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

\+ FAO 257/2018

M/S ICICI BANK ..... Appellant

Through: Mr. Punit Bhalla, Advocate.

versus

RAKESH & ANR ..... Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **23.05.2018**

CM APPL. 21711/2018 (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 dated 11.05.2018 of the learned Additional District Judge, declining to consider the appointment of a Receiver for the suit property under Order 40 Rule 1 CPC. The appellant had loaned i) Rs.5,05,735.00 to the respondent towards financing of a motor vehicle, model- “SWIFT/ VDI” bearing registration no. DL-12CJ-8614 and ii) a personal loan of Rs.1,29,000.00. The respondent defaulted in re-payment of the EMIs. A notice to the respondent evinced no response, so the loan was recalled. A suit for recovery was filed for the outstanding amount of Rs.5,82,115.85, alongwith the interest thereon.

4. The learned counsel for the appellant submits that even for consideration of issuance of notice in their application, the case has been

posted to three and a half months later in August, 2018 and that serious and irreparable prejudice would be caused to the appellants if their rights and interests are not protected on an urgent basis. It is also submitted that similar orders have been passed in a number of other applications filed by the appellant. He 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 appointed a Receiver *ex-parte*. ***Updesh Nagar*** *(supra)* 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...."*

5. It had 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,* which exhorted 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 *inter alia* 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."

6. A Receiver can be appointed under provisions under Order 40 Rule 1 CPC for protection of the suit property, and keeping in mind the judgment of the Supreme Court in ***A.Venkatasubbiah Naidu*** (supra), a party cannot be remediless on account of inaction of the court.

7. In view of the above, to secure the interests of the appellant's suit property i.e. the vehicle, model- "SWIFT/ VDI" bearing registration no. DL-12CJ-8614, the Court deems it appropriate to appoint a Receiver. Consequently, Mr. Gyanesh Kumar, Representative of the appellant is appointed as a Receiver. He shall be authorized to:-

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

ii) 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;

iii) 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;

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

8. 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.

9. 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.

10. The learned counsel for the appellant submits that this case was simply posted to three and a half months later, in August, 2018. Rather than looking into the facts of the case, the impugned order records in over 2½ pages that it is over burdened by other pressing cases hence it is constrained to take up the appellant's application.

11. He states that he had handed over to the Trial Court this Court's order dated 10.05.2018 in CS No.1533/18 titled ***ICICI Bank Ltd. vs. Govind Pathak***, which in turn had referred to an earlier order dated 04.05.2018 in FAO No.198/2018 titled ***ICICI vs. Devender Nagar*** holding that ordinarily

an application under Order 40 Rule 1 CPC must be decided expeditiously. However, despite this Court said order, no relief was granted to the petitioner and the impugned order was passed observing inter-alia:

> *" Apart from this, now days (sic) Court is also devoting itself to achieve the noble target of deposing (sic) off all 10 years and 5 years old cases in this very year and to achieve this target it is necessary to give first preference to recording of evidence so that trial is completed and then to typing of order/judgment which hardly leave (sic) stenos with spare time. Problems gets (sic) further complicated/affected if one of the regular steno is on leave and spare steno is not provided. On the top (sic) of this each day fresh cases of different financial institution (sic) are received requiring appointment of receiver. Disposing of this application on the same day affects other scheduled work or old matters. Hence, this court has got to manage its own business within the limited time and resource (sic) so that some substantive progress is done almost in all cases. <u>No doubt order appointing receiver is almost mechanical in cases involving financial institution but</u> still this court has to check each particular itself and cannot leave the same upon others. <u>Seen in these (sic) light this Court do (sic) not see in the relied upon judgment that it has been ruled that Court (sic) have been left with no discretion to manage its own business.</u> Hence, each case will have to be taken as per their own turn.*
>
> *Accordingly, put up on 23.08.2018 for consideration of application under order 40 Rule 1 CPC."* (emphasis supplied)

12. The Court is of the view that despite the Trial Court being apprised of the jurisprudence for urgent consideration of applications for appointment of a Receiver, especially for financial institutions which deal with public funds, it adjourned the case for three months later, even for consideration of issuance of notice. This cannot be construed to be in accordance with the judgements discussed hereinabove. Furthermore, for the impugned order to observe, that it did not see in the judgments relied upon, as taking away the

discretion of the Trial Court to manage its own affairs, is to miss the woods from the trees. This Court suspects an element of disregard of its orders by the Trial Court. Its observation about "orders of appointment of receiver being of a mechanical nature" purports to be a comment on the order of this Court. It is unwarranted. It is hoped that due regard to judicial dicta of superior courts will be observed. Let this order be reached to the learned Trial Court through the learned District Judge.

13. The appeal is disposed off in the above terms.

14. 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 23, 2018

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