IN THE COURT OF SH.MANISH YADUVANSHI : ADDITIONAL DISTRICT JUDGE -11, CENTRAL, TIS HAZARI COURTS, DELHI

CS No.6218/2018

ICICI BANK LTD .... Plaintiff

VERSUS

SH.PAWAN RAWAT ....Defendant

ORDER

02.7.2018

1. Vide this order, I shall dispose of an application under Order XL Rule 1 CPC filed by the plaintiff in its suit for recovery of Rs.4,63,406.32 paise through its authorized representative Mr.Mohit Grover, seeking an ad interim order for appointment of a Court Receiver.

2. The version of the plaintiff is that on the request and application of the defendant, the plaintiff bank had, on 20.5.2017, sanctioned and disbursed a vehicle loan for a sum of **Rs.4,95,550/-** against sanctioned loan of Rs.5,10,000/- to the dealer Orion Automobiles Pvt Ltd after deducting a sum of Rs.14,450/- towards processing charges

for purchase of vehicle namely **"VITARA BERZZA/LDI"**. The loan was to be repaid with interest in 60 equated monthly installments of **Rs.10,751/-** each. The defendant also executed the necessary loan documents i.e. Credit Facility Application; Deed of Hypothecation; and Irrevocable Power of Attorney on **16.5.2017.** The defendant accordingly acquired the vehicle bearing registration number **"HR-29-AP-1732"** make as above which was hypothecated with the plaintiff bank.

3. The loan was repayable with interest at the rate of 9.66 % per annum with the stipulation of payment of penal interest at the rate of 24% per annum.

4. The present defendant paid a sum of Rs.1,31,603/- which is equivalent to 12 Equated Monthly Installments, therefore defaulted in the agreed repayment schedule of the loan and had defaulted in repayment of **Rs.18,911/**- which is equivalent to 2 EMIs

and further amount of Rs.2,331/- towards late payment and Rs.4,130/0 towads cheque bouncing charges totaling to Rs.4,63,406.32 paise as on 03.8.2018. Updated statement of account of the defendant had been filed during the course of arguments.

4. Because of the default in repayment of monthly installment, the plaintiff bank has recalled the loan facility available to the defendant as per the terms of the loan documents and has sent a loan recall notice on **03.07.2018.** As per the statement of account maintained by the plaintiff bank, an amount of **Rs.4,63,406.32 paise** is due, outstanding and payable by the defendant against the vehicle loan as on the date of filing of the present suit.

5. I may mention that the vehicle in question was hypothecated by the defendant with the plaintiff bank and the deed of hypothecation authorizes the plaintiff to recover the possession of the vehicle in case of default /

breach and since, the defendant has failed to maintain financial discipline in the repayment of loan, the plaintiff has made out a prima facie case for passing an ex-parte order for appointment of receiver to repossess the vehicle in question. In the facts and circumstances, the apprehension on the part of the plaintiff that in the event of a notice being issued to the defendant, he may proceed to dispose of the vehicle in question to defeat the claim of the plaintiff is not unfounded and in that event, the plaintiff shall suffer irreparable loss and injury.

6. Accordingly, an ex-parte order is passed thereby appointing **Mr.Raju Singh** representative of the plaintiff bank as Receiver with the direction to repossess the vehicle make **"VITARA BREZZA/LDI"** bearing registration No. **"HR-29-AP-1732"** and to keep the same in his safe custody and not to dispose of the same without the orders of this court**.**

7. The receiver shall take over the possession of

the vehicle from the defendant at the address(es) given in the loan application. If the vehicle is not available at the said address(es), the receiver shall be at liberty to recover the vehicle wherever found. However, the receiver shall not stop a running vehicle on the road to forcibly take out the driver to take the possession of the vehicle. The receiver shall also not make any attempt to block the passage of a moving vehicle to bring it to a halt to take its possession.

8. 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 cases, the receiver shall take the possession of the vehicle from the borrower's residence.

9. The receiver shall be at liberty to take the assistance of the local police, if required, for taking over the possession of the vehicle.

10. The receiver shall also ensure that the repossessing of the vehicle does not result any breach of the peace. In the event of any breach of peace by the person occupying the vehicle, the receiver shall not proceed without assistance of the police.

11. At the time of taking the custody of the vehicle, the receiver shall deliver a copy of this order to the person from whom the possession of the vehicle is taken.

12. At the time of taking the custody of the vehicle, the receiver shall take the photographs of the vehicle from different angles alongwith the person(s) occupying the vehicle as well as the place of taking over the possession. The receiver shall prepare an inventory of the articles/ accessories found in the vehicle and shall furnish a copy of the inventory to the person from whom the possession is taken. The Receiver shall issue appropriate receipt to the person from whose custody the vehicle is taken. After taking the possession of the vehicle, the receiver shall keep

the vehicle in safe custody.

13. If the defendant makes the payment of the outstanding installments as on the date of taking over of the possession, the receiver shall release the vehicle in question to the defendant on superdari subject to an undertaking by the defendant to the receiver for regular repayment 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.

14. If the defendant 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 defendant makes the payment of the outstanding installments within the said period, the receiver shall release the vehicle to the defendant subject to an undertaking as aforementioned.

15. The receiver shall submit his first report before the Court within 10 days of taking over the possession/ custody of the vehicle alongwith the photographs and inventory mentioned above.

The application stands disposed of in above terms.

Announced in the open Court on 02.7.2019

(MANISH YADUVANSHI)
Additional District Judge-11
Central District
Tis Hazari Courts, Delhi.