

IN THE COURT OF AURANGZEB, DISTRICT & SESSIONS
JUDGE/JUDGE DISTRICT CONSUMER COURT
GUJRAT

Case No.45-2018

Syed Zaheer Abbas, S/O Syed Riaz Hussain, Caste Syed, R/O Mojoke Sydean,
Tehsil and District, Gujrat.

Vs

Zahid Afzal Warraich (Owner) New Jubilee Motors, Waqar Plaza, Near Mosque
Peer Walayat Shah, Jinnah Road Gujrat. 0302-6290172.

Date of institution	12-03-2019
Date of decision	24-04-2019
Complainant by	Farrukh Anwar advocate
Defendant by	Rizwan Butt advocate

Claim for Recovery of Damages.

Petition under order VII rule 11 of CPC

Order:-

1. *Petitioner /Defendant has moved aforesaid application contending that no cause of action, to file instant claim, is made out from the contents of the claim as well as the evidence produced by the claimant. Infact, the respondent /claimant purchased Motor Cycle and an agreement was executed in this regard. The dispute between the parties is one of civil nature, therefore, this Court has no jurisdiction to adjudicate upon the same. In these circumstances, the petitioner /defendant has prayed that claim in hand may be dismissed under order VII Rule 11 of CPC.*

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2. The respondent /claimant filed written reply asserting that petition in hand is not maintainable at this stage. Evidence of respondent /claimant has already been recorded and petition has been filed just to linger on the case. He prayed for the dismissal of the application.

3. **Arguments heard, record perused.**

4. Perusal of record shows that respondent /claimant has filed a petition/complaint for recovery of damages on the ground that petitioner /defendant committed fraud and misrepresentation in a transaction regarding sale of Motor Cycle on installments. It is noted that evidence of the respondent /claimant has already been recorded. The case was fixed for recording evidence of the defendant/petitioner, when petition in hand was moved. Section 11 of order VII of CPC is reproduced for reference:-

"The plaint shall be rejected in the following cases:-

- a) where it does not disclose a cause of action:
- b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:
- c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so:
- d) where the suit appears from the statement in the plaint to be barred by any law".

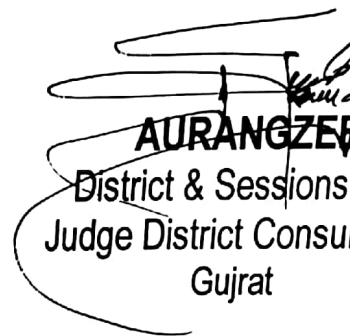
5. Only objection raised by the petitioner is regarding jurisdiction of this Court in the instant dispute. It would be appropriate to comment upon jurisdiction and

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other objections at the time of passing final judgment instead to bent upon the technicalities at this stage. Same objections have also already been taken in the written statement. So, at this stage petition in hand stand is disposed off and objections taken in the petition would be dealt and adjudicated upon in the final judgment/order.

Announced:

24 -04-2019

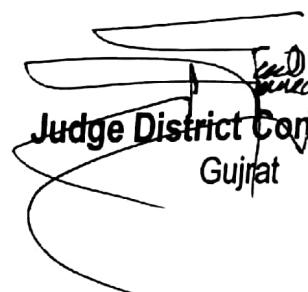

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Certificate:-

It is certified that this order consists of three pages. Each page has been dictated, read, corrected and signed by me.

Announced:

24 -04-2019


Judge District Consumer Court
Gujrat