

HIGH COURT FORM NO. (J) 2.

HEADING OF JUDGMENT IN ORIGINAL SUIT.

IN THE COURT OF MUNSIF NO. 3 AT GUWAHATI.

DISTRICT-KAMRUP

Money Suit Case No. 275/2007

Present:

Naguib Ahmed, A.J.S.
(M.Sc-Agriculture, LL.B)
Munsiff No.3, Guwahati.

29th day of August, 2012

1. M/s Pallavi Motors Private Ltd.

**Having its office and principal place
of business at Bhangagarh, G.S Road,
Guwahati – 6 and is represented by it's
Director Sri. Om Prakash Lahoty.**

District: Kamrup (M), Assam.....: Plaintiff(s)

-Versus-

1. Sri. R. Surana.

C.O: Ashirwad.

Kedar Road

Guwahati-1

District: Kamrup (M), Assam

2. Sri. Sanjay Surana.

S.O: Sri. Ranjit Singh Surana.

R.O: Ashirwad

Kedar Road

Guwahati-1

District: Kamrup (M), Assam.....: Defendant(s)

This suit coming on for final hearing on 30.07.2012 in the presence of:-

1. **Sri. S.C Keyal** : **Advocate for the plaintiff(s).**

And

1. **Sri. P. Katak**

2. **Sri. Debashish Chakravarty** : **Advocate for the defendant(s).**

and having stood for consideration to this day, the court delivered the following Judgments.

JUDGEMENT

(A Suit for realization of money of Rs. 1, 02,446/-)

1. **Plaintiff's case:** The plaintiff is a private Limited Company having its office and principal place of business at Bhangarh, G.S Road, Guwahati- 6 and is represented by its Managing Director. The defendant is the registered owner of a Maruti Vehicle No. AXK-161 and the same was given to the workshop of the plaintiff for mechanical job and replacement of spare parts and other allied works. The repair work of the defendant vehicle was over way back on 03.02.2002 but the defendants have not turned up to take the delivery of the said vehicle. The plaintiff has written a letter to the defendant on 03.02.2002 to take the delivery of the said vehicle immediately. Thereafter the plaintiff served notice dated 30.01.2002 to the defendant through his advocate to take the delivery of the said vehicle within a week from the date of receipt of the notice by paying Rs. 53,758.01/- (Rupees Fifty Three Thousand Seven Hundred Fifty Eight and Zero One Paisa) only with interest at the rate of 16% per annum of the same. The plaintiff also prepared a proforma invoice of the said amount. On 09.02.2002 the plaintiff had served another letter to the defendant. The defendant also replied the said letter on 16.02.202 with a request to prepare the vehicle for the delivery. The aforesaid bill of Rs. 53,758.01/- (Rupees Fifty Three Thousand Seven Hundred Fifty Eight and Zero One Paisa) only does not contain the works of denting, painting and other mechanical work, which were not included due to bonafide mistake on the part of the accounts section of the plaintiff for taking the delivery of the vehicle. The true bill was prepared by the plaintiff on 27.02.2002 and the amount comes to Rs. 97,862.15/- (Rupees Ninety Seven Thousand Eight Hundred Sixty Two and Fifteen Paisa) only. That till

10.06.2002 the interest on the aforesaid principal amount comes to Rs. 4584/- (Four Thousand Five Hundred Eighty Four) only at the rate of 16% per annum. The plaintiff is entitled to realize Rs. 1,02,446/- (One Lakh Two Thousand Four Hundred Forty Six) only from the defendant with interest quarterly rests at the rate of 16% per annum from the date of institution of the suit till the actual realization on the principal amount.

2. **Plaintiff's prayer:**

In the premises the plaintiff prayed for:

1. Realization of Rs. 97,862.15 (Rupees Ninety Seven Thousand Eight Hundred Sixty Two and Fifteen Paise) only being the principal amount.
2. Interest of Rs. 4584/- (Four Thousand Five Hundred Eighty Four) only as on 10.06.2002. Realization of interest pendent-lite and future interest at the rate of 16% per annum till realization of the amount.
3. Costs.

3. **Defendant No.1's version:**

The Defendant No.1 stated that in compliance to the legal notice dated 30.01.2002 issued by the plaintiff the defendant took prompt action and steps to take delivery of the vehicle by making the payment of Rs. 53,758.01/- (Rupees Fifty Three Thousand Seven Hundred Fifty Eight and Zero One Paise) only being the full and final amount for repairing the said vehicle as claimed and demanded by the plaintiff. The defendant personally visited the office of the plaintiff and requested delivery of the vehicle. The defendant also verbally expressed his willingness to pay the amount of Rs. 53,758.01/- (Rupees Fifty Three Thousand Seven Hundred Fifty Eight and Zero One Paise) only. The defendant has also written a letter to the plaintiff vide letter dated 16.02.2002 clearly stating that he was ready to pay the amount of Rs. 53,758.01/- (Rupees Fifty Three Thousand Seven Hundred Fifty Eight and Zero One Paise) only. However when the defendant personally visited the plaintiff on 26.02.2002 to take delivery of the vehicle the same was not given to the defendant as the plaintiff had stated that they will give delivery of the vehicle only after a routine check-up. Thereafter plaintiff issued a notice through their advocate demanding for the first time

payment of Rs. 97,862.15 (Rupees Ninety Seven Thousand Eight Hundred Sixty Two and Fifteen Paisa) only as per their alleged proforma invoice dated 27.02.2002 admittedly prepared on the said day being cost of repairing etc of the vehicle and thereby threatened to institute a suit for recovery of the said amount against the defendant, though no such alleged bill of Rs. 97,862.15/- (Rupees Ninety Seven Thousand Eight Hundred Sixty Two and Fifteen Paisa) only has ever been submitted at any time to the defendant prior to serving of such legal notice. This action and conduct of the plaintiff evidently shows the malafide intentions of the plaintiff. Thereafter the defendant intimated the plaintiff by addressing a letter dated 08.03.2002 clearly stating inter-alia that he is not at all liable to pay the said amount of Rs. 97,862.15/- (Rupees Ninety Seven Thousand Eight Hundred Sixty Two and Fifteen Paisa) only as the said claim of the plaintiff is baseless. In spite of the receipt of the letter dated 08.03.2002 of the defendant; the plaintiff did not take any steps to give delivery of the vehicle. The instant suit is frivolous and vexatious and being instituted with the only object of making wrongful gain and causing wrongful loss to the defendant. The defendants are therefore entitled to compensatory cost *U/S 35(A) of the Code of Civil Procedure 1908 (C.P.C)*.

The following documents were exhibited by the defendant.

- Exhibit-A :** Letter dated 30.01.2002.
- Exhibit-B :** Letter dated 09.02.2002.
- Exhibit-C :** Letter dated 16.02.2002.
- Exhibit-D :** Postal Receipt.
- Exhibit-E :** Endorsement dated 26.02.2002 made by
Mr. M Dutta, Works Manager.
- Exhibit-F :** Letter dated 08.03.2002.
- Exhibit-G :** Registration Certificate of vehicle.

4. **Defendant No.2's version:**

Defendant No.2 entered appearance and filed Written Statement stating that the plaintiff has not approached the Hon'ble Court with clear hands and as such the plaintiff is not entitled to any relief. The Defendant No.2 has in-fact denied all the claims of the plaintiff.

5. **Proceedings of the suit:**

The suit originally proceeded before the Hon'ble Civil Judge Kamrup but the same was transferred to this court vide order dated 06.05.2006.

6. **Issues:**

Upon considering the pleadings of both the parties the following issues were framed on 25.11.2009.

1. Whether the plaintiff is entitled for realization of an amount of Rs. 97,862.15/- (Rupees Ninety Seven Thousand Eight Hundred Sixty Two and Fifteen Paisa) only from the defendants?
2. Whether the plaintiff is entitled to the decrees as prayed for in the plaint?
3. To what relief is the plaintiff entitled?

7. **Witnesses:**

The plaintiff examined 2 (Two) witnesses and the defendant examined 1 (One) witness.

8. **Discussion, Decision and Reasons thereof:**

I have also heard arguments advanced by both the sides at length.

9. **Issue no.1:**

PW-1 Om Prakash Lahati deposed in his cross-examination that the defendant personally appeared before Manik Dutta to take the delivery of the vehicle. **PW-2 Manoj Jhavar** also deposed that the defendant came to take delivery of the Maruti Van. **DW-1 R.S Surana** also deposed in his cross-examination that he went to Pallavi Motors to take delivery of the vehicle on 26.02.2002. Notice was served to the defendant on 09.02.2002 and the defendant vide letter dated 16.02.2002 expressed his willingness to take delivery of his vehicle by paying the final bill of Rs. 53,758.01/- (Rupees Fifty Three Thousand Seven Hundred Fifty Eight and Zero One Paisa) only. Admittedly the plaintiff witnesses deposed that the Defendant No-1 came to take the delivery of the vehicle. These evidences therefore negate the claim of the plaintiff that the defendants had not turned up to take delivery of the vehicle.

Admittedly the repair works of the vehicle was over long back and subsequently many notices were served on the defendants to take back the vehicle, but the plaintiff could not give any cogent and justifiable ground as to why they could not give the delivery when the defendant subsequently came to take the delivery of his vehicle on 26.02.2002. In fact the defendant took prompt action to take the delivery of the vehicle on 26.02.2002 after serving a return notice to the plaintiff on 10.02.2002 about his willingness to take delivery of the vehicle.

All the notices served on the plaintiff mentioned the final bill of the repairing works as Rs. 53,758.01/- (Rupees Fifty Three Thousand Seven Hundred Fifty Eight and Zero One Paisa) only. However after the defendant visited the plaintiff on 26.02.2002, a new enhanced bill of Rs. 97,862.15/- (Rupees Ninety Seven Thousand Eight Hundred Sixty Two and Fifteen Paisa) only was issued to the defendant through the advocate of the plaintiff although no such bill was ever submitted at any point of time to the defendants. The plaintiff however mentions the said mistake as a bonafide mistake. Although many notices were earlier served on the defendants, but the plaintiff did not detect the said mistake on any of such earlier occasions. The PW-2 deposed in his cross-examination that a job-card was prepared for the repairing works of the said vehicle, which contains all the details of the repairing works. However the said job card has not been exhibited by the plaintiff to prove the nature of the repairing works done, which amounted to a charge of Rs. 97,862.15/- (Rupees Ninety Seven Thousand Eight Hundred Sixty Two and Fifteen Paisa) only. The job-card has not at-all been brought on records. Not exhibiting the said job-card in-fact suppresses the preponderance of probabilities of the plaintiff's case. No details of any mechanical works could be shown to prove that the repairing works of the vehicle amounted to Rs. 97,862.15/- (Rupees Ninety Seven Thousand Eight Hundred Sixty Two and Fifteen Paisa) only. The plaintiff in-fact failed to prove their claim of bonafide mistake which resulted in increase of the bill amount from Rs. 53,758.01/- (Rupees Fifty Three Thousand Seven Hundred Fifty Eight and Zero One Paisa) only to Rs. 97,862.15/- (Rupees Ninety Seven Thousand Eight Hundred Sixty Two and Fifteen Paisa) only. The genuineness of the mistake is a matter which needs to be explained.

The PWs have not stated of any extra repairing works in addition to the works shown in the earlier bill, but for the same works the bill was earlier made at Rs. 53,758.01/- (Rupees Fifty Three Thousand Seven Hundred Fifty Eight and Zero One Paisa) only. Non explanation of such mistake carries away the merit of the plaintiff's case.

Exhibit-5 is a computer generated Performa invoice which does not go to show the reasons of increase in the bill amount to Rs. 97,862.15 (Rupees Ninety Seven Thousand Eight Hundred Sixty Two and Fifteen Paisa) only. DW-1 deposes that he never gave the vehicle for denting and painting. Plaintiff vide **Exhibit-10** stated that the denting and painting was done with the consent and approval of the Defendant No.1. However no such consent and approval of the defendant has been proved by the plaintiff. The job-card has also been not produced to prove the claim of the plaintiff. **Exhibit-E** shows that the plaintiff has endorsed the bill amount at Rs. 53,758.01/- (Rupees Fifty Three Thousand Seven Hundred Fifty Eight and Zero One Paisa) only. In fact the plaintiff has failed to prove that the defendant are liable to pay an amount of 97,862.15 (Rupees Ninety Seven Thousand Eight Hundred Sixty Two and Fifteen Paisa) only.

In light of all this issue is decided in negative and goes against the plaintiff.

The following documents were exhibited by the plaintiff.

- Exhibit-1** : Incorporation Certificate.
- Exhibit-2** : Dealer Agreement.
- Exhibit-3** : Copy of letter dated 03.02.2002.
- Exhibit-4** : Notice dated 30.01.2002.
- Exhibit-5** : Performa Invoice.
- Exhibit-6** : Letter dated 09.02.2002.
- Exhibit-7** : Letter dated 16.02.2002 by Defendant No.1.
- Exhibit-8** : Performa Invoice dated 27.02.2002.
- Exhibit-9** : Notice dated 27.02.2002.
- Exhibit-10** : Letter dated 12.03.2002.

In view of the discussions made above these two issues can be taken up together for determination.

In the aforesaid scenario of the facts and in view of the appreciation and discussion in Issue No.1 and decisions arrived there-in, it is reluctant to discussion further on the instant issue.

The plaintiff is not entitled to any decree and relief as prayed for.

With the above observations these issues are decided in negative and goes against the plaintiff.

11.

ORDER

In the conclusion the suit is dismissed with cost.

Prepare decree accordingly.

The suit is disposed of on contest.

Given under my hand and seal of the court on *29th day of August 2012.*

*Naguib Ahmed
Munsiff No.-3, Guwahati,
Kamrup*

APPENDIX

Plaintiff's Witnesses

PW-1: Sri. Om Prakash Lahati

- Exhibit-1 : Incorporation Certificate.
- Exhibit-2 : Dealer Agreement.
- Exhibit-3 : Copy of letter dated 03.02.2002.
- Exhibit-4 : Notice dated 30.01.2002.
- Exhibit-5 : Performa Invoice.
- Exhibit-6 : Letter dated 09.02.2002.
- Exhibit-7 : Letter dated 16.02.2002 by Defendant No.1.
- Exhibit-8 : Performa Invoice dated 27.02.2002.
- Exhibit-9 : Notice dated 27.02.2002.
- Exhibit-10 : Letter dated 12.03.2002.

PW-2: Sri. Manoj Jhavar

Defendants Witnesses:

DW-1: Sri. R.S Surana

- Exhibit-A : Letter dated 30.01.2002.
- Exhibit-B : Letter dated 09.02.2002.
- Exhibit-C : Letter dated 16.02.2002.
- Exhibit-D : Postal Receipt.
- Exhibit-E : Endorsement dated 26.02.2002 made by Mr. M Dutta,
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***Naguib Ahmed
Munsiff No.-3, Guwahati,
Kamrup***