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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 23rd December, 2019

+ **CM (M) 1821/2019**

M/S ICICI BANK LIMITED

..... Petitioner

Through: Mr. Puneet Kumar Bhalla & Ms.
Chetna Bhalla, Advocates
(M:9810080772) with Mr. Sanjeev
Bakshi, legal head north in person.

versus

NAVEEN KALKAL

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

CM APPL. 55025/2019 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

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2. The present petition has been preferred by the Petitioner/Plaintiff - M/s. ICICI Bank Ltd. (*hereinafter*, “Bank”) challenging the impugned order dated 5th December, 2019, by which the Id. Trial Court has simply adjourned the application filed by the Bank under Order XXXIX Rule 6 CPC, seeking permission to sell the hypothecated vehicle, which is currently in the Bank’s custody.

3. The Respondent/Defendant (*hereinafter*, “Defendant”) had entered into an agreement for financing of the vehicle. Due to defaults in payment by the Defendant, a suit for recovery was filed by the Bank, along with an application under Order XL Rule 1 CPC, for appointment of a receiver for the hypothecated vehicle, with power to sell. It is submitted that the receiver has already been appointed and the bank official has taken possession of the vehicle. Since the Defendant continued to not appear before the Court, the

application under Order XXXIX Rule 6 CPC came to be filed by the Bank seeking permission to sell the vehicle.

4. The grievance of ld. counsel for the Bank is that the application has simply been adjourned to 15th April, 2020. Ld. counsel submits that in ***M/s. ICICI Bank Ltd. v. Kamal Kumar Garewal, [FAO 49/2015, decided on 29th May, 2015]***, a ld. Single Judge of this Court has already passed directions as to the manner in which such cases are to be dealt with, especially in respect of loan transactions where there is a default in payment. He submits that despite these guidelines having been laid down, the Trial Courts are not following the same and are unnecessarily delaying the suit.

5. After hearing ld. counsel for the Bank and perusing the application under Order XXXIX Rule 6 CPC, handed over to Court today, as also the directions of this Court passed in ***M/s ICICI Bank Ltd. (supra)***, it is seen that the Bank has already taken possession of the vehicle. The Defendant, having continued to remain away from the Court, the Trial Court has repeatedly directed filing of fresh process fee and service by publication.

6. Considering that the value of vehicles is likely to deteriorate as time passes on and also considering that there is a steep maintenance cost on the Bank, for preservation of the vehicles, a Ld. Single Judge of this Court under similar circumstances had passed the following directions in ***M/s ICICI Bank Ltd. (supra)***:

“4. On careful consideration of the submissions made learned counsel for the appellant, this Court is satisfied that the appellant has made out a case for ex parte appointment of a receiver. The appeal is, accordingly, allowed and Mr. Venkat Rao, representative of the appellant bank is appointed as receiver to take the possession of Ritz car bearing

registration No. HR-26BH-3155.

5. The receiver shall take over the possession of the vehicle from the respondent at the address(es) given in the loan application. If the vehicle is not available at the said address(es), the receiver shall be at liberty to recover the vehicle wherever found. However, the receiver shall not stop a running vehicle on the road to forcibly take out the driver to take the possession of the vehicle. The receiver shall also not make any attempt to block the passage of a car to bring it to a halt to take its possession.

6. The receiver shall avoid taking the possession of the vehicle if the vehicle is occupied by a woman who is not accompanied by a male member or an elderly, infirm or physically/mentally challenged person. In such cases, the receiver shall take the possession of the vehicle from the borrower's residence.

7. The receiver shall be at liberty to take the assistance of the local police, if required, for taking over possession of the vehicle. The concerned SHO shall provide assistance to the receiver as and when requested.

8. The receiver shall also ensure that the repossession of the vehicle does not result any breach of the peace. In the event of any breach of peace by the person occupying the vehicle, the receiver shall not proceed without assistance of police.

9. At the time of taking the custody of the vehicle, the receiver shall take the photographs of the vehicle from different angles along with the person(s) occupying the vehicle as well as the place of taking over the possession.

10. The receiver shall prepare an inventory of the articles/accessories found in the vehicle and shall furnish the copy of the inventory to the person from whom the possession is taken.

11. After taking the vehicle in possession, the receiver shall keep the vehicle in safe custody.

12. If the respondent makes payment of the outstanding instalments as on date of possession, the receiver shall release the vehicle in question to the respondent on superdari subject to an undertaking by the respondent to the receiver for regular repayment of future monthly instalments till the expiry of the tenure and a declaration not to part with the vehicle or create third party interest in the vehicle until the entire amount is paid.

13. If the respondent is not in a position to clear the entire outstanding instalments, the receiver shall give him another opportunity to pay the outstanding instalments within 30 days of taking over the possession of the vehicle and in case the respondent makes the payment the outstanding instalments within the said period, the receiver shall release the vehicle to the respondent subject to an undertaking as aforementioned.

14. If the respondent does not make the payment of the outstanding amount to the appellant bank within 60 days, the receiver, with the prior permission of the Trial Court, would be authorised to sell the vehicle in question in a public auction with prior written notice (to be sent by Speed Post AD) of the date of auction to the respondent at the address(es) mentioned in the loan agreement or the address from where the vehicle is taken into possession so that the respondent may also be able to participate in the auction to enable the appellant to fetch maximum amount from the sale of the vehicle. Whenever such an application for permission to auction the vehicle is made, the Trial Court shall adjudicate the same within 30 days of filing of the application. The receiver shall carryout video recording of the auction proceedings and shall submit the same before the Trial Court along with his final

report.

15. That the receiver shall submit his first report before the Trial Court within 10 days of taking the custody of the vehicle along with the photographs and inventory mentioned above. The final report shall be submitted before the Trial Court within 10 days of the public auction along with the proceedings for public auction and video recording of the public auction.”

7. A perusal of the above directions shows that in a similar matter, the Court has followed a particular procedure for dealing with the vehicles and vehicle loans. A similar approach can be followed by this Court. In general, whenever the Court finds that the availment of the loan itself is admitted, either due to the payment of some instalments or on the basis of documents, the Court can appoint a Receiver for taking the possession of the vehicle. The vehicle can be taken either from address given in the loan application or from any other location where it may be found. The directions given in paragraphs 5 to 15 above can be prescribed as a general procedure to be followed for taking possession of the vehicle, precautions to be taken during the same, preservation of evidence as to the status of the vehicle and maintenance of the safe custody of the vehicle. The Court's judgment above has also made adequate provisions for the payments by the Defendant, even after the possession is taken. If the payments are not made, a proper course of action would be permission for sale by public auction as per paragraphs 13 and 14 of the judgment extracted above.

8. The procedure laid down in *M/s ICICI Bank Ltd. (supra)*, thus, ought to be followed generally by the Trial Courts while dealing with the Banks' suits, which involve vehicle loan. The preservation of the vehicle initially and thereafter permitting the public auction is essential in order to ensure

that the value of the vehicle is not eroded and the Bank does not incur the additional expenses, maintenance for parking space etc. Thus, whenever the application for appointment of Receiver or for permission for sale are moved, the Trial Court shall consider the same expeditiously.

9. Under these circumstances, it is directed that the Bank would be entitled to sell the vehicle through a proper public auction with written notice to the Defendant. The notice would be served by way of speed post at the known address(es) of the Defendant, as also the location from where the possession of the vehicle was taken. The Defendant is also permitted to participate in the auction, in the manner explained in paragraph 14 of the judgment in *M/s ICICI Bank Ltd. (supra)*. Once the auction has taken place, strictly in terms of the said judgment, a report shall be filed before the Trial Court for further proceedings.

10. It is further directed that this order along with the judgement in *M/s ICICI Bank Ltd. (supra)* be circulated by the worthy Registrar General to all the District Judges, for proper circulation amongst all the Commercial Courts Judges and Civil Judges, to enable the courts to follow the broad procedure laid down therein. In cases of this nature, since public money is involved, all steps ought to be taken to ensure that recoveries to the extent possible, ought to be enabled in accordance with law.

11. The petition and all pending applications are disposed of in the above terms. *Dasti*.

PRATHIBA M. SINGH
JUDGE

DECEMBER 23, 2019*dk*