standi to file the present case. In absence of all these facts, I am of the considered view that no relief can be granted in favor of the appellant. The appeal is without merit and the same is, thereforee, dismissed.

Trial Court Record be sent back with a copy of this order forthwith.

Parties are directed to appear before the trial court on 28.02.2007.