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

%   Judgment Delivered on: February 10, 2017

\+   W.P.(C) 9232/2016

M/S ICICI BANK LIMITED ..... Petitioner
Through Ms. Chetna Bhalla, Advocate.

versus

GURVINDER SINGH BHANDAL ..... Respondent
Through None

\+   W.P.(C) 9236/2016

ICICI BANK LTD ..... Petitioner
Through Ms. Chetna Bhalla, Advocate.

versus

ARUN KUMAR & ANR ..... Respondents
Through None

\+   W.P.(C) 9240/2016

ICICI BANK LTD ..... Petitioner
Through Ms. Chetna Bhalla, Advocate.

versus

SHIV PAL SINGH CHAUDHARY ..... Respondent
Through None

\+ W.P.(C) 9245/2016

M/S ICICI BANK LIMITED ..... Petitioner
Through Ms. Chetna Bhalla, Advocate.

versus

ASHOK SHARMA ..... Respondent
Through None

\+ W.P.(C) 9246/2016

M/S ICICI BANK LIMITED ..... Petitioner
Through Ms. Chetna Bhalla, Advocate.

versus

BALJINDER SINGH ..... Respondent
Through None

\+ W.P.(C) 9256/2016

ICICI BANK LTD ..... Petitioner
Through Ms. Chetna Bhalla, Advocate.

versus

PANKAJ GARG ..... Respondent
Through None

\+ W.P.(C) 9258/2016

ICICI BANK LTD ..... Petitioner
Through Ms. Chetna Bhalla, Advocate.

versus

MAINAWATI ..... Respondent

Through None

CORAM:
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

JUDGMENT

INDIRA BANERJEE, J (ORAL)

1. In all these writ petitions, the petitioner, ICICI Bank Limited has challenged orders of the Debt Recovery Appellate Tribunal dismissing the appeals filed by the petitioner against orders of the Debt Recovery Tribunal-1 Chandigarh, whereby the prayer of the petitioner for ex parte appointment of Receivers was declined, and notices were directed to be issued to the respective respondents.

2. The issues in all the writ petitions being identical, the same were heard together, and are now being disposed of by this common judgement and order.

3. The respondents in the writ petition approached the petitioner for finance for purchase of vehicles, particulars whereof have been given in the writ petitions. The respondents were advanced loans to purchase the vehicles on terms and conditions specified in the loan agreements.

4. In terms of the loan agreements, the respondents were required to repay the loans in monthly instalments, as specified in the loan agreements. The respondents paid some monthly instalments, but thereafter committed defaults in payment of monthly instalments.

5. By way of security for the finance advanced by the petitioner, to the respondents, the respondents hypothecated their respective vehicles to the petitioner. The petitioner claims that in terms of the loan/hypothecation agreements, the petitioner had the right to take possession of the vehicles in default of payment of instalments, sell the same, and realise the proceeds thereof towards pro tanto satisfaction of its dues from the respondents.

6. The petitioner filed applications before the Debt Recovery Tribunal Chandigarh, for immediate ex parte appointment of Receivers to take possession of vehicles, hypothecated to the petitioner, in respect of which the petitioner had committed defaults in payment of instalments.

7. The learned Tribunal declined to entertain the application of the petitioners ex parte. The learned Tribunal directed that summons and/or notices be issued to the respondents. The petitioner contends that the petitioner was entitled to ex parte orders of appointment of a Receiver.

8. Being aggrieved by the refusal of the learned Tribunal to appoint Receivers over the vehicles ex parte, the petitioner appealed to the Learned Debt Recovery Appellate Tribunal, Delhi, hereinafter referred to as the learned Appellate Tribunal. Before the learned Appellate Tribunal, the petitioner prayed that instead of practising Advocates, an officer of the petitioner be appointed Receiver over the vehicles to save public money.

9. By the orders impugned in these writ petitions, the appeals have been dismissed. The learned Appellate Tribunal was of the view that there did not appear to be any urgency in the matter of appointment of a Receiver and that too by an ex parte order.

10. The learned Appellate Tribunal perused the hypothecation deeds and found that they were blank documents, which did not contain any particulars of the hypothecated vehicles. The relevant columns had not been filled up. The Appellate Tribunal found that there were no documents to show, even prima facie that the specific vehicles were in fact hypothecated by the borrowers to the applicant Bank. The learned Appellate Tribunal also arrived at the prima facie view that the borrowers were not total defaulters in payment of instalments. The learned Appellate Tribunal, therefore, declined the ex parte prayer for appointment of Receiver.

11. The operative part of one of the identical impugned orders of the learned Appellate Tribunal is extracted herein below:-

> *"In the aforesaid scenario, I am of the view that the appellant cannot be said to have made out a strong prima facie case for the appointment of a Receiver by ex parte order. However, in case the borrower enters appearance before the DRT and the matter is heard in detail, the bank can always explain the aforesaid deficiencies highlighted by this Tribunal and then the DRT would be at liberty to take any decision in accordance with law.*
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> *This appeal is accordingly dismissed with costs of Rs.10,000/- to be deposited with DRT Bar Association, Chandigarh to be utilized for its needy members. The costs shall be deposited within 10 days and the concerned Bar Association, shall be informed by the Registry about this direction. In case of default, the said Bar Association can take appropriate steps for the recovery of the costs imposed upon the appellant bank.*

12. The question is whether this Court, exercising jurisdiction under Article 226 of the Constitution of India, can sit in appeal over the decision of the learned Appellate Tribunal or in 2nd appeal against the decision of the Debt Recovery Tribunal. The answer to the aforesaid questions has to be in the negative.

13. The petitioner may be entitled to appointment of a Receiver, considering that the vehicles are hypothecated to the petitioner and that instalments payable by the respondents to the petitioner

are outstanding. *Prima facie,* the loan agreements, entitle the petitioner to take possession of the hypothecated assets. If the vehicles continue to remain in the hands of the respondents, there would be depreciation and fall in the value thereof. The vehicles would also be exposed to the risk of accidents etc. which might diminish the value of the vehicles altogether.

14. The learned Appellate Tribunal has only declined the prayer of the petitioner for appointment of Receivers at the ex parte stage. The relief prayed for by the petitioner has not been turned down.

15. Furthermore, a Receiver is an indifferent, impartial person, appointed by the Court, to receive and preserve the property in litigation pendente lite, when it does not seem reasonable to the Court that either party should hold the property. A Receiver is regarded as an officer of the Court, exercising functions in the interest neither of the plaintiff, nor the defendant but for the common benefit of all interested parties. A Receiver is frequently spoken of as “friend of the court”.

16. Even though, the petitioner may have had a right to appointment of Receiver, the petitioner had no right to insist on appointment of officers and/or representatives of the applicant bank as Receivers. The choice of Receiver would have to be left to the Court/Tribunal.

17. The only respondents in the respective writ petitions are the individual borrowers, who are neither state nor authorities amenable to the writ jurisdiction of this court, under Article 226 of the Constitution of India.

18. The Registrar, Debts Recovery Tribunal-I, Chandigarh and the Registrar, Debts Recovery Appellate Tribunal, Delhi are impleaded respondents. The memorandum of parties be amended and a fresh memorandum of parties be filed. However, no notice need to be issued to the said respondents.

19. There is, however, no such patent illegality in the impugned orders, that calls for interference by this Court, exercising jurisdiction under article 226 of the Constitution of India.

20. Prima facie, the findings arrived at by the learned Appellate Tribunal, on the basis of the materials on record before it, do not call for interference under Article 226 of the Constitution of India. The learned Appellate Tribunal has protected the right of the petitioner to pursue its applications before the Debt Recovery Tribunal after issuance of notices.

21. Notices of the applications of the applicant bank must have been served on the respondents by now. The petitioners are remanded to the Debts Recovery Tribunal. If the respondents do not appear in spite of the notice, the applications for interim relief may be disposed of in their absence, since the same

cannot be kept in abeyance indefinitely. There has to be adjudication. The petitioners are remitted to back to the Debts Recovery Tribunal-I, Chandigarh.

22. The imposition of costs on the petitioner is unfair and uncalled for since a strong prima facie case of default by the respondents in repayment of loans advanced for purchase of vehicles, which are hypothecated to the petitioner by way of security. The petitioner prima facie has the right to take possession of the hypothecated vehicles. The costs imposed by the learned Appellate Tribunal are, therefore, set aside.

23. The writ petitions are thus disposed of.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

February 10, 2017/ n