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

+ **FAO 450/2018**

M/S ICICI BANK LTD. Appellant
Through **Mr.Punit K. Bhalla, Adv.**

versus

MOHAMMAD GAZAN ALI Respondent
Through: **None.**

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

% **04.02.2019**

CM No.39994/2018 (for exemption)

1. Allowed, subject to all just exceptions.

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2. The impugned order dated 31.08.2018 passed by the court of learned Additional District Judge-12, Central District, Tis Hazari Courts, Delhi ('ADJ') in CS No.5980/18 titled as '*ICICI Bank Ltd. Vs. Md. Gazan Ali*' declining the prayer of the appellant/plaintiff for appointment of an ex-parte receiver, is the subject matter of challenge in this appeal.

3. The facts of the case as noticed by the learned ADJ in the impugned order are that '*Brief facts of the case as stated in the*

application are that applicant has provide a loan of Rs.6,75,783/- to the defendant for purchase of the vehicle i.e. car make HONDA AMAZE/SMT bearing registration No. DL14 CC 8190 vide loan agreement No.LADEL00034718931. The said loan was to be paid in 60 EMI of Rs.14,193/- each but the defendant has paid only 18 EMI and defaulted of payment of 4 EMI and thus defaulted the repayment schedule therefore defendant recalled the said loan amount vide notice dated 3.07.2018 requesting the respondent to pay the outstanding amount and also handed over possession of the aforesaid vehicle but respondent despite service of notice neither paid the loan amount nor handed over possession of the abovesaid vehicle. Since there is apprehension that respondent might dispose of security i.e. vehicle in question which would cause irreparable loss to the applicant. Therefore receiver be appointed to take possession of the vehicle in question.'

4. The learned ADJ declined the prayer for the appointment of an ex-parte receiver for the reason '*Since admittedly, defendant has paid 18 installments, in my view at this stage, it would not be appropriate to appoint ex-parte receiver. Therefore, the prayer for appointment of ex-parte receiver is hereby declined*'.

5. Learned counsel for the appellant contends that the appellant has a strong apprehension that the above said car, which is the only security provided by the respondent to the appellant against the loan amount, may be disposed of/sold away by the respondent directly or

indirectly and the respondent may also try to take the vehicle out of the jurisdiction of the court or hide the said vehicle and any of such attempt would cause irreparable loss and injury to the appellant.

6. The appellant has filed the suit for recovery of Rs.5,57,067.95 against the respondent. A sum of Rs.6,75,783/- was sanctioned as the loan amount to the respondent and after deducting the amount towards the processing fees, a sum of Rs.6,63,500/- was disbursed to the dealer of the said vehicle. The respondent paid 18 installments towards the loan amount but soon thereafter he defaulted in the payment of 4 EMIs, which led the appellant to recall the entire outstanding amount as per the terms of the loan agreement. Despite notice he failed to make the payment of the outstanding installments and a substantial amount of Rs.5,57,067.95 is still outstanding against the respondent at the time of filing the suit. Therefore, the impugned order dated 31.08.2018 passed by the learned ADJ-12, Central District, Tis Hazari Courts, Delhi in CS No.5980/18 to the extent of declining the prayer for appointment of the ex-parte receiver is hereby set aside. This court feels that the apprehension of the appellant that in the event of notice being issued to the respondent he may proceed to dispose of/sell/hide the said vehicle to defeat the claim amount is not unfounded and baseless.

7. Having regard to the above discussion, Mr.Bhupinder Singh, the 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 HONDA AMAZE/SMT bearing registration No.DL14 CC 8190 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. The copy of the order be given *dasti* under the signature of Court Master/Private Secretary.

FEBRUARY 04, 2019
"shailendra"

VINOD GOEL, J.