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

% **Date of Decision:26.09.2016**

\+ CM(M) 967/2016 & CM No.35435/2016

ICICI BANK LTD ..... Petitioner

Through Mr.Punit K.Bhalla, Adv.

versus

KAMAL KUMAR ..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. In the present petition the petitioner's grievance is that alongwith the suit the petitioner had filed an application under Order 40 Rule 1 CPC for an ex parte ad interim order appointing a Receiver which relief has not been even looked into by the impugned order.

2. The case of the petitioner is that the petitioner advanced a vehicle loan to the respondent. As there have been repeated defaults in payment of the monthly instalment, the petitioner recalled the vehicle loan and has filed the present suit for recovery. Learned counsel appearing for the petitioner relies upon a judgment of this Court in FAO 7/2016 titled ***ICICI Bank Limited vs. Updesh Nagar*** dated 05.01.2016 to contend that in identical facts this Court had held that appointment of an ex parte Receiver would be in order.

In the said judgment titled as ***ICICI Bank Limited vs. Updesh Nagar*** this court held as under:-

> "6.1 In my opinion, issuance of a mere notice can, in certain set of circumstances, cause prejudice to the applicant; the present matter is one such case.
>
> 6.2 On the aspect as to how a court is to proceed where a request, for appointment of a receiver, is made by a bank or a financial institution – the following observations of the Full Bench of the Bombay High Court, in the case of ***State Bank of India vs Trade Aid Paper and Allied Products (India) Pvt. Ltd. & Ors. AIR 1995 Bom 268,*** being instructive are required to be noticed.
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> 6.3 Briefly, the court in its judgment exhorts adoption of a practical approach while exercising power of appointment of a receiver in the case of banks and financial institutions having regard to the fact that they deal in public funds :-
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>> "…Indeed, it is the duty and function of the Court entertaining the suits instituted by Banks and financial institutions to ensure that efforts are made to dispose of the suits as early as possible and even during the pendency of the suits, ensure that not only the properties are protected but the defendant is made to repay the amount, if desirous of enjoying the benefits secured by obtaining the loan. The powers of the Court under Order 40, Rule 1 of the Code of Civil Procedure are to be exercised to advance cause of justice and what is „just and convenient" depends upon the nature of the claim and the surrounding circumstances. The Court should not close eyes to the realities and blindly follow the principles laid down 50 years before when the suits by Banks and financial institutions were a novelty. The economic liberalization and the policy of the Government to

grant loans for various activities have increased the number of suits by Banks and financial institutions and in this Court every year more than 2,000 suits are instituted. It would not be difficult to imagine how much public money is involved in these suits and how long the Nationalised Banks and financial institutions are deprived of their dues. The Court should be conscious of these facts and should be more pragmatic in exercising powers under Order 40, Rule 1 of the Code of Civil Procedure." (Emphasis is mine)

6.4 To be noted, the abovementioned Full Bench judgement of the Bombay High Court in State Bank of India vs Trade Aid Paper and Allied Products (India) Pvt. Ltd. & Ors. case was taken up in appeal to the Supreme Court only on one issue which was qua the embargo put in place by the court on the aspect of sale of the property by the receiver prior to a decree being passed in the suit. The Supreme Court over-ruled the Full Bench judgement on this aspect and stated, in no uncertain terms, in its judgement in the case of ***ICICI Ltd. & Ors. vs Karnataka Ball Bearings Corpn. Ltd. & Ors. (1999) 7 SCC 488,*** that no such fetter is contemplated on the powers of the receiver appointed under the provisions of Order 40 Rule 1 of the CPC. In other words, the Supreme Court went as far as to observe that a receiver, pursuant to the directions issued by the court in that behalf, is empowered to sell the property even before a decree is passed in the suit. This, according to the Supreme Court, is discernable on a plain reading of provisions of Order 40 Rule 1 of the CPC. (See : ***ICICI Bank Ltd. v. Collage Estates Pvt. Ltd. & Ors., 2015 SCC Online Del 12143***)

7. Having regard to the above, to the extent, the impugned order declines the prayer made for an exparte appointment of a receiver; that part of the order, is set aside."

3. Keeping in view the above judgment of this Court, it is clear that in the facts of this case a receiver should have been appointed by the trial court.

Hence, Mr.Sanjeev Jain representative of the petitioner/bank is authorised to take possession of the vehicle, namely, SWIFT/LDI bearing Registration No.HR-51BH-3964 from the possession of the respondent from agents or from anyone else. The Receiver will abide by the following terms and conditions:-

> "(i) The receiver, while taking possession of the subject vehicle will ensure that the due courtesies are extended to the respondent/ defendant.
>
> (ii) The receiver will also keep in mind the time and the place where the subject vehicle is taken possession of. If, at the time of taking possession, the respondent/ defendant were to pay the sums, which are due and payable then as stated below in para 4, the receiver, will issue a receipt in that behalf to the respondent/ defendant and release the vehicle on superdari to him.
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> (iii) In case the police assistance is required, the receiver will approach the Station House Officer manning the nearest police station, who, in such an eventuality, shall render due assistance to enable compliance in the matter.
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> (iv The receiver will file his report with the trial court within ten days of taking possession of the subject vehicle.
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> (v) In case the receiver is successful in obtaining possession of the subject vehicle before the next date of hearing, the trial court will pass appropriate orders on the next date of hearing.
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> (vi) However, in case the subject vehicle is not traced till the next date of hearing, the trial court will, accordingly, extend the period for locating the vehicle and, in that behalf, pass appropriate orders in the pending application."

4. In the eventuality the respondent tenders the full amount of

instalments in default to the petitioner/Receiver minus the penalty and other surcharges and also files an undertaking to continue to pay the monthly instalment as agreed upon in future, the receiver shall release the vehicle to the respondent on superdari forthwith. With the above observations, the present petition stands disposed of. All pending applications, if any, also stand disposed of accordingly.

5. A copy of this order be given dasti under signatures of the Court Master to counsel for the petitioner.

JAYANT NATH, J

SEPTEMBER 26, 2016

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