$~37

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

% ***Date of decision: November 15, 2022***

\+ FAO (COMM) 171/2022 & CM. APPL. 48973/2022

ICICI BANK LTD ..... Appellant

Through: Mr. Sanjeev Sagar and Ms. Ashna Chhabra, Advocates.

versus

MR. YOGESHWAR SHARMA ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T ***(Oral)***

1. Vide the present appeal the appellant bank/ original plaintiff seeks to challenge order dated 10.10.2022, vide which its application under *Order XL rule 1* read with *Order XXXVIII* and *Section 151* of the Code of Civil Procedure, 1908 (hereinafter referred to as "**CPC**") has been dismissed as no ground of *ex-parte* appointment of receiver was made out in view of the observations made by Hon'ble Delhi High Court in a case entitled ***New Morning Star Travels Vs. Volkswagen Finance Pvt. Ltd.*** CM (M) 553/2020 dated 09.11.2020.

2. The facts of the present case reveal that the respondent, took loan from appellant bank for purchasing a "HYUNDAI CRETA" 1.5 MPI MT EX bearing registration No.DL8CBA-6153 (Car) and after paying only 5

instalments stopped paying, defaulted in paying as many as 17 further instalments, resultantly, the appellant bank instituted a suit for recovery of Rs. 8,59,963/- along with interest against the him before the learned Trial Court. Appellant bank also filed an application under *Order XL rule 1* read with *Order XXXVIII* and *Section 151*, CPC for appointment of one of its officers as receiver to take possession of the afore-mentioned Car.

3. When the suit was listed before the learned Trial Court, the appellant bank was unsuccessful in obtaining an *ex-parte* order for appointment of a Receiver, hence the present appeal. The Loan Account Statement on 07.11.2002 filed by appellant bank qua respondent discloses as under:-

Loan Finance Summary As on 07-Nov-22

Particulars	Installments/Pre-payments		Additional Interest	Bounce Charges	Other Charges	Total
	PRIN	INT				
Op. Bal.	0.00	0.00	0.00	0.00	0.00	0.00
Debits	278,476.00	130,740.00	59,472.00	13,570.00	0.00	482,258.00
Credits	55,485.00	33,475.00	403.00	2,950.00	0.00	92,313.00
Cl. Bal.	222,991.00	97,265.00	59,069.00	10,620.00	0.00	389,945.00

Current OS	Excess	Receivable	Accrued Interest	Future Principal	Total Receivable
389,945.00	0.00	89,945.00	5,297.(	569,52	964,766.

4. The aforesaid reveals that the respondent i.e., the borrower had/ has not only been irregular in paying instalments, but, in fact has not paid a single penny after paying the first 5 instalments and is merrily sitting in the Car. As such, this is a fit case for appointment of a receiver as the learned Trial Court has denied the relief for *ex-parte* appointment of the receiver, without taking into consideration the aforesaid and without seeing the grave urgency in the matter. Further reliance upon ***New Morning (supra)*** by learned Trial Court is misconceived as the same was a case under the provisions of *Section 9* of The Arbitration and Conciliation Act, 1996 wherein the position is different from *Order XL rule 1*, CPC in a suit. Even otherwise, the present case pertains to purchase of one Car by the respondent, who is guilty of committing continuous defaults qua the said Car. This raises a serious doubt and suspicion over the conduct of the respondent as he has not adhered to the Loan Agreement with the appellant bank and which does not behove of any borrower like the respondent herein.

5. In view thereof, the order dated 10.10.2022 is partially modified and Mr. Kameshwar Sahu, an Officer of the appellant bank is appointed as receiver to take possession of vehicle "HYUNDAI CRETA" bearing registration number DL8CBA6153. Accordingly, the present appeal is disposed of with the following directions to the said receiver to proceed as under:-

5.1. The receiver, while taking possession of the subject Car will extend the due courtesies to the respondent.

5.2. The receiver will also keep in mind the time and the place where the subject vehicle is taken possession of. If, at the time of taking possession, the respondent pays the sums, which are due and payable then, the receiver, will issue a receipt in that behalf to the respondent and release the vehicle on superdari to him.

5.3. The receiver, if required, is free to take any Police assistance by approaching the Station House Officer of the local Police Station, who, in such an eventuality, shall render due assistance to enable compliance of this order.

5.4. The receiver will file his report with the Trial Court within 10 days of taking possession of the subject Car.

5.5. In case the receiver is successful in obtaining possession of the subject Car before the next date of hearing, the Trial Court will pass appropriate orders on the next date of hearing.

5.6. 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.

6. The present appeal, along with the application, stands disposed of in the above terms.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

NOVEMBER 15, 2022/So