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

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

\+ FAO 2/2016 & CM No.113/2016

ICICI BANK LTD ..... Appellant
Through: Mr. Punit K. Bhalla, Adv.

versus

KAMAL 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.8,08,491/- against the respondent on the ground that the appellant advanced a loan of Rs.4,40,000/- to the respondent for purchase of car make RITZ/VDI. The loan was repayable in 60 monthly instalments of Rs.9,900/- 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 3rd December, 2014 and thereafter, instituted a suit for recovery on 24th January, 2015. The appellant also sought an *ex parte* order for appointment of the Receiver along with suit.

3. Vide order dated 27th January, 2015, the Trial Court issued notice of the suit and the application for appointment of the Receiver to the respondent for 17th March, 2015. Aggrieved against the non-appointment of the Receiver, the appellant approached this Court in FAO No.49/2015 which was allowed by this Court vide judgment dated 29th May, 2015 and this Court appointed the Receiver to take over the possession of the vehicle from the respondent.

4. Vide order dated 12th August, 2015, the Trial Court held that substantial cause of action arose out of Delhi as respondent is resident of Gurgaon; credit facility application, deed of hypothecation and irrevocable power of attorney were not executed in Delhi; disbursement did not take place within its territorial jurisdiction and substantial part of the cause of action arose at the place where the respondent's bank was situated.

5. 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.

6. The Trial Court record has been perused. In para 24 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 24 of the plaint is reproduced hereunder:-

> *"That the loans was disbursed from the office of the plaintiff situated at Videocon Tower, Jhandewalan, New Delhi. The loan is repayable at Videocon Tower, Jhandewalan, 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 to try and entertain the present suit."*

7. Deed of hypothecation dated 28th January, 2017 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: <u>DELHI in the State of DELHI</u>***
> ***Date: The 28 day of JAN, Two Thousand and 11."***

8. The original irrevocable power of attorney dated 3rd February, 2017 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 VI, <u>Delhi (place)</u> on this 3rd day of Feb (month), 2011."***

9. 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).

10. 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.

11. The appeal is allowed and the impugned order is set aside. The appointment of the Receiver passed by this Court on 29th May, 2016 is also restored. The Trial Court shall recommence the proceedings and issue notice to the respondent.

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

13. 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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