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

\+ FAO 291/2018

ICICI BANK LIMITED ..... Appellant

Through: Mr. Punit K. Bhalla, Advocate.

Versus

RAJESH KUMAR ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% 01.06.2018

<u>CM APPL. 24448/2018 (Exemption)</u>

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 21.03.2018, 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.19,95,000.00/- to respondent towards financing of a vehicle, model: TATA LPT 2518 bearing no. HR-55V-2214 and a personal loan of Rs.2,42,935.00/-. There was default in payment of the EMIs. Notice was issued to the respondent but it evinced no response. Therefore, the loan was recalled. The amount claimed to be outstanding is Rs.8,00,381.11**/-.** Accordingly, the suit for recovery of the same alongwith interest had been filed. Although, the Trial Court issued notice to the

respondents/defendants, it did not deem it appropriate to appoint a Receiver rightaway.

4. The learned counsel for the appellant relies upon the judgment of this Court in FAO-7/2016 titled as ***ICICI Bank Ltd. vs. Updesh Nagar*** which in similar circumstances had set aside an ex-parte order, declining the appointment of a Receiver. The Court then appointed a Receiver. Reliance was placed upon the judgment of 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 the judgment 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 had exhorted Courts to adopt a practical approach while exercising the power of appointment of a receiver in the case of banks and financial institutions since they deal in public funds. The latter judgment held:-

> *"...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. the vehicle, model: TATA LPT 2518 bearing registration no. HR-55V-2214, the Court deems it appropriate to appoint a Receiver. Consequently, Mr. Prashant Prasad, 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.

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 three months even for consideration for issuance of notice, this Court is of the view that in the light of the judgment 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 a 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.

JUNE 01, 2018
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