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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO 26/2015

% Date of decision : 14th July, 2015

M/S ICICI BANK LTD ..... Appellant
Through: Mr. Punit K. Bhalla, Ms. Chetna Bhalla, Ms. Isha Abrol, Mr. Rachit Bigghe, Mr. Nitiesh Negi, Advs.

versus

M.M. INDUSTRIES & ORs ....Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT(ORAL)

1. The appellant challenged the order dated 15th January 2015, whereby the learned Trial Court has issued the summons of the suit and notice of the application under Order XL Rule 1 of the Code of Civil Procedure to the respondent. The appellant's grievance is that the learned Trial Court has not appointed the receiver to take over the possession of Skoda Yeti / 2.0 Ambiente M-T vehicle bearing registration number HR-29AA-7100 at the time of issuing the summons to the respondent.

2. Vide loan agreement dated 27th August, 2011, the petitioner advanced a loan of Rs.13,00,000/- repayable in 60 monthly instalments of Rs.28,280/-. The respondents committed default after payment of 35 EMIs. Vide notice dated 10th November, 2014, the petitioner recalled the loan and called upon to the respondents to pay the total outstanding amount. The respondents have not complied with the aforesaid notice. The amount payable by the

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respondents as on 26th November, 2014 is Rs.7,13,578.39/-.

3. Learned counsel for the appellant submits that the appellant filed an application under Order XL Rule 1 of the Code of Civil Procedure for appointment of a receiver to take over the possession of the vehicle before the Trial Court and the appellant pressed that application at the time of issuing of summons. It is submitted that the respondent has defaulted in the payment of the EMIs to the appellant bank and if the *ex parte* order appointing the receiver is not passed, it would be very difficult for the appellant to recover the vehicle from the respondent. It is further submitted that after the receipt of the summons, the respondent may remove the vehicle from his residence/office to make it difficult, if not impossible, for the appointment to trace the vehicle. It is further submitted that the delay in appointment of the receiver would also result in depreciation of the value of the vehicle. It is further submitted that the delay in appointing the receiver has caused prejudice to the appellant, who became entitled to take over the vehicle in terms of the agreement at the time of recalling the loan. Learned counsel for the appellant further submits that the Trial Court has not given any reasons whatsoever for declining the appellant's prayer for appointment of an *ex parte* receiver. Learned counsel for the appellant further submits that notice to the appellant had already been dispensed with vide order dated 28th January, 2015 since the appellant is seeking *ex parte* appointment of the receiver.

4. On careful consideration of the submissions made learned counsel for the appellant, this Court is satisfied that the appellant has made out a case for *ex parte* appointment of a receiver. The appeal is, accordingly, allowed and Mr. Sameer Dhar, representative of the appellant bank is appointed as

receiver to take the possession of Skoda Yeti car bearing registration No. HR-29AA-7100.

5. The receiver shall take over the possession of the vehicle from the respondent at the address(es) given in the loan application. If the vehicle is not available at the said address(es), the receiver shall be at liberty to recover the vehicle wherever found. However, the receiver shall not stop a running vehicle on the road to forcibly take out the driver to take the possession of the vehicle. The receiver shall also not make any attempt to block the passage of a car to bring it to a halt to take its possession.

6. The receiver shall avoid taking the possession of the vehicle if the vehicle is occupied by a woman who is not accompanied by a male member or an elderly, infirm or physically/mentally challenged person. In such cases, the receiver shall take the possession of the vehicle from the borrower's residence.

7. The receiver shall be at liberty to take the assistance of the local police, if required, for taking over possession of the vehicle. The concerned SHO shall provide assistance to the receiver as and when requested.

8. The receiver shall also ensure that the repossession of the vehicle does not result any breach of the peace. In the event of any breach of peace by the person occupying the vehicle, the receiver shall not proceed without assistance of police.

9. At the time of taking the custody of the vehicle, the receiver shall deliver copy of this order to the person from whom the possession is taken.

10. At the time of taking the custody of the vehicle, the receiver shall take the photographs of the vehicle from different angles along with the person(s) occupying the vehicle as well as the place of taking over the possession.

11. The receiver shall prepare an inventory of the articles/accessories found in the vehicle and shall furnish the copy of the inventory to the person from whom the possession is taken.

12. After taking the vehicle in possession, the receiver shall keep the vehicle in safe custody.

13. If the respondent makes payment of the outstanding instalments as on date of possession, the receiver shall release the vehicle in question to the respondent on s*uperdari* subject to an undertaking by the respondent to the receiver for regular repayment of future monthly instalments till the expiry of the tenure and a declaration not to part with the vehicle or create third party interest in the vehicle until the entire amount is paid.

14. If the respondent is not in a position to clear the entire outstanding instalments, the receiver shall give him another opportunity to pay the outstanding instalments within 30 days of taking over the possession of the vehicle and in case the respondent makes the payment the outstanding instalments within the said period, the receiver shall release the vehicle to the respondent subject to an undertaking as aforementioned.

15. If the respondent does not make the payment of the outstanding amount to the appellant bank within 60 days, the receiver, would be authorised to sell the vehicle in question in a public auction with prior written notice (to be sent by Speed Post AD) of the date of auction to the respondent at the address(es) mentioned in the loan agreement or the address from where the vehicle is taken into possession so that the respondent may

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also be able to participate in the auction to enable the appellant to fetch maximum amount from the sale of the vehicle. The receiver shall carryout video recording of the auction proceedings and shall submit the same before the Trial Court along with his final report.

16. That the receiver shall submit his first report before the Trial Court within 10 days of taking the custody of the vehicle along with the photographs and inventory mentioned above. The final report shall be submitted before the Trial Court within 10 days of the public auction along with the proceedings for public auction and video recording of the public auction.

17. The appeal is disposed of in the above terms. Copy of the judgment be given *dasti*.

18. The Trial Court record be sent back forthwith.

J.R. MIDHA, J.

JULY 14, 2015
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