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* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ FAO (COMM) 54/2023

ICICI BANK LTD. ..... Appellant
Through: Mr Satish Kumar, Advocate.

versus

SAHIB ..... Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE TARA VITASTA GANJU

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

% **29.01.2024**

1. None appears for the respondent despite service. By an order of this Court dated 26.09.2023 the respondent (incorrectly mentioned as the appellant in the order) was proceeded *ex parte.*

2. The appellant has filed the present appeal impugning an order dated 11.01.2023 passed by the learned Commercial Court in CS(COMM) No.2682/2022 captioned *ICICI Bank Ltd. v. Sahib* (hereafter '**the impugned order**'). By the impugned order, the learned Commercial Court rejected the appellant's application under Order XL Rule 1 of the Code of Civil Procedure, 1908 (hereafter **'the CPC'**) seeking appointment of a Receiver to take possession of the vehicle described as "BALENO/SIGMA 1.2" bearing Registration No. "HR27L2563" (hereafter referred to as '**the vehicle**').

3. It is the appellant's case that it had financed a sum of ₹6,40,000/- to the respondent for the purchase of the said vehicle. The said loan amount

was required to be repaid in 72 (seventy-two) equated monthly instalments (EMIs). The appellant bank states that the respondent had paid the first EMI but had defaulted in payment of the remaining EMIs. Consequently, the appellant has recalled the loan granted to the respondent and filed the afore-mentioned suit [CS (COMM) No.2682/2022], *inter alia,* seeking a decree of recovery of an amount of ₹6,54,667/- (Rupees six lakhs fifty-four thousand six hundred and sixty seven only) along with interest at the rate of 24% per annum. The appellant also claims that the vehicle is hypothecated to the appellant.

4. The learned counsel appearing for the appellant drew the attention of this Court to a print out from the website of the transport authority, which also indicates that the vehicle in question is financed by the appellant.

5. The learned Commercial Court found that there was no legitimate apprehension on the part of the appellant that the respondent would alienate the vehicle. The learned Commercial Court also held that non-payment of four EMIs (which were outstanding at the material time) did not establish the same. In addition, the learned Commercial Court also observed that the appellant in other cases secured orders for appointment of the Receiver and had misused the same by surreptitiously taking over the vehicle.

6. The impugned order was passed on 11.01.2023. Since then, twelve further EMIs would have become due. However, the learned counsel for the appellant states that apart from the initial EMI, the respondent has not paid any other amount towards his repayment obligations.

7. We find no reason to doubt the appellant’s claim – which is also

supported by material on record – that the purchase of the vehicle was funded by the appellant and the appellant would have recourse for disposing of the said asset for recovering its dues.

8. In view of the above, this Court considers it apposite to allow the present appeal.

9. Mr Prashant Prasad, representative of the appellant bank is appointed as the Receiver to repossess the vehicle, in accordance with law.

10. The appeal is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JANUARY 29, 2024
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