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

\+ FAO 230/2018

M/S ICICI BANK LIMITED ..... Appellant

Through: Mr. Punit K. Bhalla, Advocate.

Versus

HAKIM SINGH ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 16.05.2018

CM No. 20281/2018 (for exemption)

1. Allowed, subject to all just exceptions.

2. The application stands disposed-off.

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3. This appeal impugns an order of the learned Additional District Judge, dated 01.05.2018, declining to the appellant the relief of appointment of Receiver of the suit property sought under Order 40 Rule 1 CPC. The appellant had loaned amount of Rs. 7,71,825/- to respondent towards financing of a vehicle, namely, MOBILO/SMT D1 bearing no. DL-13CC-4634 and also personal loan of Rs. 2,97,936/-. There was default in payment of the EMIs. A notice was issued to the respondent but it evinced no response. Therefore, the loan was recalled. The amount claimed to be outstanding is Rs. 8,38,672.75/-. Accordingly, the suit for recovery of the same alongwith interest had been filed. The learned counsel for the appellant states that even for the sake of issuance of notice, the case has been

adjourned to a date four months later, i.e., September, 2018. It is the contention of the learned counsel for the appellant that serious and irreparable prejudice will be caused to the appellant if the rights and interests are not protected on an urgent basis; that the purpose of appointing a Receiver would largely be defeated if the application is taken up months later. He submits that similar orders have been passed in a number of other cases.

4. The learned counsel for the appellant relies upon the judgment of this Court dated 05.01.2016 in FAO No.7/2016 titled as ***ICICI Bank Ltd. vs. Updesh Nagar***, wherein the impugned *ex-parte* order declining the appointment of a Receiver was set aside and looking at the facts of the case and to prevent prejudice being caused to the applicant banker, the Court then appointed a Receiver *ex-parte*. The Court had referred to the judgment of the Supreme Court in ***A. Venkatasubbiah Naidu vs. S. Chellappan and Ors., 2000 7 SCC 695***, which had analysed the objective behind Order 43 Rule 1 CPC and concluded that:-

> *".....It is the acknowledged position of law that no party can be forced to suffer for the inaction of the court or its omissions to act according to the procedure established by law........the party who does not get justice due to the inaction of the court in following the mandate of law must have a remedy...."*

The Court also referred to the judgment of the Full Bench of the Bombay High Court in ***State Bank of India vs. Trade Aid Paper and Allied Products (India) Pvt. Ltd. & Ors.*** *AIR 1995 Bom 26,* exhorting Courts to adopt a practical approach while exercising the power of appointment of a Receiver apropos banks and financial institutions, having regard to the fact that they deal in public funds. The said judgment reads as under:-

> *"…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."*

5. In view of the above, to secure the interests of the appellant's suit property i.e. vehicle, namely, MOBILO/SMT D1 bearing no. DL-13CC-4634, the Court deems it appropriate that a Receiver be appointed. Consequently, Mr. Devender Lal, Representative of the appellant is appointed as a Receiver. He shall be authorized to:-

v) take possession of the vehicle but while doing so he will ensure that due courtesies are extended to the respondent/defendant;

vi) 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 the latter;

vii) in case the police assistance is required, the Receiver will approach the Station House Officer manning the nearest Police Station, who, in such eventuality, shall render due assistance to enable compliance in the matter;

viii) file his report with the Trial Court within ten days of taking possession of the subject vehicle.

6. In case the Receiver is successful in obtaining the possession of the subject vehicle before the next date of hearing, the Trial Court will pass appropriate orders on the next date of hearing.

7. 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.

8. The appeal is allowed and disposed off in the above terms.

9. In the context of dates being given after four months even for consideration for issuance of notice, this Court is of the view that in the light of the judgments in ***State Bank of India vs. Trade Aid Paper*** (supra) and ***ICICI Bank vs. Updesh Nagar*** (supra), in applications under Order 40 Rule 1 CPC, there is need for urgent adjudication on the request for appointment of Receiver in matters concerning bank and financial institutions so as to ensure that the suit properties hypothecated to them are preserved and protected.

10. A copy of this order be given *dasti* to the learned counsel for the appellant under the signatures of the Court Master.

NAJMI WAZIRI, J.

MAY 16, 2018
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