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

\+ FAO 313/2018

Judgment reserved on : 31st July, 2018
Date of decision: 6th August, 2018

M/S ICICI BANK LIMITED ..... Appellant.
Through: Mr. Puneet Bhalla, Advocate

Versus

SATYA PRAKASH CHAUDHARY .. Respondent
Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. Vide the present appeal, the appellant assails the impugned order dated **30.05.2018** of the learned Trial Court in **CS No. 1803/18** whereby on a suit filed by the plaintiff for recovery along with an application Under Order XL Rule 1 of the Code of Civil Procedure, 1908 for appointment of a receiver to take over the possession of the vehicle, i.e., car make "**SWIFT DZIRE/VDI**" bearing registration No. **UP-16BA-1465**, the learned Trial Court directed the issuance of the summons for settlement of issues along with the notice of the said application to the defendant returnable for **9.10.2018.**

2. The prayer made by the appellant herein as plaintiff to the said suit seeking appointment of an *ex parte* receiver was declined

by the learned Trial Court, it having been observed to the effect that as per the averments made in the plaint a loan of **Rs.6,27,688.00** had been given by the plaintiff, i.e., the appellant herein to the defendant/respondent herein, for purchase of the vehicle in question vide a loan agreement No. **LAGHZ00032211008** and that the said loan was to be paid in **60 EMIs of Rs.13,460/-** each but the respondent, i.e., the defendant had paid only **29 EMIs** and defaulted in payment of **seven EMIs** and thus the plaintiff i.e., the petitioner herein had recalled the said loan amount vide notice dated **12.01.2018** requesting the respondent i.e., the defendant herein to pay the outstanding amount and also to hand over the possession of the said vehicle but the respondent despite service of the notice neither paid the loan amount nor handed over the possession of the vehicle and that there is an apprehension that the respondent may dispose of the security, i.e., vehicle in question which would cause irreparable loss to the appellant and thus sought an appointment of a receiver to take possession of the vehicle in question.

3. The learned Trial Court observed to the effect that as the defendant admittedly had paid **29** instalments it was not considered appropriate at this stage to appoint an *ex parte* receiver.

4. The grievance of the appellant through the present appeal is thus to the effect that the respondent had executed a credit facility application along with the terms and conditions of the loan; a deed of hypothecation and an irrevocable Power of Attorney on **20.04.2015** in favour of the appellant bank and had undertaken to

repay the loan amount of **Rs.6,27,688.00** along with interest @ **10.40%** in 60 equated monthly instalments of **Rs.13,460/-** and had also agreed to pay the penal interest @ 24% per annum in case there was any delay in the payment of the instalment and that the respondent had also agreed that in the event of default in making the payment of instalments by the respondent, the appellant bank would be entitled to recall the entire loan and take further steps for recovery and enforcement of security.

5. It was also submitted on behalf of the appellant that as per the deed of hypothecation the vehicle financed to be hypothecated in the name of the appellant bank can be taken over by the bank in the event of default by the respondent being the rightful owner of the same.

6. It has also been submitted by the appellant that as per the irrevocable power of attorney also the appellant had been authorized to take over the possession to sell the vehicle to appropriate the dues in the event of default of payment by the respondent. *Inter alia* the appellant has submitted that despite the respondent having been informed to make the payment of the outstanding amount and also to hand over the peaceful possession of the vehicle, the respondent did not do so and thus had no right to use the vehicle in case of non-payment of equated monthly instalments and that as per the loan account maintained by the appellant as on 3.5.2018, a sum of **Rs.4,20,735.11** was payable towards the principal, interest, penal interest and other dues. *Inter alia* the appellant contended that the respondent was trying to part

with the possession of the vehicle, which is, in fact, the property of the appellant bank and the respondent was also trying to remove the vehicle from the jurisdiction of this Court which would cause an irreparable loss/injury to the appellant bank and would also deprive the bank of its legal and contractual rights which had been acquired by the documentation entered between the appellant bank and the respondent.

7. A catena of verdicts has been relied upon on behalf of the appellant in support of its contention that the *ex parte* receiver ought to be appointed in the facts and circumstances of the instant case.

8. In the verdict of this Court relied upon by the appellant in ***Citi Bank N.A. v. Sudesh Kumar***, FAO (OS) No.117/2002, an *ex parte* order was granted appointing the receiver for seizure of the vehicle pursuant to a loan scheme between the appellant and the respondent wherein the respondent had agreed to make the payment due pursuant to the agreement between the parties with payments to be made in instalments, which were not so paid.

9. Vide the verdict relied upon on behalf of the appellant in ***Citi Bank v. Bhupinder Singh***, FAO No. 198/2006 it was observed to the effect that the apprehension on the part of the appellant in the event of notice being issued to the respondent that he may proceed to dispose of the vehicle in question to defeat the suit claim, could not be taken to be unfounded and it was held that there were sufficient grounds for passing the *ex parte* order for appointment of the receiver and that it was not proper to declined the relief sought.

The legal representative of the company in that case was thus appointed as a Local Commissioner to take over the possession of the vehicle from the respondent or anyone found in possession thereof and to keep the same in his safe custody and not to dispose of the same without the order of the Court and the receiver was also authorized to seek necessary police assistance from the local police.

10. The verdicts of this Court in ***ICICI Bank Limited v. Kaptan Singh;*** II (2007) BC 586 and ***ICICI Bank Limited vs. Jal Singh***, FAO 271/2017 also with the similar prayer made by the plaintiff thereof for appointment of an *ex parte* receiver having been allowed in view of the non-payment of the EMI dues towards the loan agreement and the verdicts of this Court in ***ICICI Bank Limited v. Sushma & Anr.***; FAO 8/2018, ***ICICI Bank Limited v. Sabir Malik & Anr.***; FAO 196/2018, ***ICICI Bank Limited v. Rajesh Kumar***; FAO 291/2018; ***ICICI Bank Limited v. Hakim Singh***; FAO 230/2018 are all to the similar effect.

11. Undoubtedly, vide the verdict in ***ICICI Bank Ltd. v. Prakash Kaur and Others***; (2007) 2 Supreme Court Cases 711 the Hon'ble Supreme Court deprecated the procedure adopted by the bank in removing the vehicle from the possession of the person from whom they had to get the EMI and in whose possession the vehicle was, by hiring musclemen or recovery agents and observed vide para 16 thereof to the effect that

> *" **The bank should resort to procedure recognized by law to take possession of the vehicles in cases***

where the borrower may have committed default in payment of the instalments instead of taking resort to strong-arm tactics."

12. It was thus submitted on behalf of the appellant that it is because of the observations of the Hon'ble Supreme Court in ***ICICI Bank Limited v. Prakash Kaur*** (Supra) that the appellant and other banks have thus now sought the recovery of the vehicle hypothecated to the bank pursuant to loan agreements executed by the purchasers of the said vehicle who have purchased the vehicle on the basis of the loan issued by the Bank and that the Banks have started instituting suits for recovery of the amount due and re-possession of the vehicles in question.

13. Undoubtedly the institution of the suit by the appellant herein is a recourse to a fair procedure in the circumstances of the case. As held in ***Citi Bank N.A. v. Sudesh Kumar*** (supra), the apprehension of the appellant that the respondent would sell the hypothecated vehicle cannot be held to be imaginary in as much as there has been a default in payment of **seven EMIs** by the respondent and the factum that despite the reminder to pay the amount due towards the Equated Monthly Instalments, the respondent, had failed to do so and **his cheques issued were also not honoured in as much as cheque bouncing charges are also claimed by the appellant,** the apprehension of the appellant that the vehicle in possession of the respondent may be misappropriated or sold off cannot be held to be merely imaginary.

14. Thus Mr. Syed Razi, the representative of the appellant bank, as prayed vide the appeal, is appointed as a receiver to take over the possession of the vehicle, i.e., car make "**SWIFT DZIRE/VDI**" bearing registration No. **UP-16BA-1465**, from the respondent and in terms of the verdict of this Court in ***ICICI Bank Limited v. Updesh Nagar;*** 2016 Lawsuit(Del) 64, it is directed as under:

> 1 The receiver, while taking possession of the subject vehicle will ensure that the due courtesies are extended to the respondent/ defendant.
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> 2 The receiver will also 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 him.
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> 3 In case the police assistance is required, the receiver will approach the Station House Officer manning the nearest police station, who, in such an eventuality, shall render due assistance to enable compliance in the matter.
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> 4 The receiver will file his report with the trial court within ten days of taking possession of the subject vehicle.
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> 5 In case the receiver is successful in obtaining possession of the subject vehicle before the next

date of hearing, the trial court will pass appropriate orders on the next date of hearing.

6 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.

In view of the above terms, the appeal is disposed of.

Copy of this judgment be given *Dasti,* under the signatures of the Court Master, as prayed.

ANU MALHOTRA, J.

AUGUST 6th, 2018/SV