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

Date of decision: 24th February, 2020

\+ **CM (M) 224/2020**

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

Through: Mr. Punit K. Bhalla and Mr. Chetra Bhalla, Advocates. (M: 9810080772)

versus

KAMAR ALI ..... Respondent

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>

% **24.02.2020**

<u>Prathiba M. Singh, J.</u>(Oral)

<u>CM APPL. 7313/2020 (exemption)</u>

1. Allowed, subject to all just exceptions. Application is disposed of.

<u>CM (M) 224/2020</u>

2. This petition challenges the impugned order dated 23rd July, 2016 in view of the fact that the application under Order XXXIX Rule 6 CPC, which was filed by M/s. ICICI Bank Ltd. *(hereinafter, "Bank"),* has not been decided by the Trial Court, despite the suit itself having been decreed.

3. The background is that the Bank had filed a suit for recovery of Rs.5,68,822.51/- against the Respondent/Defendant (*hereinafter, "Defendant")* in which initially an application for appointment of Receiver was filed. The case of the Bank is that the Defendant had availed of a vehicle loan of Rs.5,95,000/- in respect of a car i.e., HYUNDAI I20/ELITE/SPORTZ, registered in Delhi, which was disbursed to the Defendant under the loan cum hypothecation scheme of the Bank.

4. The Defendant had agreed to repay the loan amount, along with interest @10.85%, in 60 equal instalments of Rs.12,892/- each. The entire amount had been disbursed to the Defendant. The Trial Court had, vide order dated 8th March, 2016, appointed a Receiver for taking possession of the car. In the said order, the Trial Court appointed one of the Bank officials as the Receiver and directed the seizure of the vehicle.

5. Since then, the vehicle has been lying in the control of the Bank. Immediately after taking possession of the vehicle, the Bank moved an application under Order XXXIX Rule 6 CPC sometime in July, 2016 itself. Notice was issued in the application. The prayer in the said application reads as under:

> *"a) direct the plaintiff to sell the said vehicle namely **"I 20/ ELITE/ SPORTZ BEARING REGISTRATION NO.DL-12CE-9560**, and direct the plaintiff to adjust the sale proceeds towards the outstanding amount due and payable by the defendant to the plaintiff; and*
>
> *b) pass such other/further order (s) as this Hon'ble Court may deem fit and proper in the interest of justice."*

6. This application continues to remain pending even though the suit itself has now come to be decreed on 23rd July, 2016. The Trial Court has passed a decree for a sum of Rs.5,68,822.51/- with interest. The operative portion of the said order reads as under:

> *"On the basis of above findings, the suit of the plaintiff is decreed against*
> *the defendant as follows:*
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> *The plaintiff is entitled for a money decree against the defendant for the principle amount of Rs.5,68,822.51/- along with an interest @ 07% per*

> *annum on such amount from the date it became due till its realization with costs.*
>
> *Decree sheet be drawn accordingly.*
>
> *File be consigned to Record Room."*

7. The grievance of the Bank is that despite the application under Order XXXIX Rule 6 CPC having been filed, even in the final decree permission has not been given to the Bank for selling the vehicle.

8. It is submitted by Mr. Bhalla, ld. counsel for the Bank, that the Bank is incurring parking charges for keeping the vehicle. It is further submitted that the suit itself having been decreed, no useful purpose would be served by not selling the vehicle. Ld. counsel also submits that despite orders having been passed in ***M/s ICICI Bank Ltd. v. Naveen Kalkal [CM(M) 1821/2019, decided on 23rd December, 2019]*** and ***M/s. ICICI Bank Limited v. Nidhi Sharma [CM (M) 1814/2019, decided on 23rd December, 2019]***, which rely upon ***ICICI Bank Ltd. v. Kamal Kumar Garewal [FAO 49/2015, decided on 29th May, 2015],*** and the same having been placed before the Trial Court, the same were not considered by the Trial Court and the application seeking permission for sale of the vehicle has simply been adjourned.

9. After hearing ld. counsel for the Bank, there is no doubt that the application under Order XXXIX Rule 6 CPC ought to have been decided by the Trial Court at the time of the final order in the suit itself. To keep the application pending, while the suit itself has been decreed, is completely irrational. The car has a limited life value which deteriorates with each passing day. The Bank ought to be permitted to sell the car to recover whatever amount it can to satisfy the decree.

10. Furthermore, the manner in which the application for Receiver is

being treated by the Trial Court is completely unsatisfactory. Repeated orders have been passed by this Court in several matters including, ***Kamal Kumar Garewal (supra)*** and ***Naveen Kalkal (supra).*** Ideally, when the Trial Court is satisfied that the case for appointment of a Receiver has been made out and the Bank has taken control of the car for repayment, when the Bank approaches the Trial Court for permission to sell the vehicle, the same should be directed to be considered expeditiously, as observed in ***Naveen Kalkal (supra)***.

11. Despite the above two judgments, trials courts are not considering the applications for appointment of receivers and for auction of the vehicles, diligently. The said applications are either being adjourned from time to time and in some matters, such as this one, the applications continue to remain pending even though decrees have been passed, thus rendering the applications completely infructuous. In view thereof, in ***M/s ICICI Bank Ltd. v. Deepanshu Bansal & Anr. [CM(M) 18/2020, decided on 13th January, 2020]*** and in ***M/s ICICI Bank Ltd. v. Priya Baveja [CM(M) 16/2020, decided on 13th January, 2020]*** this Court had directed that whenever the application for appointment of Receiver or for permission for sale are moved, the Trial Court shall consider the same expeditiously & dispose of the same within 60 days.

12. Under these circumstances, the impugned order is modified to the extent that the application under Order XXXIX Rule 6 CPC has not been dealt with by the Trial Court. The Bank is permitted to sell the vehicle through a proper public auction with notice to the Defendant. Notice be served through speed post at the last known address of the Defendant as also the location from where the vehicle was taken into possession. The

Defendant is also permitted to participate in the auction, as per paragraph 14 of ***Kamal Kumar Grewal (supra)***. Once the auction has taken place, a report shall be placed by the Bank before the Trial Court so that if the Defendant wishes to obtain any information, the same would be available to the Defendant.

13. The petition is disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 24, 2020/*dj*
(Corrected and released on 13th March, 2020)