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

\+ FAO 436/2015

ICICI BANK LTD ..... Appellant

Through: Mr. Punit K. Bhalla and Ms. Chetna Bhalla and Ms. Isha Abrol, Advs.

versus

PAWAN KUMAR YADAV ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

<u>O R D E R</u>

% **23.12.2015**

<u>CM No.32322/2015 (Exemption)</u>

1. Allowed subject to just exceptions.

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2. This is an appeal directed against order dated 27.11.2015, passed by the learned Additional District Judge (ADJ). By this order, the learned ADJ has agreed to the appellant's prayer for appointment of a receiver in respect of the vehicle described as "HONDA CITY/1.5 V-MT bearing registration No.HR-26CB-2003", albeit on certain conditions.

3. Broadly, the conditions, which have been indicated in the impugned order and, with which, the appellant is aggrieved, are as follows:-

(i) The appointment of Mr. Mohit Sharma, Advocate along with Mr. Gyanesh Kumar, a representative of the appellant / plaintiff, as a co-receiver.

(ii) The direction that the co-receiver, i.e. Mr. Mohit Sharma, Advocate, would be paid a fee of Rs.20,000/-; with a further direction that the said fee would be paid within seven days from the date of the impugned order.

(iii) The receivers will ensure that the subject vehicle is kept in safe custody, albeit within the territory of the court, i.e. the Central District.

(iv) Upon payment of 50% of the loaned amount, the subject vehicle will be released to the respondent or his representative on *superdari*.

(v) The validity period of the order is confined to 30 days.

4. Mr. Bhalla says that these conditions are onerous and, in a sense, unworkable.

5. It is Mr. Bhalla's contention that since the suit amount is a sum of Rs.5,56,312.59 inclusive of interest, the direction to pay fees of Rs.20,000/- to a co-receiver appointed by a court, especially, when the very recovery of the dues is uncertain, is a heavy burden cast on the appellant/plaintiff. It is his contention that the appellant/plaintiff is ultimately dealing with public funds. It is submitted that the receivership order passed by the trial court can be easily executed by an officer of the appellant/plaintiff.

6. As regards the other condition, which requires the receiver to keep the subject vehicle within the territorial jurisdiction of the court, i.e. the Central District, Mr. Bhalla says that the appellant/plaintiff does not have a godown within the territorial jurisdiction of the court. It is the submission of the learned counsel that hiring a place within Central District, will involve expenses, which, again, makes the proposition of recovery by instituting the present action unworkable and impracticable.

7. Mr. Bhalla, as indicated above, is also aggrieved by the condition contained in the order which directs release of the subject vehicle to the

respondent /defendant on deposit of only 50% of the loaned amount. He says that the principal amount loaned to the respondent / defendant was a sum of Rs.7 lakhs, and because, defaults were committed, the suit amount came to a figure of Rs.5,56,312.59. 50% of the loaned amount, according to the learned counsel, would leave a huge monetary gap, which may, ultimately, be difficult to bridge, as there is no other security except the subject vehicle.

8. Insofar as the other condition placed in the impugned order, which is indicative of the fact that the order will remain in operation only for a period of 30 days, Mr. Bhalla says, that the said condition is also unworkable for the reason that more often than not it is very difficult to trace the subject vehicle. In case the appellant / plaintiff is unable to trace the subject vehicle within the given period, it would have to, once again, move the court by way of a fresh application.

9. For all these reasons, Mr. Bhalla says that the order needs to be interfered with by this court.

10. Having regard to the submissions of Mr. Bhalla, I am inclined to agree with him. A receiver appointed in an action instituted by a bank, essentially, seeks to secure what are in effect public funds. With Non Performing Assets (NPAs) of banks reaching a staggering figure, trial courts have to keep this aspect in mind even while it seeks to balance the interest of the borrowers, especially, small individual borrowers, who are in genuine financial crises.

10.1 In this context, at the ex-parte stage, apart from the other impugned directions, for the trial court to direct release of the subject vehicle if, 50%

of the loan amount is paid, was not appropriate. The trial court needs to assess the financial position and other attendant difficulties of the borrower. The trial court, in this case, as is perceptible from the action instituted, appointed a receiver to secure what are, essentially, public funds at the end of the day.

10.2 Furthermore, for the trial court, to put unnecessary fetters on the working of a receiver does not inure to the benefit of the person asking for the said relief, much less a bank. Once the court was convinced that the appellant had a *prima facie* case qua recovery, and there was a default in payment of dues then, ordinarily, the appointment of a receiver, in the case of a bank, should have followed as a matter of course.

11. In these circumstances, the impugned order is modified to the following extent:-

(i) Mr. Gyanesh Kumar, who I am told, is a representative of the appellant, is appointed as the sole receiver.

(ii) The receiver shall take possession of the subject vehicle. The receiver will keep the vehicle at the place provided by the appellant/plaintff.

(iii) In case the respondent pays the entire amount, which is, due and payable, the subject vehicle will be released to the respondent on *superdari*. In such an eventuality, the receiver will issue a receipt in that behalf to the respondent.

(iv) Further more, if necessary, the receiver will be entitled to take assistance of the concerned police station.

12. It is made clear that other directions issued by the trial court with regard to the manner of taking possession shall be borne in mind by the

receiver. *Inter alia*, the receiver, will bear in mind that due courtesies are extended to the respondent, while taking possession of the subject vehicle.

13. The receiver will also bear in mind the time and place at which the possession of the subject vehicle is taken, so that, no inconvenience is caused to the respondent.

14. The receiver will file a report with the trial court on or before the next date of hearing.

15. In case, on that date, the possession of the subject vehicle is not taken, on account of failure to discover the location of the vehicle, the trial court will be at liberty to extend the operation of this order.

16. The appeal is disposed of, in the aforesaid terms.

17. Dasti.

RAJIV SHAKDHER, J

DECEMBER 23, 2015
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