

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 29th August, 2018

Date of decision : 14th September, 2018

FAO 403/2018

M/S ICICI BANK LTD.

..... Appellant

Through Mr. Punit K. Bhalla, Adv.

versus

HEMA GERA

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. Vide the present appeal FAO 403/2018, the appellant assails the impugned order dated 07.06.2018 and 09.08.2018 of the Trial Court of the learned ADJ-03 (South), Saket Courts, New Delhi whereby it was observed by the learned Trial Court to the effect that before passing an appropriate order under Order XL Rule 1 CPC, it was considered expedient to issue summons of the suit to the defendant on filing of PF and by way of registered post with acknowledgement due and all other modes of service as approved. The appellant thus seeks the appointment of an ex-parte receiver to take over the possession of the vehicle **MARUTI SWIFT / LXI bearing registration no. HR-51BM-8342** from the possession of the respondent.

2. The grievance of the appellant is to the effect that the ex-parte

receiver as prayed by the appellant for seizure of the vehicle referred hereinabove was not appointed. It has been averred by the appellant that the respondent in November, 2016 had requested the appellant for grant of loan to the tune of **Rs.4,00,000/-** for purchase of the vehicle **MARUTI SWIFT / LXI bearing registration no. HR-51BM-8342** and entered into a loan agreement under the loan cum hypothecation scheme of the appellant bank and executed the credit facility application along with standard terms and conditions for said facility, deed of hypothecation and irrevocable power of attorney in favour of the appellant bank and that the respondent had agreed to repay the said loan in **60** equated monthly instalments with interest as per the repayment schedule and that the respondent had secured the loan by way of hypothecating the vehicle and that the appellant bank had sanctioned a loan of **Rs.4,00,000/-** and disbursed an amount of **Rs.3,97,050.00 on 30.11.2016** to the dealer under loan account no. **LAFDB00035070156** as per the request of the respondent under the loan cum hypothecation scheme of the appellant bank after deducting the amount towards the processing fees as per request of the respondent under the personal loan cum hypothecation scheme.

3. The appellant bank contended that the respondent had also stated to have agreed to repay the said loan amount of **Rs.4,00,000/-** along with interest **@10.03% in 60** equated monthly instalments of Rs.8,505/- in terms of loan account no. **LAFDB00035070156** and that the respondent had also agreed that in case any instalments is delayed the respondent would **pay a penal interest @24% per annum** as per the loan documents executed by him on the outstanding equated

monthly instalments amount and that it had also been agreed by the respondent that in the event of default in making the payment of the instalments, the appellant bank would be entitled to recall the entire loan and to take further steps for recovery and enforcement of security.

4. Documents were received by the respondents in favour of the appellant bank on 29.11.2016.

5. It is further submitted by the appellant that as per the deed of hypothecation executed by the respondent, the vehicle financed was to be hypothecated in the name of the appellant bank and that the appellant bank was thus entitled to take over the possession of the vehicle in the event of default in making the payment of the instalments of the loan by the respondent.

6. The respondent is also stated to have executed an irrevocable power of attorney authorizing the appellant bank to take over the possession of the vehicle and also to sell the same to appropriate the dues in the event of default by the respondent.

7. The appellant further submits that the respondent had failed to adhere to the financial discipline of the repayment of the loan i.e. towards principal or interest or charges.

8. As per the averments made in the plaint, several cheques sent by the respondent to the appellant bank were dishonoured / returned back unpaid and which were not cleared even on reminders being issued by the appellant bank for the same. The appellant bank further submits that the respondent failed to make the vehicle available for inspection to the officials of the appellant in consonance with the

terms and conditions of the documents executed by the respondent in favour of the appellant bank.

9. The appellant further submits that the respondent in terms of the loan documents executed had paid an amount of **Rs.1,10,565.00 i.e. 13 equated monthly instalments** and defaulted for an amount of **Rs.34,020.00 i.e. 4 equated monthly instalments** and an amount of **Rs.11,044.00 towards late payment and cheque bouncing charges** against the loan account no. **LAFDB00035070156** and **thus the appellant bank had recalled the loan facility available to the respondent by way of sending a loan recall notice dated 12.01.2018, which was however withdrawn on 12.01.2018 itself but despite the same, the appellant chose not to put in appearance.**

10. The appellant bank further submits that it had strong apprehension that the respondent might sell away the vehicle, which would cause an irreparable loss, injury and would also deprive them of their legal and contractual rights which had been acquired by the documented contacts entered into between the appellant bank and the respondent.

11. The appellant bank further contended that despite the receipt of the loan recall notice and other statutory notices the Respondent herein has neither updated the account nor has made the payment to the bank and also did not even approach the bank with regard to the payment of the outstanding amount and that there was strong apprehension that the Respondent herein would sell the vehicle, in the said circumstances it was a fit case for an appointment of a receiver ex-parte since ample of opportunities was given to the Respondent herein

for updating the account and it was also made clear to them that in case the payments are not made within the stipulated time, the vehicle of the Respondent herein would be repossessed.

12. 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.

13. Vide the verdict relied upon on behalf of the appellant in "***Standard Chartered Bank Vs. Devender Nagar***", C.R.P. 223/2004 of this Court it was observed that "that the vehicle remains the property of the Appellant /Financer till such time as the entire amount is paid" and that this Court issued ex-parte receiver order on the apprehension that the vehicle will be difficult to track once the Respondent gains knowledge of the Proceedings". This Court held that this is a fit case to exercise the powers under Section 115 of the Code of Civil Procedure as the the Learned Lower Court failed to appreciate the orders passed by this Court in ***F.A.O. NO. 51 OF 2015, 'ICICI BANK LTD. VS ROHIT KUMAR', F.A.O. NO. 23 OF 2015, 'ICICI BANK LTD. VS SASHISATYA', F.A.O. NO. 28 OF 2015, 'ICICI BANK LTD. VS SOLITAIRE FOOD PVT. LTD. & ORS. F.A.O NO. 291 OF 2018 'ICICI BANK LTD VS RAJESH KUMAR, FAO 311/2018, 'M/S ICICI BANK LIMITED VS. AKASH PARASHAR, FAO 312/2018, M/S ICICI BANK LIMITED VS RAHUL & ANR., FAO 313/2018, M/S ICICI BANK LIMITED VS. SATYA PRAKASH CHAUDHARY, FAO 314/2018, M/S ICICI BANK LIMITED VS. MAMRAJ TOMAR, FAO 315/2018, M/S ICICI BANK LIMITED VS. AVINASH, FAO 316/2018, M/S ICICI***

BANK LIMITED VS. BHAJAN LAL SOLANKIYA & ANR., FAO 321/2018, M/S ICICI BANK LIMITED VS. RANDHIR SINGH, AND IN FAO 322/2018, M/S ICICI BANK LIMITED VS. V SQUARE DEVELOPMENT COMPANY PVT. LTD.& ANR., wherein in similar circumstances the Trial court did not appoint an ex-parte receiver and the appellant aggrieved therein approached to this Court and this Court in these matters allowed the petitions and appointed the receiver to take over the possession of the vehicle.

14. 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.

15. 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 decline 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.

16. 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.

17. 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.”

18. 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.

19. 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 **4 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.

20. Thus Mr. Amit Bhargava, 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 **MARUTI SWIFT / LXI bearing registration no. HR-51BM-8342**, 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.

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.

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.

4 The receiver will file his report with the trial court within ten days of taking possession of the subject vehicle.

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.

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

ANU MALHOTRA, J

SEPTEMBER 14th, 2018/mk