

1

CS (COMM) No. 1021/2021
ICICI Bank Ltd. vs Rahul Gupta

04.05.2021

Pr : Sh. Manish Dewan, advocate with Sh. Arun Chaudhary, Regional Manager on behalf of plaintiff bank.

Defendant no.1 with Sh. Vikas Lakra, advocate.

Today proceedings were conducted through video conferencing.

Initially some discussions taken place at first call and at the request of counsel for plaintiff, matter was passed over lateron for 10 minutes to allow joining of some official of the bank. Lateron Sh. Arun Chaudhary, Regional Manager of the plaintiff bank also joined the proceedings in whose presence the arguments were heard.

This is an application under Order 9 Rule 13 CPC moved by defendant no. 1 which was taken up on 27.04.2021. In compliance of the order dated 27.04.2021, defendant no.1 has filed his statement on 02.05.2021 on official email of the court. According to the statement of the defendant no.1, he is appearing for defendant no. 2 also who is his wife and according to defendant, he has made all the installments in time and completely upto August 2020. Defendant obtained vehicle loan on 26.02.2019 and he applied for reconstruction of the same in writing in December, 2020 though stated that verbal talks were going on since September, 2020 in this regard. This request was once approved by the bank on 05.01.2021 and defendant was directed to submit certain documents but subsequently bank cancelled the said approval on 09.04.2021 during pendency of this case on the alleged ground of non submission of certain documents. Defendant has placed on record certain mails and chats which shows that requisite documents as demanded by the bank were supplied and it was even confirmed by the bank officials. Apparently defendant has completed all the necessary formalities of the plaintiff bank as per documents



placed on record by him and his request of reconstruction of loan on the face of it is wrongly rejected after due approval.

The present case was filed on 22.03.2021 and this fact of undergoing process of reconstruction of the loan is concealed by the bank and nothing is alleged in this regard in the plaint. On the basis of allegations of the plaintiff, this court passed exparte order regarding appointment of receiver on 22.03.2021 and the vehicle was seized on 16.04.2021 by the bank after rejecting the reconstruction of loan request on 09.04.2021. The malafide of the bank itself is clear from the fact that it waited for passing of declining order of reconstruction of loan dated 09.04.2021 before executing of the receiver order on 16.04.2021 and in between process of reconstruction of the loan was going on.

No reply of this application is filed by the plaintiff nor the statement of account as directed is filed. Even the receiver report is also not received from the bank till date despite the seizure of the vehicle on 16.04.2021 which is a violation of one of the conditions of the order dated 22.03.2021 passed by this court. Even if the concerned AR was suffering from Covid-19 problem, then also the receiver report could have been sent on email of the court by receiver himself or by counsel within prescribed time but bank failed in this regard. Had the bank disclosed about the process of reconstruction of the loan going on in the plaint, than the possibility would have been that no exparte receiver order was passed. This conduct of the plaintiff bank in concealing material fact in this regard cannot be appreciated and there is no hesitation to say that bank obtained exparte receiver order by concealing material fact from the court.

The amount of one EMIs is Rs. 13,920/-. Defendant has paid all the installments upto August, 2020 in time and from September, 2020 onwards he has not paid any EMI under the belief that his loan will be reconstructed. Defendant is admitting that there is some fault and lapses on his part also as he did not file written request immediately and continued to orally talk for about 3 months under



bonafide belief and faith on the verbal assurances of the bank officials that his loan will be reconstructed.

Defendant in his statement dated 02.05.2021 sent on email stated that he is ready to pay the defaulted EMIs within a reasonable time. During discussions, defendant no. 1 appearing personally stated that he has already paid installments upto August 2020 and from September 2020 onwards till today, he is in default of 08 EMIs and he is ready to clear all the EMIs upto end of August 2020. He also stated that he is ready to pay amount of two EMIs within few days.

Counsel for the plaintiff opposed this request and further stated that in case the court is asking the defendant to pay the defaulted EMIs, then he should immediately pay all the defaulted EMIs in lumpsum or to give a bank guarantee, then only the vehicle can be released. Counsel also has apprehension that vehicle if released to the defendant will be disposed off by him. It is also stated that defendant no. 1 had misbehaved with the receiver when he had gone to seize the vehicle but in absence of such report of receiver how and in which manner the alleged misbehavior took place, this version of the counsel cannot be accepted. Defendant stated that he is doing the business of tour and travels and due to lockdown and Covid-19 situation for last more than 1 year he has suffered huge financial loss.

After considering all the circumstances including the alleged financial loss suffered by the defendant in his business due to Covid-19 situation as well as his voluntarily offer to pay the 8 defaulted EMIs by end of August, 2021, I am allowing this application of the defendant. He is directed to pay amount equivalent to 2 EMIs by 15.05.2021 and the remaining 06 defaulted EMIs by the end of August 2021. However, he will continue to pay the current months installment also regularly.

The seized vehicle shall be released by the bank within 3 days of the receipt of the first two installments. For the time being, defendant will pay only the EMIs amount without any overdue charges or without any penalty and the bank can deal with this issue at the time of final closure of the account or subject to decision of this case as the case may be. Defendant is further directed not to dispose off/transfer



the vehicle in question after its release to him and he will surrender the vehicle as and when directed by the court.

During discussions, it also transpired that defendant has taken one another business loan from the plaintiff in which there are also some defaults and his request for reconstruction of the same is also pending. Let the parties to try to settle all the loan transactions if possible. Bank should adopt lenient approach by giving moratorium or by allowing reconstruction application keeping in view the Covid-19 situation and suffering of business losses by the citizens during the last one year period. Recently Hon'ble Supreme Court has also given some concessions to the borrowers in loan transactions so whatever benefit accrues in favour of the defendant, plaintiff should provide the same to him.

With these observations, the present application is disposed off. Let the defendants to file their written statement also on the date already fixed i.e. 15.05.2021, if possible. Copy of this order be uploaded on the website of this court today itself.



(Ashwani Kumar Sarpal)
District Judge- Commercial Court-05 (Central)
04.05.2021