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

% **Date of Decision: 28th February, 2017**

\+ FAO 529/2016

ICICI BANK LTD ..... Appellant

Through: Mr. Punit K. Bhalla, Adv.

versus

SANDEEP KUMAR ..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. Learned counsel for the appellant seeks dispensation of the service of notice on the respondent on the ground that the impugned order was passed by the learned Trial Court before service of notice on the respondent. The Trial Court record has been perused. Considering that the impugned order was passed before service of notice on the respondent, the notice to the respondent in this appeal is dispensed with and the appeal is taken up for hearing.

2. The appellant instituted a suit for recovery of Rs.3,34,971.03 against the respondent on the ground that the appellant advanced a loan of Rs.5,30,000/- to the respondent for purchase of car make I-20/MAGNA 1.4 DSL. The loan was repayable in 60 monthly instalments of Rs.11,591/- each. The respondent executed credit facility application, deed of hypothecation and irrevocable power of attorney in favour of the appellant. The respondent defaulted in making the payment of the monthly instalments and, therefore, the

appellant recalled the loan vide notice dated 11th May, 2016. The appellant instituted a suit for recovery on 8th September, 2016 and sought an *ex parte* order for appointment of the Receiver along with suit.

3. Vide order dated 26th September, 2016, the Trial Court held that substantial cause of action arose out of Delhi as respondent is resident of Ballabgarh, Haryana; credit facility application, deed of hypothecation and irrevocable power of attorney do not bear the signature of the Bank officials and disbursement did not take place within its territorial jurisdiction. The Trial Court also dismissed the application for appointment of Receiver.

4. Learned counsel for the appellant submits that the loan was disbursed from the plaintiff's office at Videocon Tower, Jhandewalan, New Delhi; loan was repayable at Videocon Tower, Jhandewalan, New Delhi, credit facility application, deed of hypothecation and irrevocable power of attorney were executed at Delhi and the same has been specifically mentioned in the documents. Reliance is placed on the judgment of this Court in ***ICICI Bank v. Astha Kumar,*** (2015) 224 DLT 651 in which this Court set aside the similar order passed by the learned Trial Court.

5. The Trial Court record has been perused. In para 18 of the plaint, the appellant has specifically pleaded that the loan was disbursed from the plaintiff's office at Videocon Tower, Jhandewalan Branch, New Delhi and it was repayable at the same address. Para 18 of the plaint is reproduced hereunder:-

> *"That the loan was disbursed from the office of the plaintiff situated at Videocon Tower, Jhandewalan, New Delhi. The loan is repayable at Videocon*

Tower, Jhandewalan Branch, New Delhi. The said branch is situated under the jurisdiction of police station Paharganj and as majority of cause of action has taken place under the territorial jurisdiction of the Hon'ble Court. Hence this court has territorial jurisdiction to try and entertain the present suit."

6. Deed of hypothecation dated 10th September, 2013 specifically records the place of execution as Delhi. Relevant portion of the same is reproduced hereunder:-

> ***"1.A DETAILS OF PLACE AND DATE OF EXECUTION OF THIS DEED***
> ***At: DELHI-VT in the State of DELHI,***
> ***Date: The 10 day of 9, Two Thousand and 13."***

7. The original irrevocable power of attorney dated 10th September, 2013 records that the same was executed in Delhi. Relevant portion of the same is reproduced hereunder:-

> ***"IN WITNESS WHEREOF I/we, the Borrower/s, has/have executed these present at VT, Delhi (place) on this 10 day of 9 (month), 2013."***

8. In ***ICICI v. Astha Kumar***, (supra) this Court set aside a similar order passed by the Trial Court holding that Trial Court at the initial stage is required to accept the veracity of assertions made in the plaint. This case squarely covered by the principles laid down in ***ICICI v. Astha Kumar***, (supra).

9. This Court is of the view that the averments made by the appellant in the plaint and the documents showing the place of execution within the jurisdiction of the Trial Court were sufficient to issue notice to the respondent. However, it is clarified that this judgement would not preclude the Trial Court from considering the issue of jurisdiction after recording of the evidence.

10. The appeal is allowed and the impugned order is set aside. The Trial Court shall recommence the proceedings and issue notice to the respondent.

11. Learned counsel for the appellant submits that the receiver be appointed in terms of the judgment of this Court in ***ICICI Bank Ltd. v. Astha Kumar*** *(supra).* The appellant's prayer is allowed and Mr. Abhishek Saxena, a representative of the appellant is appointed as the receiver to take the possession of vehicle I-20/MAGNA 1.4 DSL bearing registration number HR-29AF-2869.

12. The receiver shall take over the possession of the vehicle from the respondent at the address(es) given in the loan application. If the vehicle is not available at the said address(es), the receiver shall be at liberty to recover the vehicle wherever found. However, the receiver shall not stop a running vehicle on the road to forcibly take out the driver to take the possession of the vehicle. The receiver shall also not make any attempt to block the passage of a car to bring it to a halt to take its possession.

13. The receiver shall avoid taking the possession of the vehicle if the vehicle is occupied by a woman who is not accompanied by a male member or an elderly, infirm or physically/mentally challenged person. In such cases, the receiver shall take the possession of the vehicle from the borrower's residence.

14. The receiver shall be at liberty to take the assistance of the local police, if required, for taking over possession of the vehicle. The concerned SHO shall provide assistance to the receiver as and when requested.

15. The receiver shall also ensure that the repossession of the

vehicle does not result in any breach of peace. In the event of any breach of peace by the person occupying the vehicle, the receiver shall not proceed without assistance of police.

16. At the time of taking the custody of the vehicle, the receiver shall deliver copy of this order to the person from whom the possession is taken.

17. At the time of taking the custody of the vehicle, the receiver shall take the photographs of the vehicle from different angles along with the person(s) occupying the vehicle as well as the place of taking over the possession.

18. The receiver shall prepare an inventory of the articles/accessories found in the vehicle and shall furnish the copy of the inventory to the person from whom the possession is taken.

19. After taking the possession of the vehicle, the receiver shall keep the vehicle in safe custody.

20. If the respondent makes payment of the outstanding instalments as on date of possession, the receiver shall release the vehicle in question to the respondent on s*uperdari,* subject to an undertaking by the respondent to the receiver for regular repayment of future monthly instalments till the expiry of the tenure and a declaration not to part with the vehicle or create third party interest in the vehicle until the entire amount is paid.

21. If the respondent is not in a position to clear the entire outstanding instalments, the receiver shall give him another opportunity to pay the outstanding instalments within 30 days of taking over the possession of the vehicle and in case the respondent makes the payment of the outstanding instalments within the said

period, the receiver shall release the vehicle to the respondent subject to the undertaking as aforementioned.

22. If the respondent does not make the payment of the outstanding amount to the appellant bank within 60 days, the receiver would be authorised to sell the vehicle in question in a public auction with prior written notice (to be sent by Speed Post AD) of the date of auction to the respondent at the address(es) mentioned in the loan agreement or the address from where the vehicle is taken into possession so that the respondent may also be able to participate in the auction to enable the appellant to fetch maximum amount from the sale of the vehicle. The receiver shall carry out video recording of the auction proceedings and shall submit the same before the Trial Court along with his final report.

23. That the receiver shall submit his first report before the Trial Court within 10 days of taking the custody of the vehicle along with the photographs and inventory mentioned above. The final report shall be submitted before the Trial Court within 10 days of the public auction along with the proceedings for public auction and video recording of the public auction.

24. The Trial Court record be returned back forthwith and the matter be listed before the Trial Court on 1st May, 2017.

25. Copy of this judgment be given *dasti* to learned counsels for the parties under signature of Court Master.

FEBRUARY 28, 2017 **J.R. MIDHA, J.**

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