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

% *Date of Order: 30.05.2019*

\+ **F.A.O.No.232/2019**

M/S ICICI BANK LTD ..... Appellant

Through: Mr. Puneet K. Bhalla, Advocate.

Versus

NARESH KUMAR ....Respondent

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (ORAL)

C.M. No.27138/2019 (for exemption)

Allowed, subject to all just exceptions.

F.A.O. No.232/2019

1. The impugned order dated 22.04.2019 passed by the court of learned Additional District Judge-01, Central District, Tis Hazari Courts, Delhi (‘ADJ’) in Civil Suit No.376/2019 by which an advocate was appointed as a receiver under Order XL Rule 1 CPC to repossess the vehicle in question with liberty to deposit the same with the concerned SHO and make a report to the court, is the subject-matter of challenge in this appeal.

2. The appellant/plaintiff has filed a suit for recovery of Rs.6,85,506.51 against the respondent on the ground that they have

disbursed a loan amount of Rs.11,47,430/- on interest to the respondent/defendant for purchase of a vehicle, that is, EICHER 20.16 which the respondent has agreed to repay in 47 equated monthly instalments along with interest @ 9.80%. The vehicle financed by the appellant to the respondent bears Registration No.HR-3V-8767. The appellant has also sanctioned and disbursed a loan amount of Rs.2,00,000/- on 08.04.2016 as top-up loan against the security of the said vehicle. The respondent has committed default in making the payment of the instalments and a sum of Rs.6,85,506.51 has been the outstanding amount at the time of filing the suit.

3. Having regard to the submissions of the appellant, the learned ADJ by impugned order appointed Sh. Rahul Budhiraja, Advocate as receiver and fixed his charges/expenses to the tune of Rs.18,000/-.

4. The learned counsel for the appellant contends that it has always been the practice to appoint the named officer of the finance company as receiver to repossess financed vehicle in case of default as this facilitates saving of time and expenditure.

5. A Division Bench of this court in ***ICICI Bank Limited vs. Satyabeer Singh & Anr.***, W.P. (C) No.535/2019 decided on 21.01.2019 has held that '...... *In such cases, where the chattel/vehicle is itself offered as a security for procurement of the loan and there is default in repayment of the loan, it is the right of the lender bank to take possession of the chattel/vehicle. The lender bank is therefore entitled to take possession of the chattel/vehicle and it serves no*

purpose to appoint a practicing Advocate as Local Commissioner/Receiver. This would only cause logistic problems and lead to unnecessary expenditure on the lender ban, which, as it is, is sustaining a loss due to non-payment of the loan. In our view, in such type of cases, the Tribunal should invariably appoint the named officer of the lender bank as the Local Commissioner/Receiver to take over the possession from the defaulting borrower of the concerned chattel/vehicle. We, therefore, allowed the present petitions and modify the impugned order passed by the Tribunal in each of these cases.'

6. In view of the above legal position, the impugned order cannot be allowed to sustain and accordingly is set aside.

7. Having regard to the above discussion, Sh. Manoj Shukla, representative of the appellant Bank is hereby appointed as a receiver to take over the physical possession of the vehicle in question i.e. car make EICHER 20.16 bearing Registration No.HR-3V-8767 from the respondent or any other person in whose possession the same is found, with the following directions: -

i) The receiver is directed that while taking possession of the said vehicle, he shall ensure to extend due courtesy to the respondent or the person in whose possession the said vehicle is found;

ii) If at the time of taking the possession of the said vehicle, the respondent intends to make the payment of outstanding amount, which are due and payable, he shall receive the amount against receipt and release the vehicle forthwith on *superdari* to him;

iii) At the time of taking the possession of the said vehicle, the photographs of the said vehicles from all angles (including inside) be taken. He shall also take the photograph of the speedometer clearly displaying the kilometers covered by the said car;

iv) He shall also get the survey of the said vehicle done from a Government approved surveyor regarding its condition and value by next day of taking the possession;

v) In case police assistance is required, the receiver may approach the SHO of the concerned Police Station situated nearby, who in such an eventuality shall provide necessary assistance to enable the receiver to comply with this order.

vi) He shall file the complete report with the learned ADJ within five days of taking the possession of the said vehicle;

vii) He shall keep the car in safe custody and the car shall not be sold/disposed of without permission of the trial court.

8. The appeal is disposed of accordingly.

9. A copy of the order be given *dasti* under signatures of the Court Master.

(VINOD GOEL)
JUDGE

MAY 30, 2019/'AA'