

(2007) 02 DEL CK 0164

In the Delhi High Court

Case No : FAO 42 of 2007

ICICI Bank Limited

APPELLANT

Vs

Kaptan Singh

RESPONDENT

Date of Decision : 05-02-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1

Citation : (2007) 2 BC 586 : (2007) 139 DLT 501 : (2007) 1 ILR Delhi 76 Supp

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

Bench : Single Bench

Advocate : Punit K. Bhalla, for the Appellant; None, for the Respondent

Final Decision : Disposed Off

Judgement

J.M. Malik, J.—The appellant herein filed a suit under Order 37 CPC and application under Order 40 Rule 1 CPC before Trial Court on 01.12.2006. The appellant/plaintiff advanced a loan in the sum of Rs. 5,60,000/- to the defendant/respondent for purchase of a vehicle in respect of which hypothecation-cum-loan-agreement dated 01.05.2004 was executed. It was agreed that the respondent/defendant would pay off the loan in 35 monthly Installments of Rs. 17,803/- each commencing from 07.06.2004 to 07.03.2007. The appellant herein served legal notice upon the defendant dated 17.11.2006. The defendant did not pay even a single penny towards the above said loan. In the plaint, the plaintiff has averred that the defendant is trying to part with the hypothecated vehicle and is trying to remove the same from the bounds of this city. The plaintiff also moved application under Order 40 Rule 1 CPC for appointment of receiver to take over the possession of the vehicle, namely, Scorpio/DX TC2 Car bearing No. DL-9C G-6822 ex-parte.

2. The Trial Court dismissed the application. It opined that in view of Prahalad Rai Muf v. Sat Narain 2000 RLRN 29, this Court had held that due to delay the matter had become stale and there was no emergency or danger requiring immediate action to deprive defendants of de-facto possession. He also placed

reliance on another authority reported in *T. Krishnaswamy Chetty Vs. C. Thangavelu Chetty and Others*, wherein it was held that "appointing receiver is in the discretion of the Court and it would be exercised in favor of a person who has a strong prima facie case and there was emergency or danger or loss requiring urgent action and there were adverse and conflicting claims and the conduct of the applicant was free from blame."

3. On the other hand, the learned Counsel for the appellant has drawn my attention towards order passed by this Court in FAO (OS) 117/2002 decided on 3.4.2002. In this case, learned Single Bench did not grant the appellant's prayer for ex-parte order to seize the vehicle. Consequently the LPA was filed which ordered:

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.

4. Counsel for the appellant has also drawn my attention towards another order passed by this Court in *Citi Bank N.A. v. Bhupender Singh* in FAO 198/2006 in Suit No. 73/2006 dated 11.8.2006. In this case, the appellant had paid some of the amount but defaulted in making payment of four Installments. Learned Trial Court declined the prayer for an ex-parte order relying upon a decision of the Supreme Court in *R. Manoharan v. Smt. D. Jayakumari and Ors.* UJ (SC) 13. The learned Single Judge distinguished the above said authority of the Supreme Court because that had stemmed out of a compromise and learned Single Judge passed an ex-parte order.

5. The case of *Prahalad Rai Muf v. Sat Narain* (supra) has got no application to the facts of this case. The Court observed that the plaintiff did not vigorously pursue the application and it came up for hearing after 12 years. However, the facts of the case in hand are altogether different. Application was immediately moved along with the suit which was filed on 01.12.2006 itself. The money suit was filed within the leeway of three years. To wait for the opposite party that he

will pay the amount, hoping against the hopes, serving him with legal notice, preparation of plaint entail considerable time. These things cannot be done in a jiffy.

6. 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. Thus I hereby appoint Mr. Sameer Vohra, representative of the appellant bank as receiver to take over the possession of the vehicle bearing No. DL-9CG-6822 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.

Copy of this judgment be given dusty to the appellant.