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

\+ CM(M) 826/2016

ICICI BANK LTD ..... Petitioner

Through Mr. Punit K. Bhalla, Advocate.

versus

PRATEEK GOEL ..... Respondent

Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

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

% **01.09.2016**

<u>CM No. 30981/2016 (exemption)</u>

Exemption is allowed subject to all just exceptions.

<u>CM(M) 826/2016</u>

1. By the present petition, the petitioner seeks to impugn the order dated 28.5.2016. The petitioner had filed a suit for recovery of outstanding amount of Rs.4,58,071/- on account of vehicle loan. Along with the suit an application under Order 40 Rule 1 CPC for appointment of receiver to take possession of the vehicle bearing registration No.DL-8C-AG-4832 was also filed.

2. By the impugned order, the trial court allowed the application of the petitioner and appointed an advocate as a court receiver on terms and conditions stated therein.

3. The learned counsel for the petitioner submits that his grievance is

limited to the fact that the trial court has appointed an advocate as receiver whereas the request of the petitioner was for appointment of an officer of the company as a receiver. He submits that there are two grounds on which the appointment of an advocate would be inappropriate. Firstly, he submits that the recovery of the loan amount given to the respondent is itself in doubt and by paying the fees of the advocate; the petitioner would be incurring additional expenditure without any benefit to the petitioner. Secondly, he submits that an advocate would also be engaged in his professional activities and as and when the car/vehicle is spotted, he will not be in a position to go and physically take the possession of the vehicle.

4. He also relies on the earlier judgment of this court passed in F.A.O. No.436/2015 titled *ICICI Bank Ltd. vs. Pawan Kumar Yadav* dated 23.12.2015 wherein in similar facts and circumstances, this court had modified the order of the trial court appointing an advocate as the receiver and had appointed an officer of the bank as receiver.

5. In my opinion, there is merit in the contentions of the learned counsel for the petitioner. No purpose is served by appointing an advocate and directing the petitioner to pay professional fees to the said advocate for the said purpose in the facts and circumstances, namely, that the recovery of the loan amount itself is doubtful. Further, as rightly pointed out, the advocate may not be in a position to devote his time in the manner as may be required for the purpose of executing the order.

6. I may note that this court in the case of *ICICI Bank Ltd. vs. Pawan Kumar* Yadav (*supra*) noted as follows :-

> *"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.

7. In view of the above, the present petition is allowed. The impugned order shall stand modified to the extent that instead of Sh. Ashish Chandra, Advocate being appointed as a receiver, Sh. Ikkramudin, Representative of the Bank is appointed as a receiver to take into custody the vehicle on the same terms and conditions as stated in the impugned order. Needless to add, he will not be entitled to any fees.

8. The petition stands disposed of.

9. *Dasti*.

JAYANT NATH, J

SEPTEMBER 01, 2016