

(2020) 01 DEL CK 0133

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 27 Of 2020

M/S ICICI Bank Limited

APPELLANT

Vs

Meena Kumari & Anr

RESPONDENT

Date of Decision : 13-01-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 40 Rule 1, Order 39 Rule 6

Citation : (2020) 01 DEL CK 0133

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Punit K. Bhalla, Chetna Bhalla

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

CM APPL. 1122/2020 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 27/2020

2. This petition challenges the impugned order dated 27th February, 2019 in view of the fact that the application under Order XXXIX Rule 6 CPC, which was filed by M/s. ICICI Bank Ltd. (hereinafter, "Bank"), has not been decided by the Trial Court, despite the suit itself having been decreed.

3. The background is that the Bank had filed a suit for recovery of Rs.8,33,378.28/- against the Respondents/Defendants (hereinafter, "Defendants") in which initially an application for appointment of Receiver was filed. The case of the Bank is that the Defendants had availed of a vehicle loan of Rs.7,73,000/- in respect of a car i.e., Ecosport/1.5 P Titanium AT, registered in Haryana, which was disbursed to the Defendants under the loan cum hypothecation scheme of the Bank. The Defendants also availed of a personal loan of Rs. 3,98,000 from the Bank, against the security of the same vehicle,

under the Bank's personal loan cum hypothecation scheme.

4. The Defendants had agreed to repay the loan amount of Rs.7,73,000/- in 60 equal instalments of Rs.16,612/- each, along with interest @10.49% and the personal loan amount of Rs. 3,98,000 in 36 equal instalments of Rs.13,752/- each, along with interest @14.77%. The entire amount had been disbursed to the Defendants. The Trial Court had, vide order dated 27th March, 2018, appointed a Receiver for taking possession of the car. In the said order, the Trial Court appointed one of the Bank officials as the Receiver and directed the seizure of the vehicle. The said order reads as under:

"Issue summons to defendant no.1 through all modes i.e. PF/RC/approved courier/registered post/speed post as well as affixation on filing of PF by the plaintiff within three weeks from today, returnable on 07.08.2018.

An application under Order 40 Rule 1 r/w Section 151 CPC filed on behalf of the plaintiff for appointment of receiver. Heard on the application. In view of submissions made by counsel for plaintiff and the averments made in the application, the application is allowed.

It is the case of the petitioner that petitioner financed an amount of Rs.7,73,000/- to the respondent vide loan agreement dated 10.06.2015 for the purchase of a vehicle namely "ECOSPORT/1.5 P TITANIUM AT" bearing registration No.HR-29AL-2110 and under the terms and conditions of the said agreement, the said vehicle was hypothecated in favour of the petitioner. The loan was to be repayable in 60 monthly installments of Rs.16,612/-. The defendant also approached the petitioner bank for a personal loan of Rs.3,98,000/- to be repaid in 36 EMIs of Rs.13,752/- vide documents executed on 12.01.2017. For the said loan, the plaintiff bank maintained account No.LAFDB00032774134 and SPBGC00035241434. Ld. Counsel for the petitioner has contended that defendant in terms of the Loan documents executed had paid an amount of Rs.4,98,360/- (30 EMIS) and defaulted for an amount of Rs.33,224/- (02 EMIS) and Rs.10,276/- towards late payment and cheque bouncing charges besides future instalments of Rs.4,61,748/- against the loan account no.LAFDB00032774134. The defendant has paid Rs.1,23,768/- (09 EMIs) and defaulted in repayment of Rs.55,008/- (04 EMIS) towards equated cheque bouncing charges against the loan account No. SPBGC00035241434 as on 13.02.2018. The plaintiff in terms of the loan documents executed by the defendant, issued a notice dated 16.11.2017 upon the defendant calling to repay the loan amount. Prayer has been made for appointment of Mr. Neeraj Singh, Representative of the petitioner as the receiver to take possession of the vehicle in question. Keeping in view the totality of the facts and circumstances, and for the preservice of hypothecated vehicle, I consider it just and convenient to appoint Mr. Neeraj Singh as a Receiver to take ex-parte ad-interim possession of the hypothecated vehicle bearing registration No.HR-29AL-210 till final disposal of the application on merits with the following stipulations:

(i) that the receiver is directed to first give offer to the respondent for making payment of defaulted EMIs/amount before seizure of the vehicle.

(ii) that if the respondent make payment of the outstanding installments as on date of possession, the receiver shall release the vehicle in question to the respondent on Superdari subject to an undertaking by the respondents to the receiver for regular payment of future monthly installments till the expiry of the tenure, and a declaration not to part with the vehicle or create third party interest in the vehicle until the entire amount is paid.

(iii) that if the respondent is not in a position to clear the entire outstanding installments, the receiver shall give him another opportunity to pay the outstanding installments within 30 days of taking over the possession of the vehicle and in case the respondent make the payment of the outstanding installments within the said period, the receiver shall release the vehicle to the respondent subject to an undertaking as aforementioned.

(iv) that if the respondent does not make the payment of the outstanding amount to the petitioner within 60 days, the receiver, with the prior permission of the arbitrator; would be authorized to sell the vehicle in question in public auction with prior written notice (to be sent by speed post AD) of the date of auction to the respondent at the address(es) mentioned in the agreement or the address from where the vehicle is taken into possession so that the respondent may also be able to participate in the auction to enable the petitioner to fetch maximum amount from the sale of the vehicle. The receiver shall carry out video recording of the auction proceeding and shall submit the same before the arbitrator alongwith his final report. Copy of the report shall be submitted by the receiver to the arbitrator.

(v) that the receiver may take the police aid if required. This order itself would amount to a notice/directions to the SHO of the concerned area to provide the requisite assistance to the receiver for repossession of the vehicle.

(vi) that the receiver shall give the copy of the order to the person from whose custody he takes the vehicle.

(vii) that the receiver shall issue appropriate receipt to the person from whose custody he takes the vehicle and will also note therein the condition of the vehicle.

(viii) that the receiver shall ensure that the vehicle is kept in the same condition.

(ix) that the receiver shall ensure that there possession of vehicle does not result in any breach of peace. In the event of any breach of peace, the receiver shall not proceed without assistance of police.

(x) that at the time of taking custody of the vehicle, the receiver will take the photographs of the vehicle from different angles along with the person(s) occupying the vehicle as well as the place of taking over the possession and shall

ensure that the vehicle is kept in same condition in which it was seized and ;

(xi) that the receiver shall prepare an inventory of the goods/accessories found in the vehicle and shall furnish the copy of the inventory to the person from whom the vehicle is seized,

(xii) that the receiver shall avoid taking the possession of the vehicle if the vehicle is occupied by a woman who is not accompanied by a male member or an elderly, infirm or physically/mentally challenged person. In such case, the receiver shall take the possession of the vehicle from the borrower's residence only

(xiii) that the parties are at liberty to apply to the Ld. Arbitrator for modification of this order.

This order is subject to the condition that the petitioner shall refer the disputes to the Arbitrator within two months from today and inform the court about the same. This order is subject to the condition that the vehicle shall however, not be sold or disposed of or parted with without the permission of this court. The receiver shall also be bound to produce the vehicle in the court as and when required. The report be filed by the receiver within a week of the seizure of the vehicle containing all the details including that of the person from whose possession and place from where the vehicle has been seized. Copy of the order be given dasti to counsel for plaintiff."

5. A perusal of the above order shows that the taking of possession of the vehicle was subject to the condition that the vehicle shall not be sold/disposed of/parted with without the permission of the Court. Since then, the vehicle has been lying in the control of the Bank. Immediately after taking possession of the vehicle, the Bank moved an application under Order XXXIX Rule 6 CPC sometime in August, 2018 itself. Notice was issued in the application. The prayer in the said application reads as under:

"a) direct the plaintiff to sell the said vehicle namely "ECOSPORT BEARING REGISTRATION NO. HR-29AL-2110" and direct the plaintiff to adjust the sale proceeds towards the outstanding amount due and payable by the defendant to the plaintiff; and

b) pass such other/further order (s) as this Hon'ble Court may deem fit and proper in the interest of justice."

6. This application continues to remain pending even though the suit itself has now come to be decreed on 27th February, 2019. The Trial Court has passed a decree for a sum of Rs.8,33,378.28 with interest. The operative portion of the said order reads as under:

"8. The original documents have been exhibited and proved in the testimony of PW1 as Ex.PW1/1 to Ex.PW1/9. The witness has not been cross examined by the defendant and hence the testimony of PW1 has remained un-rebutted and

unchallenged. Plaintiff has successfully proved its case. Hence, the suit of the plaintiff is accordingly decreed for the amount of Rs. 8,33,378.28/- with interest @ 6% per annum from the date of filing of the suit till its recovery/realisation. Costs of the suit and litigation charges also awarded in favour of the plaintiff and against the defendant. Decree sheet be prepared accordingly."

7. The grievance of the Bank is that despite the application under Order XXXIX Rule 6 CPC having been filed, even in the final decree permission has not been given to the Bank for selling the vehicle.

8. It is submitted by Mr. Bhalla, Id. counsel for the Bank, that the Bank is incurring parking charges for keeping the vehicle. It is further submitted that the suit itself having been decreed, no useful purpose would be served by not selling the vehicle. Id. counsel also submits that despite orders having been passed in M/s ICICI Bank Ltd. v. Naveen Kalkal [CM(M) 1821/2019, decided on 23rd December, 2019] and M/s. ICICI Bank Limited v. Nidhi Sharma [CM (M) 1814/2019, decided on 23rd December, 2019], which rely upon ICICI Bank Ltd. v. Kamal Kumar Garewal [FAO 49/2015, decided on 29th May, 2015], and the same having been placed before the Trial Court, the same were not considered by the Trial Court and the application seeking permission for sale of the vehicle has simply been adjourned.

9. After hearing Id. counsel for the Bank, there is no doubt that the application under Order XXXIX Rule 6 CPC ought to have been decided by the Trial Court at the time of the final order in the suit itself. To keep the application pending, while the suit itself has been decreed, is completely illegal and irrational. The car has a limited life value which deteriorates with each passing day. The Bank ought to be permitted to sell the car to recover whatever amount it can to satisfy the decree.

10. Furthermore, the manner in which the application for Receiver is being treated by the Trial Court is completely unsatisfactory. Repeated orders have been passed by this Court in several matters including, Kamal Kumar Garewal (supra) and Naveen Kalkal (supra). Ideally, when the Trial Court is satisfied that the case for appointment of a Receiver has been made out and the Bank has taken control of the car for repayment, when the Bank approaches the Trial Court for permission to sell the vehicle, the same should be directed to be considered expeditiously, as observed in Naveen Kalkal (supra).

11. Considering that a large number of petitions have been filed today, which include suits both at the interim stage and at the final stage wherein the applications under Order XXXIX Rule 6 CPC, for permission to sell the vehicle, are simply being adjourned from time to time, it is deemed appropriate to direct that applications for sale of the vehicle, whenever filed, shall be disposed of within 60 days, except in case of any unusual or exceptional circumstances. Such orders for sale of the vehicle deserve to be passed especially in those cases where the Defendant(s) remain ex-parte and do not contest the proceedings. No useful purpose would be served by leaving the vehicle to deteriorate and letting

the Bank incur further charges to store and preserve the vehicle.

12. Under these circumstances, the impugned order is modified to the extent that the application under Order XXXIX Rule 6 CPC has not been dealt with by the Trial Court. The Bank is permitted to sell the vehicle through a proper public auction with notice to the Defendants. Notice be served through speed post at the last known address of the Defendants as also the location from where the vehicle was taken into possession. The Defendants are also permitted to participate in the auction, as per paragraph 14 of Kamal Kumar Grewal (supra). Once the auction has taken place, in the suits where final decrees have been passed, a report shall be placed by the Bank before the Trial Court so that if the Defendant(s) wish to obtain any information, the same would be available to them. In those cases where the suits are still pending, the report shall be filed before the Trial Court to enable the Court to proceed with the suit and pass the final orders in the suit.

13. The present order along with the previous judgements in Kamal Kumar Grewal (supra) and Naveen Kalkal (supra) be circulated by the worthy Registrar General to all the district courts and civil judges. The petition is disposed of in the above terms. All pending applications are also disposed of.