

OMP (I) (Comm) no. 37/2020
M/s. SMC Global Securities Ltd.
Vs.
Sh. Pramod Kumar Aggarwal
16-7-2020

Present:- Sh. Shreyas Jain and Sh. Tarun Gupta, Advocates for
petitioner
None for respondents

Today the proceedings were conducted through Video Conferencing. Affidavit of Sh. Tarun Gupta, AR of the petitioner company was received yesterday on official e-mail and today also received fresh affidavit as previous one was containing some minor typing mistakes.

According to affidavit of AR, notice was served upon PNB bank as per last order and bank had supplied statement of account to him, according to which only Rs. 35,000/- was found in the bank account of the respondent but this affidavit does not mention whether that account is freezed by bank or not. How the bank has given statement of account of the respondent to the petitioner has to be checked as there was no direction to the bank to supply any copy of statement to the official of the petitioner. Since no official report of the bank is received so the same is awaited for next date. Directions be given to concerned bank that report can be sent on the official e-mail of the court.



AR also mentioned in his affidavit that two officials of the company had gone to the residence of the respondent but his wife refused to take process. This affidavit does not mention on which date, time and place, they had gone. The affidavits of the concerned two officials have also not been filed. This version of the AR cannot be accepted as he himself had not gone at the residence of the respondent. Thus, the taking of personal steps for service through official of the company cannot be believed.

It is alleged that those officials had gone to the local court also for taking process server to the house of the respondent but that court has not provided this help, however in the affidavit of AR, nothing in this regard is mentioned. Let respondent be again served through local court process serving agency.

It is also alleged that notice was sent through speed post also but no receipt of postal department is filed nor any track report is annexed with the affidavit of AR. It is also not mentioned on which date, speed post was sent and from which post office. The version of deemed service through post is not acceptable.

It is also stated that notice was sent to e-mail and whatsapp number of the respondent by company at its own. No steps were taken to serve the respondent through the official e-mail of the District Judge office which is working. Let the respondent be served again through official mail of the process serving agency of District Judge. Let the petitioner to identify documents that e-mail and whatsapp number upon which process was sent by it at its own belonged to the respondent only. In such situation, I am not



accepting the alleged service as stated by the AR of the petitioner in his affidavit as valid service of the respondent. Fresh steps be taken for service of the respondent for next date.

It is stated that claim has been filed before concerned institution recognized by BSE/Indian Stock Market which may appoint arbitrator within 15 days. Let the petitioner to inform on next date whether arbitrator has been appointed or not and if is appointed what steps he had taken so far. Since the respondent is not properly served so request of the counsel for the petitioner to direct respondent to file affidavit of his assets and properties etc. is rejected which relief was also not directed on the last date.

It is also stated that respondent is having other bank accounts and efforts will be made to try to trace out those particulars.

Put up this matter on 17-8-2020 for awaiting due service of the respondent, report of the bank and consideration through video conferencing at 11 a.m., if by that time court is not opened.



(Ashwani Kumar Sarpal)

District Judge (Commercial)-05

Central District, Tis Hazari

CS (Comm) No. 981/2020
ICICI Bank Ltd. vs Brahm Pal Singh

16-07-2020

Pr : Sh. Deepak Kaushik, Id. Counsel for plaintiff.

Fresh suit for recovery received by way of assignment through online. It be checked and registered. Counsel for the plaintiff filed court fees of Rs.7,835/--. Reader is directed to report whether the court fees paid 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 the defendant took a loan for purchase of the vehicle and he committed defaults in payment of the installments. According to the counsel out of **60** installments, only **07** installments were paid and the last installment was paid on 25-12-2019 and thereafter, no payment is made due to which the loan amount has been recalled by issuing a legal notice and as per agreement defendant is under obligation to surrender the vehicle in case of non payment but he has failed to do so. There is chance of concealment of the vehicle or its unauthorised disposal by the defendant.

Plaintiff bank has also placed on record statement of account to show the defaults committed by the defendant in payment of the installments. The vehicle number **UP-16CC-9405 make I 20 ELITE /ASTA DSL** had been purchased by the defendant from the loan amount and lateron hypothecated to the plaintiff bank.

Counsel for the plaintiff further requested for appointment of **Sh. Bittu Kumar**, representative/official 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 defendant in making payment of installments and apprehension of the plaintiff bank that defendant 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 no. **UP-16CC-9405 make 1 20 ELITE /ASTA DSL** from the possession of the defendant and **Sh. Bittu Kumar**, official 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 defendant/occupant 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 defendant/occupant 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 defendant 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.

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

Issue notice of the suit and application also to the defendant for next date of hearing i.e. **14-09-2020** on PF/RC through speed post, email and whatsapp address, if available as well as through dasti service by the receiver.



(Ashwani Kumar Sarpal)
District Judge - Commercial Court-05 (Central)
16.07.2020

CS (Comm) No. 982/2020
ICICI Bank Ltd. vs Ashish Yadav

16-07-2020

Pr: Sh. Deepak Kaushik, Id. Counsel for plaintiff.

Fresh suit for recovery received by way of assignment through online. It be checked and registered. Counsel for the plaintiff filed court fees of Rs.8,435/-. Reader is directed to report whether the court fees paid 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 the defendant took a loan for purchase of the vehicle and he committed defaults in payment of the installments. According to the counsel out of 60 installments, only 19 installments were paid and the last installment was paid on 10.01.2020 and thereafter, no payment is made due to which the loan amount has been recalled by issuing a legal notice and as per agreement defendant is under obligation to surrender the vehicle in case of non payment but he has failed to do so. There is chance of concealment of the vehicle or its unauthorised disposal by the defendant.

Plaintiff bank has also placed on record statement of account to show the defaults committed by the defendant in payment of the installments. The vehicle number DL-14CD-9139 make WRV/VXMT had been purchased by the defendant from the loan amount and lateron hypothecated to the plaintiff bank.

Counsel for the plaintiff further requested for appointment of **Sh. Anurag Tiwari**, representative/official 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 defendant in making payment of installments and apprehension of the plaintiff bank that defendant 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 no **DL-14CD-9139 make WRV/VXMT** from the possession of the defendant and **Sh. Anurag Tiwari**, official 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 defendant/occupant 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 defendant/occupant 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 defendant 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.

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

Issue notice of the suit and application also to the defendant for next date of hearing i.e. **14-09-2020** on PF/RC through speed post, email and whatsapp address, if available as well as through dasti service by the receiver.



(Ashwani Kumar Sarpal)
District Judge – Commercial Court-05 (Central)
16.07.2020

CS (Comm) No. 983/2020
ICICI Bank Ltd vs Mohd Rafi Khan & Ors

16-07-2020

Pr: Sh Deepak Kaushik, Id Counsel for plaintiff

Fresh suit for recovery received by way of assignment through online It be checked and registered Counsel for the plaintiff filed court fees of Rs 20 600/- Reader is directed to report whether the court fees paid 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 the defendants took a loan for purchase of the vehicle and they committed defaults in payment of the installments. According to the counsel, out of 47 installments, only 05 installments were paid and the last installment was paid on 15-11-2019 and thereafter, no payment is made due to which the loan amount has been recalled by issuing a legal notice and as per agreement, defendants are under obligation to surrender the vehicle in case of non payment but he has failed to do so. There is chance of concealment of the vehicle or its unauthorised disposal by the defendant.

Plaintiff bank has also placed on record statement of account to show the defaults committed by the defendants in payment of the installments. The vehicle number **UP-14HT 8111 make ULTRA 1518** had been purchased by the defendants from the loan amount and lateron hypothecated to the plaintiff bank.

Counsel for the plaintiff further requested for appointment of **Sh. Ajeet Singh Chauhan or Mohd. Rafi Khan or Mohd. Asad Abbas**, representative/official 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 no **UP-14HT 8111 make ULTRA 1518** from the possession of the defendant and **Sh. Ajeet Singh Chauhan**, representative/official 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 defendant/occupant 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 defendant 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.

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

Issue notice of the suit and application also to the defendants for next date of hearing i.e. 14-09-2020 on PF/RC through speed post, email and whatsapp address, if available as well as through dasti service by the receiver



(Ashwani Kumar Sarpal)
District Judge – Commercial Court-05 (Central)
16.07.2020