

**IN THE COURT OF SHRI BHARAT AGGARWAL, LD. CIVIL JUDGE**  
**- 02 WEST DISTRICT, TIS HAZARI COURTS, DELHI**  
**SUIT NO.609325/2016**

**Sh. Ajay Chaudhary**

S/o Sh. Rameshwar

R/o House No.RZ-A-4/248,

Durga Park, Nasirpur Road,

Palam Colony, New Delhi - 110045

.....**PLAINTIFF**

**VERSUS**

1. **Sh. Deepak**

Proprietor of M/s Delhi Auto

B-4, Shop No.6-8, Manak Vihar Extension,

Beri Wala Bagh, Scooter Market,

Subhash Nagar, New Delhi – 110018

2. **Galaxy Financial Services Pvt. Ltd.**

Regd. Office J-4, Auto Milap Market,

Beri Wala Bagh, Hari Nagar, New Delhi – 110064,

Through its Managing Director/Director/Authorized Signatory

.....**DEFENDANTS**

**Suit filed on – 02/06/2014**

**Judgment reserved on – 25/08/2020**

**Date of decision – 25/08/2020**

**SUIT FOR PERMANENT AND MANDATORY INJUNCTION**

**JUDGMENT: -**

By this judgment, I shall adjudicate a suit for permanent and mandatory injunction filed by the plaintiff against the defendants. Before adjudicating upon the issues framed in the present suit, it is necessary to state the pleadings in the present suit concisely.

**Pleadings of the plaintiff :-**

1. Present suit has been filed by the plaintiff against the defendants seeking permanent injunction restraining the defendants from repossessing the Auto/TSR bearing No.DL-1RL-1297 (hereinafter referred to as the “TSR”) from the plaintiff and direction to the defendants to get the hypothecation of defendant no.2 cancelled from the registration certificate of the TSR and to issue a no objection certificate to the plaintiff in this regard for issuance of a new registration certificate from the Transport Department, Government of NCT of Delhi.

It is the case of the plaintiff that he is a driver by occupation and as he was interested to purchase an old Auto Rikshaw/ TSR, and for this purpose, he approached the defendant no.1 in the month of September, 2009. Both the defendants deal in the business of auto finance. It is stated that plaintiff paid a sum of Rs.1,20,000/- as down payment in cash to the defendant no.1 for which no receipt was issued to him and he also got financed an auto loan of Rs.1,40,000/- from the defendant no.1 which was financed through the defendant no.2. It is further stated that the defendant no.1 obtained various signatures of the plaintiff on blank papers and the loan of Rs.1,40,000/- was to be repaid in monthly installments of Rs.12,340/- within a period of 18 months. That in October, 2009 the TSR was handed over by the defendant no.1 to the plaintiff and the Registration Certificate of the TSR bears the hypothecation of defendant no.2. The permit of the TSR is in the name of the plaintiff and he has been plying the said TSR since October, 2009. It is further stated that the plaintiff has paid various

installments in total amounting to Rs.4,25,000/- which has already been acknowledged by defendant no.1. It is further stated that on 21/01/2014 when the plaintiff visited the office of defendant no.1 to pay the last installment and get the hypothecation cancelled, the defendant no.1 demanded a sum of Rs.25,000/- from the plaintiff for cancellation of hypothecation from the registration certificate. It is stated that thereafter on 04/05/2014 plaintiff visited the office of defendant no.1 and paid Rs.21,000/- and defendant no.1 obtained the signature of plaintiff on various blank papers, but on 13/05/2014 the defendant no.1 again demanded Rs.50,000/- from the plaintiff for cancellation of registration certificate and started abusing and misbehaving with the plaintiff. Thereafter, on 15/05/2014 it is stated that some musclemen visited the office of the plaintiff and demanded the TSR. In these circumstances, on 16/05/2014 the plaintiff lodged the written complaint with Police Station Rajouri Garden, but allegedly no action has been taken. In these circumstances, the plaintiff has filed the present suit against the defendants seeking permanent and mandatory injunction.

**Pleadings of the defendants: -**

2. Written statement was filed by defendant no.1 wherein *inter alia* it is stated that the defendants have never attempted to take possession of the TSR in question and that plaintiff approached the defendant no.1 in the month of July, 2009 for purchase of the TSR for a total amount of Rs.4,11,000/- out of which plaintiff paid Rs.1,11,000/- as down payment and balance Rs.3Lakhs was got financed by defendant no.1 on 04/07/2009 which was repayable in 36 monthly installments of Rs.12,340/- each. It is stated that the possession of the TSR was given by the defendant no.1 on 04/07/2009. It is alleged that the plaintiff was regular defaulter in making the payment of the installment amount and he committed willful defaults and plaintiff showed additional financial need of Rs.1Lakh in the month of October, 2011 and thus the defendant no.1 got the said vehicle financed with the defendant no.2 on

23/10/2011 for an amount of Rs.3Lakhs and received the outstanding balance payment of Rs.2Lakhs accrued from the defendant no.2 on behalf of the plaintiff towards the outstanding balance amount. It is stated that the plaintiff availed the finance facility in the nature of hire and purchase agreement and signed the loan agreement/hypothecation agreement dt.23/10/2011 for a total financed amount of Rs.4,44,000/- on 23/10/2011 which included principal amount of Rs.3Lakhs and interest amount of Rs.1,44,000/-. It is further stated that as per the knowledge of the answering defendant plaintiff had to pay 36 installments of Rs.12,335/- each, totaling to Rs.4,44,000/-.

3. Written statement was also filed on behalf of defendant no.2 on the similar lines whereby *inter alia* it was stated that defendant no.2 is a registered non-banking financial institution and defendant no.2 had duly authorized the defendant no.1 to accept payment on behalf of defendant no.2 from the plaintiff and to issue receipt in this regard towards the TSR in question. It is stated that the plaintiff had made a representation before the defendant no.2 for availing finance facility in the nature of hire and purchase of the TSR through defendant no.1. It is stated that plaintiff undertook to confirm the payment schedule alongwith the agreed rate of interest within 36 months payable in the installment of Rs.12,335/- each. It is further stated that defendant no.2 had sent many requests and demands calling upon the plaintiff to clear dues but the plaintiff chose not of respond and thereafter a legal demand notice was sent on behalf of the defendant no.2 which was duly served. It is further stated that plaintiff had only paid Rs.2,11,695/- in broken amounts towards the installments till date to the defendants and the due amount till July, 2014 is Rs.4,07,055/- and balance outstanding is Rs.1,95,360/- till July, 2014.

It is pertinent to note that in response to Para-9 of the plaint whereby plaintiff has stated that he had paid various installments to the tune of Rs.4,25,000/- to the defendant no.1 on various occasions, it is stated by the

defendants that the contents of Para-9 of the plaint cannot be replied as the plaintiff has not mentioned the date of payments/receipt numbers. However, from the perusal of the record all the receipts with the relevant dates and the amount had been filed by the plaintiff alongwith the suit itself. Therefore, as such the para pertaining to the payment of Rs.4,25,000/- by the plaintiff to the defendant no.1 has not been categorically denied by the defendants.

4. Replication has also been filed on behalf of plaintiff to the written statement of defendants wherein the averments made in the written statement were denied and those made in the plaint were reiterated and reaffirmed.

It was reiterated that plaintiff had paid excess amount to the tune of Rs.4,25,000/- to the defendant no.1 and nothing remains to be paid on behalf of the plaintiff.

**Issues :-**

5. From the pleadings of the parties, following issues were framed in the suit vide order dt.17/11/2015: -

- (a) Whether there is no cause of action in favour of the plaintiff to file the present suit? OPD
- (b) Whether the plaintiff is entitled for the decree of permanent injunction as prayed for? OPP
- (c) Whether the plaintiff is entitled for the decree of mandatory injunction as prayed for? OPP
- (d) Relief.

**Evidence :-**

6. In order to prove his case, plaintiff got examined himself as PW-1 and led his evidence by way of affidavit which is exhibited as Ext. PW-1/A wherein he reiterated the averments made in the plaint. PW-1 also relied upon certain documents which are as under :-

<b>Identification Mark</b>	<b>Description</b>
Ex. PW-1/1 (OSR)	Copy of driving license of plaintiff.
Ex. PW-1/2 (OSR)	Copy of badge number of plaintiff.
Ex. PW-1/3 (OSR)	Copy of Registration Certificate of Auto/TSR No.DL 1RL 1297.
Ex. PW-1/4 (OSR)	Copy of TSR permit.
Mark-A (Colly)	Copy of receipts of installments (EMI) (42 in number) with respect to Auto/TSR in question.
Ex. PW-1/6 (OSR)	Copy of complaint dt.16/05/2014 lodged with the Police Station Rajouri Garden, Delhi.

PW-1/plaintiff was cross-examined by the counsel for defendants at length. During his cross-examination PW-1 stated that he got the TSR in question financed in the year 2009 for total finance amount of Rs.1,40,000/- which was to be repaid in 18 months in monthly installment of Rs.12,340/- each. He further stated that he holds the commercial license to drive the vehicle/TSR. He states that he has already paid Rs.4,25,000/- in total to Sh. Deepak Katyal i.e. the defendant no.1 in respect of the TSR. He further admitted that the vehicle/TSR in question from the year 2009 is in his possession. He admitted that hypothecation of the TSR was in the name of defendant no.1 in the year 2009 and the Registration Certificate of the TSR was got transferred in his name on 08/07/2011 and on the same date hypothecation in the name of defendant no.2 was got added. However, he stated that he was not aware that the hypothecation of the defendant no.1 was cancelled and that the name of defendant no.2 was added in the year 2011. He further stated that he came to know about such addition/substitution of defendant no.1 by defendant no.2 in the year 2014. He admitted that he used to pay the installment amounts to defendant no.1 in broken amount and with a default of a month. He denied the suggestion that in the year 2011 the accounts of defendant no.1 were made clear and the vehicle was refinanced

from the defendant no.2.

During the cross-examination the witness/PW-1 was shown the loan documents and he admitted his signatures on Point-A and the document was taken on record as Ex. PW-1/D1 i.e. the loan agreement/loan-cum-hypothecation agreement. Again, PW-1 denied the suggestion that the TSR in question was got refinanced in the year 2011. He further stated that defendant no.1 demanded a sum of Rs.50,000/- for cancelation of hypothecation. He further admitted that officials of defendants never tried to snatch or take back the possession of the TSR in question forcibly, however, he stated voluntarily that the officials used to come and give threats.

Thereafter plaintiff led the evidence of one Sh. Ram Briksha Chaudhar as PW-2 who led his evidence by way of affidavit which is exhibited as Ext. PW-2/A and PW-2 did not rely upon any document.

PW-2 stated in his evidence affidavit that he knows the plaintiff and he is well conversant with the facts of the case. He reiterated the version of the plaintiff in his evidence affidavit and stated that the plaintiff had paid a sum of Rs.1,20,000/- in cash to the defendant no.1 and got financed of Rs.1,40,000/- through the defendant no.2.

PW-2 was cross-examined by the counsel for the defendants whereby *inter alia* he stated that he knows the plaintiff for the last 10 years and he used to ride the vehicle of the plaintiff on rent bearing No.5368. He further stated that he accompanied the plaintiff to the office of defendant no.1 around 7-8 times, but he does not remember the exact dates and his signature was never obtained as a witness. He further stated that the signatures of plaintiff were obtained on some blank printed papers in the month of September, 2009 by the defendant no.1. He further stated that an amount of Rs.21,000/- was paid by the plaintiff in the year 2014 to the defendant no.1 but no receipt was issued by the defendant and there were verbal arguments between the defendant no.1 and plaintiff. He further stated that he had also driven the vehicle in question on rent. Thereafter, vide order dt.07/12/2016

plaintiff's evidence was closed upon the statement of the plaintiff himself.

7. Defendants in order to prove their case got examined Sh. Deepak Katyal i.e. the proprietor of M/s Delhi Auto as DW-1 who tendered his evidence by way of affidavit which is Ex. DW-1/1 and whereby the contents of the written statement were reiterated. He also relied upon certain documents which are as under :-

<b>Identification Mark</b>	<b>Description</b>
Ex. DW-1/A	The Board Resolution/Authority Letter in the name of defendant no.1/DW-1.
Ex. DW-1/B (OSR)	Copy of certificate of registration issued by RBI with respect to defendant no.2 company.
Mark-X1	Photocopy of legal demand notice dt.16/07/2014 issued to the plaintiff on behalf of defendant no.2.
Mark-X2	Photocopy of invoice dt.23/08/2008 issued by Bagga Link @ Bajaj.
Mark-X3	Photocopy of receipt dt.28/08/2008 issued by Transport Department for grant of permit to Rakesh.
Mark-X4	Photocopy of receipt dt.28/08/2008 for addition of hypothecation in the name of Delhi Auto.
Mark-X5	Photocopy of registration slip issued by Transport Department with respect to Auto/TSR No.DL 1RL 1297 showing the owner's name as Rakesh and hypothecation of Delhi Auto.
Mark-X6	Photocopy of Registration Certificate of Auto/TSR No.DL 1RL 1297.
Mark-X7	Photocopy of receipt dt.08/07/2011 showing transfer of permit in the name of plaintiff.
Mark-X8	Photocopy of letter dt.05/07/2011 for cancellation of hypothecation agreement.
Mark-X9	Photocopy of receipt dt.08/07/2011 for cancellation

	of hypothecation agreement of Delhi Auto and addition of hypothecation agreement in the name of defendant no.2 company.
Mark-X10	Photocopy of receipt dt.08/07/2011 for transfer of permit in the name of plaintiff.
Mark-X11	Photocopy of Form-34 and Screen Report issued by transport department.

DW-1/defendant no.1 was cross-examined by the counsel for plaintiff whereby he stated that the plaintiff first approached him for the purchase of TSR in the year 2011. The said statement of defendant no.1 was completely contrary to the statement made by defendant no.1 in the written statement as in Para-6 it is stated by the defendant no.1 himself that the plaintiff approached the defendant no.1 in the month of July, 2009 for purchase of Auto. DW-1 further stated that plaintiff approached the defendant no.1 for purchase of vehicle in question in the year 2009 and thereafter he got it refinanced from the defendant no.2 after two years. He further stated that certain signatures of plaintiff were obtained on papers like hire purchase agreement, Superdari at the time of grant of loan in the year 2009 and he can produce the said documents. He thereafter admitted that he has not supplied the copy of hire purchase agreement and Superdari executed in the year 2009 to the plaintiff. He admitted that the invoice value of the TSR in question was about Rs.1,35,000/- in the year 2008 and as per the replacement scheme the sale price in the market was Rs.4,11,000/-. Thereafter, the cross-examination of DW-1 was deferred on 13/02/2017, however, on 25/07/2017 DW-1 stated that he has not brought the hire purchase agreement of the year 2009 and other documents pertaining to the said year as the said documents were stated to be not traceable. It is pertinent to note here that nowhere in the written statement of defendant no.1 he has spoken about or even vaguely referred to any documents executed between the parties in the year 2009.

He further stated that he has not filed any authorization letter

regarding receiving of installments on behalf of defendant no.2 and for issuance of receipts. However, in the written statement of defendant no.2 it has been stated that the defendant no.1 has the authority to issue receipts of installments on behalf of defendant no.2.

He further admitted that in the year 2009 several documents i.e. the loan agreement was executed by the plaintiff on the finance of the vehicle in question. He admitted that he has not issued the receipt for the down payment of Rs.1,11,000/- to the plaintiff. He further admitted that there was no written request by the plaintiff for grant of additional finance amount of Rs.1Lakh in the month of October, 2011. He admitted that defendant no.2 never issued any receipt for receiving installments in respect of the TSR. Thereafter he voluntarily stated that certain receipts were issued on behalf of defendant no.2 for the period starting from October, 2011. However, perusal of the receipts pursuant to the year 2011 does not reveal that such receipts were issued on behalf of the defendant no.2. He further stated that he maintains the ledger and cash book of financed vehicles and he has the entries of the payment and the financed amount in the cash book of the TSR in question, however, he admits that he cannot produce the ledger book for the year 2009 to 2014. On 25/07/2017, defendants' evidence was closed on behalf of the defendants upon the statement of defendant no.1.

**Decision with reasons :-**

8. The arguments were heard on behalf of parties and the record has been carefully perused. Now, I shall give my issue-wise findings which are as under: -

9. **Issue No.(a) -**

**(a) Whether there is no cause of action in favour of the plaintiff to file the present suit? OPD**

The onus to prove this issue was upon the defendants.

The defendants have vaguely stated in the written statement that there is no cause of action against the answering defendants, however, no arguments were advanced in this regard and in fact no specific averments have been made by the defendants in respect of the argument pertaining to cause of action. The plaintiff has filed the present suit alleging that despite payment of excess amount in respect of the TSR in question, the defendants are trying to repossess the TSR from the plaintiff and the defendants have not issued a no-objection for the purpose of cancellation of the hypothecation of the defendant no.2 from the Registration Certificate of TSR. It is stated by the plaintiff that the cause of action arose on 04/05/2014 when the plaintiff visited the office of defendant no.1 and paid him Rs.21,000/- for cancellation of the hypothecation and again on 13/05/2014 when plaintiff visited the office of defendant no.1 and the defendant no.1 demanded excess amount of Rs.50,000/-. Therefore, in the considered opinion of this court, there exist a cause of action in favour of the plaintiff and against the defendants as allegedly the defendants have demanded more moneys from the plaintiff despite the payment of excess amount already.

Accordingly, this issue is decided against the defendants and in favour of the plaintiff.

10. **Issue No.(b) and (c) -**

**(b) Whether the plaintiff is entitled for the decree of permanent injunction as prayed for? OPP**

**(c) Whether the plaintiff is entitled for the decree of mandatory injunction as prayed for? OPP**

The onus to prove these issues was upon the plaintiff.

The plaintiff has filed the present suit seeking injunction restraining the defendants from repossessing the TSR and direction to the defendant no.2 for issuance of no objection certificate so that the hypothecation on the TSR can be cancelled.

Briefly stated, the plaintiff's entire case is that since he wanted to purchase a second hand/used TSR, he approached the defendant no.1 and paid Rs.1,20,000/- as down payment and got loan financed for Rs.1,40,000/-. Plaintiff has further stated that the defendant no.1 got signatures of the plaintiff on various blank documents and in the month of October, 2009 the TSR in question was handed over to the plaintiff by the defendant no.1. It is further stated by plaintiff that he has made payment in several installments totaling to more than an amount of Rs.4,25,000/- in the following manner as is mentioned in Mark-A.

<b>Sr. No.</b>	<b>Receipt Sr. No.</b>	<b>Date</b>	<b>Amount</b>
1.	528	20/12/2009	Rs.11,140/-
2.	753	04/02/2012	Rs.10,000/-
3.	863	09/03/2010	Rs.12,335/-
4.	981	02/04/2010	Rs.10,000/-
5.	1212	31/05/2010	Rs.11,135/-
6.	3069	30/06/2011	Rs.12,340/-
7.	1364	31/07/2010	Rs.12,300/-
8.	393	21/11/2009	Rs.12,340/-
9.	1652	30/06/2010	Rs.12,350/-
10.	1878	31/10/2010	Rs.12,350/-
11.	2177	31/12/2010	Rs.5,000/-
12.	2007	30/11/2010	Rs.12,300/-
13.	1096	30/04/2010	Rs.12,330/-
14.	1754	30/09/2010	Rs.12,350/-
15.	1528	31/08/2010	Rs.6,500/-
16.	2776	30/04/2011	Rs.10,340/-
17.	3514	30/09/2011	Rs.12,300/-
18.	3200	31/07/2011	Rs.10,000/-
19.	2300	31/01/2011	Rs.11,300/-
20.	2581	31/03/2011	Rs.12,340/-
21.	2942	31/05/2011	Rs.12,300/-
22.	6345	31/01/2013	Rs.12,340/-
23.	8875	31/12/2013	Rs.7,500/-
24.	4805	30/04/2012	Rs.10,000/-
25.	4990	31/05/2012	Rs.12,340/-
26.	5179	13/07/2012	Rs.6,000/-
27.	6250	12/01/2013	Rs.7,000/-
28.	4398	21/02/2012	Rs.12,335/-

29.	3865	30/11/2011	Rs.11,300/-
30.	5347	10/08/2012	Rs.5,000/-
31.	5513	03/09/2012	Rs.12,340/-
32.	5647	30/09/2012	Rs.12,340/-
33.	6767	31/03/2013	Rs.11,350/-
34.	6048	03/12/2012	Rs.11,500/-
35.	7252	31/05/2013	Rs.6000/-
36.	8373	31/10/2013	Rs.10,000/-
37.	4155	31/12/2011	Rs.11,000/-
38.	7479	30/06/2013	Rs.5,500/-
39.	7649	31/07/2013	Rs.6,500/-
40.	9077	31/01/2014	Rs.8,000/-
41.	4624	31/03/2012	Rs.12,330/-
42.	9725	04/05/2014	Rs.21,000/-
<b>Total</b>			<b>Rs.4,45,025/-</b>

Upon perusal of all the said receipts it is apparent that these receipts were issued by defendant no.1 to the plaintiff. Plaintiff states that despite making payment of the excess amount to the tune of Rs.4,25,000/- yet the defendants are asking for more money and not issuing the no objection certificate and trying to take possession of the TSR in question. On the other hand, the defendant no.1 states that the total amount for the TSR was Rs.4,11,000/- out of which only Rs.1,11,000/- was paid as down payment by the plaintiff and Rs.3Lakhs were financed. It is further stated that in October, 2011 as the plaintiff had additional financial need, a loan agreement/vehicle loan-cum-hypothecation agreement dt.23/10/2011 was executed between the plaintiff and defendant no.2. Further, defendant no.2 has stated that it had authorized defendant no.1 to accept payment on behalf of defendant no.2 and also issue proper receipts in this regard. Defendant no.2 further stated that plaintiff had entered into a hypothecation-cum-loan agreement Ex. PW-1/D1 whereby the plaintiff was supposed to pay 36 monthly installments of Rs.12,335/- each, but the plaintiff has always defaulted in making the repayments. It is further stated that plaintiff is yet to pay Rs.1,95,360/- till July, 2014. In order to support his case, the plaintiff has relied upon Ex. PW-1/4 i.e. permit issued by Transport Department, Government of NCT of Delhi,

Registration Certificate of the TSR in question Ex. PW-1/3 which shows that the vehicle is hypothecated with the defendant no.2 and the name of the owner is shown as of the plaintiff. Mark-A are the receipts of payments issued by the defendant no.1 to the plaintiff.

Defendants on the other hand, have relied upon Ex. PW-1/D1 which is the loan agreement/vehicle loan-cum-hypothecation agreement dt.23/10/2011 executed between the plaintiff and the defendant no.2 allegedly for further loan of Rs.3Lakhs which was to be repaid in 36 installments and which carried an interest of Rs.1,44,000/-.

Plaintiff relied upon various other documents like, invoice, receipt for grant of permit to one Sh. Rakesh, Registration Certificate of vehicle showing previous owner's name i.e. Sh. Rakesh, previous Registration Certificate, certain other receipts, legal notice, etc.

Documents bearing Mark-X-9 dt.08/07/2011 issued by the Transport Department reflects that the cancellation of hypothecation of Delhi Auto was requested and addition of hypothecation of defendant no.2 was done on 08/07/2011 whereby the loan agreement is dt.23/10/2011. Therefore, in these circumstances the defendant sought to argue that the hypothecation documents was executed later whereas the request with the Transport Department for deletion of defendant no.1 and addition of defendant no.2's hypothecation was done few months prior to that which is very surprising. It is further pertinent to note that during the cross-examination of the defendant, he had stated that the plaintiff approached to him for the purchase of TSR in the year 2011 whereby as above noted in the written statement it has been clearly stated by the defendant no.1 that the plaintiff approached the defendant no.1 in the year 2009. There is clear contradiction in the testimony of defendant no.1.

It is further pertinent to note that defendant no.1 during his testimony also stated that certain relevant documents were executed by the plaintiff in the year 2009 i.e. the actual year when the plaintiff took possession

of the TSR in question. It was stated that there were documents like, hire purchase agreement, Superdari, etc. He stated that he has not carried such documents executed in the year 2009. However, he stated thereafter on the other day of his cross-examination that he has not brought the purchase agreement for the year 2009 as such documents were not traceable. In these circumstances, it is not difficult to believe that no such documents were executed by the defendants in the year 2009 and this also supports testimony of the plaintiff that he was made to sign by the defendants on dotted lines and blank papers. The said position is not very difficult to believe considering the fact that the plaintiff is an Auto driver and earns his livelihood by plying Auto/TSR.

Defendant no.1/DW-1 further admitted that he had not issued any receipt for down payment of Rs.1,11,000/- by the plaintiff. He stated that there is no system for issuance of receipts regarding down payment. Such position is extremely difficult to believe as when a payment is made by one party to another especially during such commercial transactions, receipts are issued for each and every transaction so as to ensure transparency, to show authentication of the transaction and for record. During his cross-examination, defendant no.1/DW-1 further stated that the company price/invoice price of the TSR in question was about Rs.1,35,000/- in the year 2008, however, he voluntarily thereafter stated that as per the replacement scheme, the sale price in the market was Rs.4,11,000/- in the year 2009. However, it is quite apparent from the entire evidence led on record that defendants have miserably failed to place on record any document to prove or even vaguely show that the sale price of the second hand TSR in question in the year 2009 was around Rs.4,11,000/-.

The plaintiff has vehemently relied upon receipts bearing Mark-A which have been stated in Para-9 of the plaint. In response to Para-9 in para wise reply of the written statement, it is stated by the defendants that plaintiff has not mentioned the date of payments/receipt numbers and the defendants

reserved the right to reply when specific date of payments/receipt numbers would be provided. It is pertinent to note that the receipts i.e. Mark-A were filed alongwith the plaint itself and which clearly mentions the date and the receipt number and in these circumstances there is no specific denial to the receipts issued by the defendant no.1 which in fact amount to admission. There is no difficulty in holding that the defendants have admitted the contents and the figures mentioned in Mark-A i.e. the receipts issued by defendant no.1 for payments made by the plaintiff in respect of the TSR in question. The fact that the receipts have been issued by defendant no.1 and not defendant no.2 also takes relevance from the averment made by the defendant no.2 in their written statement that defendant no.2 had authorized defendant no.1 to receive payments on its behalf. The total of the payments made by the plaintiff to the defendants as per receipts Mark-A is Rs.4,45,025/- which is well beyond the invoice price of the TSR in question in the year 2008. Even if the unsubstantiated testimony of defendant no.1/DW-1 is to be believed that the resale value of TSR as per replacement scheme was Rs.4,11,000/-, yet the plaintiff has made payments of Rs.4,45,025/- which is in fact more than total amount to be paid, i.e., Rs.4,11,000/- as claimed by the defendant himself.

The testimony of defendant is also difficult to believe as the price of a second hand vehicle is usually lesser than the brand new vehicle and the defendants neither made any submission nor placed on record any document so as to substantiate its allegation that the cost of the second hand TSR was in fact more than the brand new one. Even though, there are no documents pertaining to the transaction whereby the TSR was handed over by the defendant no.1 to the plaintiff, yet the plaintiff has substantially proved on record that the TSR was given by defendant no.1 to the plaintiff and the plaintiff had been paying the monthly installments to the defendant no.1 in this regard. As substantial payments have already been made by the plaintiff to the defendant no.1 some of which were collected even on behalf of

defendant no.2, therefore, defendants are bound to issue a no objection certificate in favour of the plaintiff so that the hypothecation on the Registration Certificate of the TSR in question can be cancelled. It is also surprising to note in this case that even though the defendants have alleged that plaintiff is yet to make payment of Rs.1,95,360/- (payable till July, 2014) yet the defendants have not initiated any proceedings against the plaintiff for recovery of such amount, which goes on to support the version of the plaintiff itself that he has already made substantial payments to the defendants as per their understanding.

A bare perusal of Ex.PW-1/D1 also reflects that the plaintiff was asked to sign on dotted lines. It is the allegation of defendant no.1 that the total amount of the TSR in the year 2009 was Rs.4,11,000/- out of which Rs.1,11,000/- was paid by the plaintiff as down payment and Rs.3Lakhs was financed in July, 2009. It has been further stated by the defendants that Rs.3Lakhs were again financed by the plaintiff in October, 2011 through the defendant no.2. A bare perusal of Mark-A i.e. the receipts would show that certain payments were made to the defendants by the plaintiff between the year 2009 and 2011 as is set out in the table above. In these circumstances, it is highly suspicious that when the earlier financed amount of Rs.3Lakhs was being paid by the plaintiff in installments, even though irregular, then where was the need to again execute another loan-cum-hypothecation agreement on dotted lines in October, 2011 i.e. Ex. PW-1/D1. Furthermore, the defendants' written statement is completely silent on the aspect as to what happened to the payments made by the plaintiff between the year 2009 and 2011. From a comprehensive perusal of the documents and testimony led on record, it is evident that plaintiff being an Auto driver has suffered immense agony and harassment at the instance of the defendant companies as despite making substantial payments to the defendants, yet the defendants have not issued appropriate letter/no objection certificate so that the hypothecation be cancelled on the Registration Certificate of the TSR. If at all the stand of the

defendants were to be believed then they always had the remedy of filing appropriate proceeding for recovery of money from the plaintiff, but admittedly the defendants did not resort to any such proceedings, therefore, giving more strength to the arguments of the plaintiff that entire repayment has been made already. The present case pertains to injunction which is an equitable relief and on weighing the evidence led on record by both the parties, the scale is tilted in favour of the Plaintiff and Plaintiff has established on record the payments made by him to the Defendants.

In these circumstances, the court considers it appropriate that a decree be passed restraining the defendants permanently from taking repossession of the TSR in question i.e. TSR bearing Registration No.DL-1RL-1297, Chassis No.12080 and Engine No.45938. The defendants are hereby further directed to issue a no objection certificate in favour of the plaintiff so that the hypothecation on the TSR in question be cancelled on the Registration Certificate within 30 days from today.

11. **Issue no.(d) -**

**(d) Relief –** In view of the findings given on issues no.(a) to (c), documents placed on record, pleadings of the parties and evidence led by the parties, the plaintiff has proved his case on the scale of preponderance of probabilities. Accordingly, the suit of the plaintiff is hereby decreed and following reliefs are awarded to the plaintiff.

(a) A decree of permanent injunction in favour of plaintiff and against the defendants thereby restraining the defendants permanently from taking repossession of the TSR in question i.e. TSR bearing Registration No.DL-1RL-1297, Chassis No.12080 and Engine No.45938.

(b) A decree of mandatory injunction in favour of plaintiff and against the defendants thereby directing the defendants to issue a no objection

certificate in favour of the plaintiff, so that the hypothecation of the TSR in question be cancelled on the Registration Certificate, within 30 days from today.

(c) Costs of the suit.

Decree sheet be prepared accordingly. File be consigned to record room after completing the necessary formalities.

(BHARAT AGGARWAL)  
Civil Judge, Delhi (West)-02

Pronounced, through video conferencing through Cisco Webex Application, on 25/08/2020.