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

% *Date of Decision: 12.04.2017*

\+ CM(M) 385/2017

ICICI BANK LTD ..... Petitioner

Through Mr.Puneet K.Bhalla, Adv.

versus

ADESH KUMAR ..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

CM No.13682/2017 (Exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 385/2017

1. An advance copy of the petition has been sent to the respondent but none is present on behalf of the respondent.

2. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 1.4.2017 by which the trial court has merely kept the application pending u/o 40 R 1 without passing any orders in the same.

3. The petitioner has filed a suit for recovery of Rs.3,38,713.61/-. It is stated that the respondent had approached the petitioner for grant of loan for purchase of a vehicle ‘I 10 GRAND/MAGNA bearing Registration No. UP-14CE-5083and entered into a loan Agreement under the loan-cum-hypothecation scheme of the petitioner bank. The respondent was to repay the loan in 60 equated monthly instalment of Rs.8,894/-. The money was

disbursed to the respondent. Various documents were executed by the respondent. The respondent had also approached the petitioner for grant of personal loan of Rs. 1,60,000/- against the security of the said vehicle and entered into a loan Agreement under the loan-cum- hypothecation scheme of the petitioner bank. The respondent was to repay the loan in 36 equated monthly instalment of Rs.5,546/-. The respondent failed to adhere to the financial discipline and several equated monthly instalments were not paid. Along with the plaint the petitioner filed an application for appointment of a receiver relying upon the judgment of this court dated 15.09.2016 passed in CM(M) 1279/2015 titled as "ICICI Bank Ltd. vs. Meera Lal". On account of default, the petitioner recalled the loan facility by sending a recall notice dated 10.08.2016.

4. In the petition filed it is urged that sale, disposal, transfer of the vehicle, which is the only security with the petitioner, would cause irreparable loss and damage to the petitioner and deprive the petitioner of its legal and contractual rights. The petitioner strongly apprehends that the only security shall be disposed by the petitioner. Hence, it is urged that the trial court ought to have appointed a Receiver to possess the vehicle in question.

5. Reliance is placed on a judgment of this Court in ***ICICI Bank Ltd. Vs. Updesh Nagar*** in ***FAO 7/2016*** dated 5.1.2016. In that judgment passed under somewhat similar facts, this court observed as follows:-

> "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.
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> 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.

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 :-

> "…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***)

6. It was in view of the above legal position that this court in CM(M) 1279/2015 appointed a Receiver.

7. It is not clear as to why the trial court did not deal with the application for appointment of receiver. The judgment dated 15.09.2016 has been passed in a case with almost identical facts. That case also pertained to a vehicle loan against hypothecation of the vehicle. There was failure on the part of the respondent therein to pay necessary EMIs. In view of the above, the said order is modified.

8. Mr. Karunakar Tripathy, the representative of the petitioner Bank is appointed as the Receiver with the following directions

8.1 The receiver, while taking possession of the subject vehicle will ensure that the due courtesies are extended to the respondent/ defendant.

8.2 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, the receiver, will issue a receipt in that behalf to the respondent/ defendant and release the vehicle on superdari to him.

8.3 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.

8.4 The receiver will file his report with the trial court within ten days of taking possession of the subject vehicle.

8.5 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.

8.6 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."

9. Petition stands disposed of. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J

APRIL 12, 2017

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