CS (COMM) NO.: 1557/22
ICICI BANK VS. HEERA LAL & ANR.

05-07-2022

Pr : Sh. Rajesh Kumar, counsel for the plaintiff.

Hard copy of the suit is received.

Reader is directed to report whether the court fees paid by the plaintiff is correct or not.

An application under Order 40 Rule 1 CPC for appointment of the receiver is moved alongwith the suit for taking possession of the hypothecated vehicle. Counsel for the plaintiff relied upon the case law **M/s ICICI Bank vs Randhir Singh FAO 321/2018 decided on 06.08.2018 by Delhi High Court.**

It is stated that defendants took two loans, one for purchase of a vehicle and another is GECL loan. Defendants committed defaults in payment of installments of both the loans. According to the counsel, out of **47** installments of 1st loan, only **20** installments were paid and defendants committed defaults of **04** installments. Defendants had paid only ₹ 69,036/- out of **48** installments of 2nd loan and defaulted **04** EMIs. Defendants had failed to make payments of installments of both the loans due to which both the loans amount have been recalled by issuing a legal notice dated **28-12-2021** and as per agreements, defendants are under obligation to surrender the vehicle in case of non-payment but he failed to do so. There is chance of concealment of the vehicle or its unauthorised disposal by the defendants.

Plaintiff bank has also placed on record statement of account to show the defaults committed by the defendants in payment of the installments of both the loans. The vehicle bearing registration number **HR-55AH-1454 Make AL ECOMET 1214** had been purchased by the defendants from the amount of 1^{st} loan and lateron hypothecated to the plaintiff bank.

Counsel for the plaintiff further requested for appointment of **Sh. Vijay Kumar,** Officer of the plaintiff bank as a receiver on the ground that for the better co-ordination and immediate and quick action, the official of the bank be appointed as receiver.

Keeping in view the defaults committed by the defendants in making payment of installments and apprehension of the plaintiff bank that defendants may conceal or dispose off the vehicle in question, I deem it appropriate and take it as a fit case where the receiver is to be appointed at this stage for taking possession of the vehicle in question. Accordingly, application under Order 40 Rule 1 CPC is allowed for the time being and plaintiff bank is permitted to take into possession of the vehicle bearing registration no. **HR-55AH-1454 Make AL ECOMET 1214** from the possession of the defendants and **Sh. Vijay Kumar**, Officer of the plaintiff bank is authorized to seize the above mentioned vehicle and take its custody. He is permitted to take the help of the police if required. However, it is ordered that he shall also comply with following terms and conditions:

1. The vehicle shall be seized in between 8:00 a.m. to 8:00 p.m. only.

2. It shall not be seized when is moving on the road.

3. The receiver shall seize the vehicle personally and shall not delegate this power to anyone.

4. The defendants/occupants of the vehicle shall be permitted to remove their belongings from the vehicle in question at the time of seizure.

5. At the time of seizure of the vehicle, the signature of an independent person of the locality or nearby area or police official shall be obtained on the possession report.

6. The copy of the possession report shall be given to the defendants/occupants of the vehicle at the spot itself. The date and time of seizure of the vehicle must be clearly mentioned in the report.

7. The detailed condition of the vehicle as well as its accessories shall be noted in the possession report and photographs of the vehicle shall be also taken at the time of seizure.

8. The vehicle in question shall not be disposed off or sold without prior permission of the court and shall be kept in safe custody.

9. The receiver shall be under the control of the court and is required to file the report in the court within three days of the seizure of the vehicle.

10. If the vehicle is not traced out or could not be seized due to any reasons then report giving reasons shall be filed in this regard on the next date of hearing.

It is also warned to the receiver that he shall be personally liable in case of violation of any of the above conditions.

Since, at the specific request of the plaintiff bank, its officer is appointed as receiver so an obligation is also put upon the plaintiff to ensure that its employee appointed by the court as receiver must comply with above terms and conditions otherwise the appointment order of the receiver shall be cancelled or shall not be extended or the seized vehicle can ordered to be returned to the defendants unconditionally without any payment.

It is also made clear to the plaintiff that this is an interim measure and the order of appointment of receiver shall remain in force only till next date of hearing unless again extended.

If the vehicle could not be seized by the next date of hearing then this interim order may not be extended further so the receiver must take the sincere efforts for tracing out and seizing of the vehicle.

Issue summons of the suit to the defendants for **17-08-2022** on filing PF and be served through registered cover, speed post, courier and also on e-mail and whatsapp address, if available, as well as through dasti service by the Receiver.

Copy of this order be given to the AR/counsel for the plaintiff bank for handing over the same to the receiver.

(Ashwani Kumar Sarpal)
District Judge- Commercial Court-05 (Central)
05-07-2022