(2007) 07 DEL CK 0233

In the Delhi High Court

Case No : FAO No. 271 of 2007

ICICI Bank Limited APPELLANT

Vs

Jal Singh RESPONDENT

Date of Decision : 20-07-2007

Acts Referred:

Citation : (2007) 07 DEL CK 0233

Hon'ble Judges : J.M. Malik, J

Bench : Single Bench

Advocate : S.C. Bhalla, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

J.M. Malik, J.—CM NO. 9403/2007

Allowed subject to just exception.

Application stands disposed of.

2. FAO No. 271/2007

The learned Additional District Judge vide its order dated 29th June, 2007, has declined the request of the appellant-bank to appoint an ex parte receiver. Adumbrated in brief the case of the appellant is this. The respondent approached the appellant-bank for grant of a loan in the sum of Rs. 1,77,382/- for the purchase of a vehicle namely 733/34 bearing registration No. HR-30C-7827 under the Loan-cum-Hypothecation Scheme of the appellant-bank. The respondent executed demand promissory note for an amount of Rs. 1,77,382/- and interest thereon at the rate of 9.33 % p.a., irrevocable power of attorney and several other documents in favor of the appellant-bank on 13th December, 2004. The respondent agreed to repay the said loan along with interest in 16 quarterly Installments. It was also agreed that in the event of any default in paying the Installments by the respondent the appellant-bank would be entitled to take the possession of the commercial vehicle financed to him and sell the same to recover the outstanding amount due. It is alleged that the respondent failed to adhere to the financial discipline of the repayment of loan. A sum of Rs. 2,12,304.59 inclusive of penal interest @24% per annum and other dues is due to him. Thereafter, a loan recall notice dated 28th April, 2007, was served upon the respondent but it did not produce the desired result.

3. The Additional District Judge dismissed the application filed by the appellant-bank on the following grounds:

(a) there is merely an apprehension to the plaintiff that the defendant may sell away vehicle;

(b) there is no fact or circumstance narrated that the defendant is intending to sell the vehicle or the circumstances, which makes the apprehension strong;

(c) the defendant''s vehicle was registered in the State of Haryana and the defendant is the resident of Faridabad but the plaintiff/applicant requests to authorize the Receiver from taking control and possession of the vehicle whomsoever possession has;

(d) the circumstances narrated, prima facie, in the application do not fulfill the requirement for appointment of the Receiver ex-parte defined under Rule 1 of Order XL.

(e) the case law of CITI Bank N.A. v. Udesh Kumar, CITI Bank N.A. v. Bhupinder Singh and ICICI Bank Ltd. v. Kaptan Singh (supra) suggest that there are circumstances alike taking the vehicle from the vicinity of city or selling of the vehicle but the present application neither suggests any date nor any other factual position that the defendant is actually intending to sell the vehicle, Therefore, the apprehension prevailing in the mind of the plaintiff distinguishes, prima facie, present application from the case law presented and;

(f) the plaintiff/applicant has also filed 10 other applications in other suit symmetrical, it also suggests that there was no specific circumstance.

Aggrieved by the above-said order, the appellant has preferred this appeal.

4. In my judgment dated 5th February, 2007, passed in FAO 42/2007 titled as ICICI Bank Limited v. Kaptan Singh (which was also produced before the learned Additional District Judge), I had followed the judgment dated 3rd April, 2002, passed by a Division Bench of this Court in FAO(OS)117/2002 titled as CITI Bank N.A. v. Udesh Kumar, wherein it was held,

On the basis of averments made in the plaint supported on the documents filed therewith, we are satisfied that sufficient ground has been made out for passing an ex-parte ad-interim order as prayed for in is No. 3073/2002 and in case ex-parte ad interim order as prayed, is not granted, the entire purpose of filing the suit is likely to become infructuous. Accordingly, ex parte ad interim order was called for which has not been passed by the learned Single Judge. We accordingly proceed to pass the said order appointing Mr. Amit Sharma and/or

Mr. Puneet Malhotra, officers/representatives of the appellant bank, to take the custody of the Tata Safari Vehicle bearing registration No.DL3C V2760 and to keep the same under their charge. In case, any police aid will be required, it will be permissible for the officers/representatives to seek such aid in order to enable them to take possession of the said vehicle. The officers on obtaining possession of the vehicle, will issue appropriate receipt to the person from whose custody vehicle is taken and will also note down therein the condition of the vehicle and will ensure that the vehicle is kept in the same condition. The vehicle thereafter will be dealt with in accordance with the order to be passed by learned Single Judge who is seized of the matter.

I also mentioned:

Under these circumstances, I follow the above said two authorities cited by learned Counsel for the appellant. Moreover, this Court is bound to follow the Division Bench judgment and so is the Additional District Judge.

5. Similar view was taken by this Court in Citi Bank N.A. v. Bhupender Singh in FAO 198/2006 in Suit No. 73/2006 dated 11.8.2006. The learned ADJ should have followed the orders passed by this court from time to time.

6. Learned Counsel for the appellant has drawn my attention towards an authority reported in Manager, ICICI Bank Ltd. Vs. Prakash Kaur and Others, , wherein the Apex Court was pleased to hold that where the borrower may have committed default in payment of the Installments instead of taking resort to strong arm tactics, bank should resort to procedure recognized by law to take possession of vehicles.

7. Prime facie, it is apparent that the respondent has failed to make the payment of Installments as per agreement. The bizarre conduct of the respondent is difficult to fathom. It is also clear that even the service of the legal notice had no impact upon the respondent. It is not difficult to cull out the intention of the respondent. The possibilities of his transferring the vehicle or selling or vamoose along with the vehicle, not to be found in the future cannot be ruled out.

8. In the light of the discussion above, I allow the appeal and set aside the order passed by the Court below. I hereby appoint Mr. Sanjeev Bakshi, Principal Officer of the appellant-bank as receiver to take over the possession of the vehicle, namely, 733/34 bearing registration No. HR-30C-7827 and to keep the same under his charge. In case any police aid will be required, it will be permissible for the said representative to seek such aid in order to enable him to take possession of the said vehicle. The said representative on obtaining possession of the vehicle, will issue appropriate receipt to the person from whose custody vehicle is taken and will also note down therein the condition of the vehicle and will insure that the vehicle is kept in the same condition. The vehicle, thereafter, will be dealt with in accordance with the order to be passed by the learned ADJ, who is seized of this matter. With these directions, the appeal stands disposed of, making it clear that this order is subject to further order, if any, to be passed by

the learned ADJ after hearing the respondent. Copy of this judgment be immediately sent before the learned ADJ.

9. Copy of this judgment be given dusty to the appellant.

