

(2015) 10 DEL CK 0239

In the Delhi High Court

Case No : FAO 316/2015

ICICI Bank Limited

APPELLANT

Vs

Prem Chand Sharma

RESPONDENT

Date of Decision : 05-10-2015

Acts Referred:

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

Citation : (2015) 224 DLT 192

Hon'ble Judges : Rajiv Shakdher, J.

Bench : Single Bench

Advocate : Punit K. Bhalla and Chetna Bhalla, Advocates, for the Appellant

Final Decision : Disposed Off

Judgement

Rajiv Shakdher, J.

CM No. 21940/2015 (Exemption)

1. Allowed subject to just exceptions.

FAO 316/2015

2. This is an appeal directed against order dated 25.08.2015 whereby the learned Additional District Judge (Central), Tis Hazari, has declined to grant the prayer sought for appointment of a receiver, at the ex parte stage.

2.1. In this particular case, the appellant has averred that, a loan in the sum of Rs.6.50 lacs was sanctioned in favour of the respondent. It is further averred that in pursuance of the same, an amount equivalent to Rs.6,47,980/- was disbursed to the respondent.

2.2. It is also stated that in this behalf a loan agreement dated 13.10.2012 was executed between the appellant and the respondent. In pursuance of the aforementioned loan agreement, a sum equivalent to Rs.6,47,980/- was disbursed on 05.11.2012 to the respondent.

2.3. It is stated that pursuant to the loan extended to the respondent, he purchased and, was consequently, delivered a vehicle described as: TATA LPT 1613; bearing registration no. UP-17T-1109 (hereafter referred to as the subject vehicle).

2.4. The said loan was required to be paid by the respondent in 35 Equated Monthly Instalments (EMIs) equivalent to Rs.22,750/- each. The loan facility, apparently, evidently carries a penal interest of 24% p.a. The said loan, according to the appellant is secured by a deed of hypothecation and an irrevocable power of attorney. The latter document i.e. the irrevocable power of attorney, apparently, authorises the appellant to take possession of the subject vehicle and sell the same, in case, of commission of default in the repayment of dues by the respondent.

2.5. According to the appellant, the respondent failed to adhere to the terms of the loan agreement, and thus, committed defaults in payment of the EMIs. The total sum due and payable against the outstanding instalments, according to the appellant, is an amount of Rs. 1,13,500/-, and an amount of Rs. 27,774/- towards late payment and cheque bouncing charges. This amount is, in addition, to the instalments falling due in future; which is, an amount equivalent to a sum of Rs.1.82 lacs, as on 20.02.2015.

2.6. In view of the aforesaid, the appellant appears to have issued a recall notice dated 26.11.2014.

2.7. It is the appellant's case that the respondent neither replied to the notice nor repaid the amount, which was due and payable under the loan agreement.

3. By virtue of the aforesaid notice, the respondent was also called upon to hand over the possession of the subject vehicle.

3.1. The appellant having failed, in its endeavour, to receive the defaulted amount and / or the possession of the subject vehicle, proceeded to institute an action for this purpose in the court below. The said suit was moved on 15.03.2015. As indicated above, a prayer was made for appointment of a receiver, at that stage itself. The trial court, however, has declined the request for appointment of a receiver at the ex parte stage.

4. It is, in these circumstances, that the appellant has filed the instant appeal.

5. Having heard Mr. Bhalla and perused the record, I am of the view that the appellant has set up a prima facie case for appointment of a receiver. The balance of convenience also appears to be in favour of the appellant. There is in the given circumstances every possibility of harm being caused to the interest of the appellant if, the respondent were to create third party interest in the subject vehicle in the interregnum.

5.1. Accordingly, the prayer made by the appellant for appointment of a receiver ought to have been granted by the trial court. As indicated at the very outset, if

the trial court had reasons to decline the request for appointment of the receiver, the same ought to have been articulated in the order itself. The trial court has done neither; except for, directing issuance of summons in the suit.

5.2. In my view, the order being bereft of reasons and given the fact that a good prima facie case has been set up by the appellant, I am inclined to both appoint a receiver and set aside the impugned order. It is directed accordingly. Mr. Rajesh Lavania & Mr. Krishna Kumar representatives of the appellant are appointed as receivers. They will take possession of the subject vehicle. In case the respondent were to pay the outstanding amount, the subject vehicle will be released to him, albeit on superdari. The receivers will also, in such an eventuality, issue a receipt to the respondent evidencing the payment of dues by the respondent.

5.3. In case police assistance is required, the concerned SHO, on being approached, by the receiver will render the necessary assistance. The receiver will, however, ensure that while taking possession of the subject vehicle every courtesy is extended to the respondent and / or the person who may be in seisin of the subject vehicle, at the time the receiver seeks to take possession of the same. The receiver while taking possession, will bear in mind the place and time when the possession of the subject vehicle is sought to be taken so as to ensure that no inconvenience is caused to the respondent or the person who, at the relevant point in time, may be in seisin of the subject vehicle.

6. The directions passed by me hereinabove for appointment of the receivers will continue to operate till the trial court hears and disposes of the application filed by the appellant in the suit for the very same purpose.

6.1. The Trial court will have liberty, upon hearing the respondent i.e. the original defendant to modify, vary or even vacate the order if, the circumstances impel it to do so.

7. I may only indicate that the issues raised in the present appeal with regard to the appointment of a receiver have been dealt with by me in the judgment dated 15.09.2015, passed in FAO 293/2015, titled : ICICI Bank Ltd. Vs. Collage Estates Pvt. Ltd. and Ors. The relevant observations made therein are extracted hereafter for the sake of convenience :-

"..7. Before concluding, I may only point out that there is an illuminating discussion in the judgement of the Madras High Court in the case of T. Krishnaswamy Chetty Vs. C. Thangavelu Chetty and Others, , wherein the court after adverting to various authorities, set down the five core principles, which a court should ordinarily keep in mind while appointing a receiver. These are briefly paraphrased as follows: (i) The appointment of a receiver is a matter within the discretion of the court. The discretion is neither arbitrary nor absolute. It is required to be exercised to effectuate the ends of justice and to protect the interest of all parties who are interested in the controversy. (ii) While appointing a receiver, the court should satisfy itself that the plaintiff has set up a prima facie

case and has a good chance of succeeding in the suit. (iii) The plaintiff must be able to demonstrate emergent danger or loss if immediate action is not taken. (iv) Ordinarily an order for appointment of a receiver, which results in depriving the defendant of de-facto possession, is not granted where it may cause irreparable wrong. (v) The last factor that a court has to bear in mind while appointing a receiver, is to look at the conduct of the party who makes an application for appointment of a receiver. The applicant should approach the court with clean hands and should not have disabled himself from seeking, what is, an equitable relief by virtue of the laches and delay and/or acquiescence.

7.1. Insofar as principle no. (iv) is concerned, I may add that it has to be applied bearing in mind the assets qua which a receiver is appointed. If it is an immovable property, the said principle may apply, whereas in a case of a movable or perishable property, the court may or may not apply this principle. Even in the case of an immovable property the defendant can always be directed to continue in possession as an agent of the court. In other words, defendant will act as a receiver and his possession will be custodia legis.

7.2. Furthermore, in so far as this principle is concerned, it has to been seen in the light of the law which has evolved vis-a-vis claims of banks and financial institutions. A Full-Bench of the Bombay High Court exhorted courts to adopt a practical approach in exercising the power vested with them for appointment of a receiver, having regard to their outstanding claims. [See State Bank of India Vs. Trade Aid Paper and Allied Products (India) Pvt. Ltd. and others,].

7.3. I may also indicate herein that the Full Bench judgement of the Bombay High Court in State Bank of India case was taken up in appeal to the Supreme Court only on one issue which was qua the embargo put in place by the Full Bench on the aspect of sale of the property by the receiver prior to a decree being passed in the suit. The Supreme Court over-ruled the Full Bench judgement on this aspect and stated, in no uncertain terms, in its judgement in the case of Industrial Credit and Investment Corporation of India Ltd. and Others Vs. Karnataka Ball Bearings Corpn. Ltd. and Others, , that no such fetter is contemplated on the powers of the receiver appointed under the provisions of Order 40 Rule 1 of the CPC. In other words, the Supreme Court went as far as to observe that a receiver, pursuant to the directions issued by the court in that behalf, is empowered to sell the property even before a decree is passed in the suit. This, according to the Supreme Court, is discernable on a plain reading of provisions of Order 40 Rule 1 of the CPC. The only caveat that the court entered was that while directing sale of the property before passing of a decree, it will apply sound judicial discretion in the matter. In this regard some of the instances, in which sale could be directed, which were articulated by the Supreme Court were as follows. These instances were cited by the Supreme Court only by way of illustration: (a) Where the court feels if the property is not sold, the initiator of the action would be subjected to a great fraud (b) Where there could be diminution in value of assets if immediate order is not passed. (c)

Where there is apprehension of wastage or even where wrongful entrants or trespassers may attempt to make an in-roads in the property for permanent settlement.."

8. With the aforesaid directions in place, the appeal is disposed of.