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

\+ **CM(M) 1006/2019, CM APPL. 30130/2019**

M/S ICICI BANK LIMITED ..... Petitioner

versus

ISHITA TRAVELS PVT LTD & ANR ..... Respondents

\+ **CM(M) 1008/2019 & CM APPL. 30151/2019**

M/S ICICI BANK LIMITED ..... Petitioner

versus

SUBAL JALAN & ANR ..... Respondents

Present: Mr.Punit K.Bhalla, Advocate for ICIC Bank Limited
None for the respondents.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **08.07.2019**

CM APPL. 30130/2019 in CM(M) 1006/2019,
CM APPL. 30151/2019 in CM(M) 1008/2019

Exemption allowed, subject to all just exceptions.

The applications are disposed of.

CM(M) 1006/2019
CM(M) 1008/2019

1. These petitions are directed against orders dated 13.05.2019, by which the Trial Court has adjourned the applications of the petitioner-bank for appointment of receiver on hypothecated vehicles, on the

ground that the details of the vehicles in question are not mentioned, and that more than one loan agreement is alleged to have been entered into.

2. In view of the fact that summons have not been issued in the suit by the Trial Court, and the petitioner's grievance is against adjournment of its application for *exparte* orders, it is not necessary to issue notice in these petitions.

3. Both the suits were filed in January, 2019, and have been listed on several occasions but the plaintiff's request for *ex parte* appointment of receiver has not been dealt with. Although the order sheets record that on two occasions, adjournment was sought on behalf of the plaintiff, it is not necessary to enter into that controversy, as the reasons recorded in the impugned order for adjournment of the application for appointment of a receiver are two-fold – that the details of the vehicles are not mentioned, and that more than one loan agreement is alleged to have been entered into. The plaintiff has therefore been directed to furnish the correct details of the vehicles and the applications have been adjourned to 03.09.2019.

4. A perusal of the application filed along with the suit shows that the vehicles have been described by model and registration number. In these circumstances, the findings of the Trial Court that the details of the vehicles have not been mentioned in the application is unsustainable. The existence of more than one loan agreement is also of no great significance. The plaintiff's entitlement to relief can arise

out of a single contract or several contracts. The task of the Court is to interpret those contracts and decide the entitlements and liabilities of the parties.

5. Learned counsel for the petitioner has relied upon several judgments and orders of this Court in cases filed by the plaintiff - bank itself, where this Court has intervened in circumstances similar as the present one to appoint receivers over hypothecated vehicles.

6. In CM(M) 99/2017 [*ICICI Bank Ltd. vs. Kasmeera Devi*, decided on 27.01.2017], the Court relied upon an earlier judgment in FAO 7/2016 [*ICICI Bank Ltd. vs. Updesh Nagar*, decided on 05.01.2016] and directed appointment of a receiver. The relevant dicta in *Updesh Nagar* (supra) is as follows:

> *"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.*
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> *6.3 Briefly, the court in its judgment exhorts adoption of a 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*

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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 defendant 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 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) 7 SCC 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)"*

7. Similarly, in FAO 251/2018 [*M/s ICICI Bank Limited vs. Murari Lal Shukla & Anr.*, decided on 23.05.2018], also relying *inter alia* upon the judgment in *Updesh Nagar* (supra), the Court appointed a receiver. In particular, this Court has reiterated the requirement of urgent consideration of applications for appointment of a receiver, especially for financial institutions. The adjournment of the applications by almost four months, pursuant to the impugned orders in the present case, cannot be held to be in consonance with the directions passed by this Court.

8. In *M/s ICICI Bank Limited vs. Jetesh Prasher* [CM(M) 138/2019, decided on 30.04.2019] also, a similar course has been adopted by the Court.

9. The plaintiff has produced documents to show that the vehicles

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were hypothecated to it under loan agreements which have not been duly serviced by the respondent/borrower. Learned counsel for the petitioner has also has submitted that the cheques in all these cases have been dishonoured, and the loans have consequently been recalled. The plaintiff's apprehension that the vehicles will be sold or misappropriated by the respondents cannot be dismissed outright. In the circumstances, the plaintiff has made out a good *prima facie* case for grant of *exparte* interim orders and the balance of convenience is also in favour of such orders being passed.

10. As a result of the above, the following directions are passed:-

a) In CM(M) 1006/2019, Mr.Amit Bhargava/Mr.Raju Singh, the representatives of the plaintiff-bank are appointed as receivers to act jointly and severally to take into their custody three 'HYUNDAI XCENT' vehicles bearing Registration No. "UP-16DT-4288", "UP-16DT-4188" & "UP-16DT-3605" from wherever it is found and in whomsoever's possession it is found.

b) In CM(M) 1008/2019, Mr.Syed Razi/Mr.Jaspreet Singh the representatives of the plaintiff-bank, are appointed as receivers to act jointly and severally to take into their custody five 'ALTO/LXI CNG' vehicles bearing Registration No. "DL-1RTB-4442", "DL-1RTB-4471", "DL-1RTB-4455", "DL-1RTB-4418" & "DL-1RTB-4483", from wherever it is found and in whomsoever's possession it is found.

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c) The receivers will ensure that due courtesies are extended to the respondent and to the persons in whose possession the vehicles are found.

d) The receiver will also keep in mind the time and 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.

e) In case 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. The receiver will file his report with the Trial Court within ten days of taking possession of the subject vehicle.

f) 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.

g) 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.

11. The petitions are allowed in the aforesaid terms. However, it is made clear that the observation contained in this order are only for the

purpose of deciding the petitioner's entitlement to *ex parte ad interim order,* and will not prejudice the parties at trial. Any application for vacation or modification of this order, or grant of further orders may also be made to the Trial Court, which will decide the same in accordance with law.

12. A copy of the order be given *dasti*, under the signature of the Court Master.

P. Jalan

PRATEEK JALAN, J

JULY 08, 2019
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