

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM (M) 139/2019**

Judgment reserved on : 30.01.2019
& 29.03.2019

Date of decision :30.04.2019

M/S ICICI BANK LIMITED Petitioner
Through: Mr. Punit K Bhalla, Advocate
versus

AFSAR ALI Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner M/s ICICI Bank Limited vide the present petition, a CM(M) calling it an appeal seeks the setting aside of an order dated 29.09.2018 of the learned trial Court of the Civil Judge-03 (Central) in Suit No.2880/2018 vide which the prayer made by the petitioner herein as plaintiff of the said suit seeking an ex-parte appointment of the receiver under Order 40 Rule 1 of the CPC, 1908 to take over the possession of the vehicle Maruti Alto 800/VXI bearing registration No.UP14 DD-3840 was declined, observing to the effect that it would amount to injustice to the defendant i.e. the respondent herein if the application was allowed ex-parte in as much as there was a default in payment of only five equated monthly instalments till 03.08.2018 and that there could have been certain

circumstances that had arisen due to which, the defendant/ respondent herein might not have been able to repay five EMIs and it could only be ascertained once the defendant was served with the notice of the suit in hand and appeared in Court.

2. The submission made by the petitioner herein is to the effect that the respondent had approached the petitioner in March, 2017 for a car loan for the purchase of the said vehicle for an amount of Rs.2,88,100/-, out of which, the Bank disbursed an amount of Rs.2,78,000.00 on 16.03.2017 which loan amount was repayable in 60 equated monthly instalments of Rs.6120/-, of which, the respondent paid a sum of Rs.67,320/- (i.e. 11 equated monthly instalments) but defaulted in payment of a sum of Rs.30,600.00/- (i.e. five equated monthly instalments) and cheques issued by the defendant/ respondent herein were dishonored and returned unpaid and that Rs.6,693.00/- towards late payment and cheque bouncing charges totalling to Rs.37,293/- apart from future instalment of Rs.2,68,497.50/- was payable as on the date 03.08.2018.

3. The petitioner also submitted that a notice recalling the loan was also sent by the petitioner to the respondent on 03.07.2018 but despite that, the respondent had not paid the loan amount. *Inter alia* the petitioner submitted that the vehicle was hypothecated with the plaintiff Bank. It was further submitted on behalf of the petitioner that in view of loan documents having been executed by the petitioner including the deed of hypothecation as per which the vehicle was financed was hypothecated in the name of the petitioner bank with the Bank being entitled to take over the possession of the vehicle in the

event of default by the respondent, the Bank being the original owner of the vehicle and the petitioner having been authorized by the Irrevocable Power of Attorney by the respondent to take over the possession of the vehicle and to sell the same to appropriate the dues in the event of default by the petitioner, grave prejudice would be caused to the petitioner if the ex-parte receiver is not appointed as the petitioner has strong apprehensions that the respondent could sell away the vehicle which was the property of the petitioner Bank in as much as the respondent was not paying the instalments nor producing the vehicle for inspection as per the terms and conditions of the documents, which would cause irreparable loss and injury to the respondent.

4. Reliance was placed on behalf of the petitioner on the verdicts of this Court in CM (M) 384/2019 titled as **ICICI Bank Ltd. Vs. Dharmendra**, order dated 23.05.2018 in FAO 262/2018 titled as **ICICI Bank Ltd. Vs. Naveen Kalkal**, order dated 31.10.2017 in CM (M) 1238/2019 titled as **ICICI Bank Ltd. Vs. Raj Narayan**, order dated 21.12.2016 in CM (M) 1333/2016 and order dated 05.01.2016 in FAO 7/2016 titled as **ICICI Bank Ltd. Vs. Updesh Nagar** wherein it was observed to the effect:

“6.1 In my opinion, issuance of a mere notice can, in certain set of circumstances, cause prejudice to the applicant; the present matter is one such case.

6.2 On the aspect as to how a court is to proceed where a request, for appointment of a receiver, is made by a bank or a financial institution the following observations of the Full Bench of the Bombay High Court, in the case of State

Bank of India vs Trade Aid Paper and Allied Products (India) Pvt. Ltd. & Ors. AIR 1995 Bom 268, being instructive are required to be noticed.

6.3 Briefly, the court in its judgment exhorts adoption of a CM(M)384/2017 Page 3 practical approach while exercising power of appointment of a receiver in the case of banks and financial institutions having regard to the fact that they deal in public funds "...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 Respondent 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." (Emphasis is mine)

6.4 To be noted, the abovementioned Full Bench judgement of the Bombay High Court in State Bank of India vs Trade Aid Paper and Allied Products (India) Pvt. Ltd & Ors. case was taken up in appeal to the Supreme

Court only on one issue which was qua the embargo put in place by the court on the aspect of sale of the property by the receiver prior to a decree CM(M)384/2017 Page 4 being passed in the suit. The Supreme Court over-ruled the Full Bench judgement on this aspect and stated, in no uncertain terms, in its judgement in the case of ICICI Ltd. & Ors. vs Karnataka Ball Bearings Corpn. Ltd. & Ors. (1999) 7SCC 488, that no such fetter is contemplated on the powers of the receiver appointed under the provisions of Order 40 Rule 1 of the CPC. In other words, the Supreme Court went as far as to observe that a receiver, pursuant to the directions issued by the court in that behalf, is empowered to sell the property even before a decree is passed in the suit. This, according to the Supreme Court, is discernable on a plain reading of provisions of Order 40 Rule 1 of the CPC. (See : ICICI Bank Ltd v. Collage Estates Pvt. Ltd & Ors., 2015 SCC Online Del 12143)”

5. Reliance was also placed on behalf of the petitioner on the verdict of this Court in **ICICI Bank Ltd. Vs. Sunny** in CM (M) 388/2017 decided on 12.04.2017, in **ICICI Bank Ltd. Vs. Ajeet Singh & Anr.** in CM (M) 386/2017, a verdict dated 12.04.2017, in **ICICI Bank Ltd. Vs. Rajender Kumar** in CM (M) 392/2017 decided on 17.07.2017, in **ICICI Bank Ltd. Vs. Ram Chandra Yadav** in CM (M) 1333/2016, a verdict dated 21.12.2016, on the verdict dated 12.04.2017 in CM (M) 385/2017 titled as **ICICI Bank Ltd. Vs. Adesh Kumar**, on the verdict dated 14.09.2018 in FAO 401/2018 titled as **ICICI Bank Ltd. Vs. Nandini Acharya** and in M/s ICICI Bank Ltd. Vs. Akash Parashar in FAO 311/2018 dated 06.08.2018. Vide the verdict of this Court in **Citi Bank Vs. Bhupinder Singh** in FAO 198/2006 it had been observed to the effect:

“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.”

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:

“ 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 repossession 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 three 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.”

6. In the instant case also there have been five defaults in payment of the EMIs by the respondent and thus as the cheques issued by the respondent have also been dishonored, 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.

7. Thus Mr. S. Jafri, 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 ALTO 800/VXI” bearing registration No. UP14 DD 3840, 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.
8. The petition is accordingly disposed of.
9. Copy of the judgment be given *Dasti*, as prayed.

APRIL 30th, 2019/vm

ANU MALHOTRA, J.



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