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

% Judgment delivered on: 07.12.2020

\+ CM(M) 599/2020 & CM APPL.30342/2020

ICICI BANK ….. Petitioner

versus

MOHD. ADIL …..Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Punit Bhalla, Advocate.

For the Respondent: None.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. The hearing was conducted through video conferencing.

2. Petitioner is aggrieved by the order of the Trial Court in simplicitor adjourning the proceedings and not granting permission under Order XXXIX Rule 6 CPC for sale of the vehicle which has been taken into custody by the receiver appointed by the Court.

3. It is contended that the respondent defaulted in making the payment of the instalments and accordingly the subject suit for recovery was filed against the respondent and application was moved to the concerned Trial Court for appointment of a receiver to take over possession of the subject vehicle. The possession of the vehicle was

taken over on 19.01.2018.

4. Application under Order XXXIX Rule 6 CPC was filed on 22.10.2020 seeking permission to sell the vehicle. The application is stated to be pending and no order on the application has been passed despite passage of substantial period.

5. Learned counsel for the petitioner relies on judgments of this Court dated 29.05.2015 in FAO 49/2015 titled ***M/s. ICICI Bank Ltd vs. Kamal Kumar Garewal*** wherein this Court has held as under:-

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

6. In *Kamal Kumar Garewal (Supra)* this Court has directed that once the receiver takes possession of the vehicle, in case the respondent is willing to make the payment of the outstanding amount on the date of possession, the vehicle is to be released to the respondent on *superdari*. In case he is not in a position to clear the entire outstanding instalments, 30 days time is to be given by the receiver to grant him an opportunity to make the payment and in case the respondent fails to make the payment to the bank within 60 days, the receiver with prior permission of the Trial Court would be authorised to sell the vehicle in question in a public auction with prior written notice to the debtor. The notice is to be sent at the address mentioned in the loan agreement or to the address from which the vehicle is taken possession of to enable him to participate in the auction so that maximum amount can be fetched.

7. This judgment has been subsequently relied upon in several decisions of this Court. Learned counsel for the petitioner relies on a judgment dated 23.12.2019 in ***ICICI Bank Ltd vs. Naveen Kalkal*** in CM(M) No.1821/2019 and decision dated 13.01.2020 in CM(M) No.27/2020 titled ***M/s. ICICI Bank Ltd vs. Meena Kumari & Anr.*** Wherein, in identical circumstances this Court has granted permission to the bank to sell the vehicle through a public auction with notice to the respondent.

8. Learned counsel for the petitioner contends that delay in sale of the repossessed vehicle substantially diminishes the realisable market value of the vehicle causing loss to the bank.

9. In view of the above, the bank is permitted to sell the vehicle through a proper public auction with notice to the respondents. The notice be served through speed post as well as email address (if available) at the last known address of the respondents in addition to the address mentioned on the loan documents as also the address from where the vehicle was repossessed.

10. Respondent would also be permitted to participate in the auction as stipulated in *Kamal Kumar Garewal (Supra)*. Once the auction has taken place the report shall be placed before the concerned Trial Court. The bank shall follow the procedure as laid down in *Kamal Kumar Garewal (Supra)*.

11. The application under order XXXIX Rule 6 is allowed in the

above terms.

12. The petition is accordingly disposed of in terms hereof.

13. Copy of the Order be uploaded on the High Court website and be also forwarded to learned counsels through email.

SANJEEV SACHDEVA, J.

DECEMBER 07, 2020/rk