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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 7/2018 & CM APPL. 462/2018**
M/S ICICI BANK LIMITED

..... Appellant

Through: Mr. Punit K. Bhalla, Advocate, Ms.
Chetna Bhalla, Advocates.

versus

MOHAMMAD KHALIL

..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **08.01.2018**

CM APPL. 461/2018 (Exemption)

Allowed subject to all just exceptions.

The application stands disposed off.

FAO 7/2018 & CM APPL. 462/2018

This appeal seeks setting aside of an order dated 24.11.2017 passed by the learned Additional District Judge returning the plaint on the ground that the plaint is not maintainable for want of territorial jurisdiction. The learned counsel for the appellant submits that this was done at the pre-notice stage, hence notice would not be necessary to the respondent for the decision of the present appeal. In the circumstances, notice to the respondent is dispensed with.

It is the appellant's case that a loan of Rs. 7,59,357/- had been advanced to the respondent for financing a vehicle bearing No. UP-16-AZ-9109, namely, AWENTURA/ EMOTION. Since, there has been a default of

repayment of the EMIs, the loan was recalled and the appellant sought possession of the vehicle by way of appointment of a Receiver. The loan recall notice to the respondent did not evince any response.

The reason for the returning of the plaint was that since the registered office of the bank is in Gujarat and the defendant is a resident of Noida, hence the Court would have no jurisdiction. This reasoning is erroneous because the loan documents were executed in Delhi, i.e., at Videocon Tower, Jhandewalan Extension, New Delhi and the loan was disbursed from Delhi. The loan documents annexed to the appeal, show that first Credit Facility Application Form and the irrevocable power of attorney, both were executed by the respondent at Videocon Tower, Jhandewalan Extension, New Delhi. Cause of action arose in Delhi too. Accordingly, the suit would be maintainable in Delhi.

In a similar case filed by the appellant bank, this Court held in ***ICICI Bank Ltd. vs. Astha Kumar & Anr.*** in FAO No. 214/2015 decided on 06.11.2015 and ***ICICI Bank Ltd. vs. Suresh & Anr.*** in FAO 51/2017 decided on 28.02.2017, that the Delhi Courts would have jurisdiction to adjudicate the lis. The learned counsel for the appellant submits that in view of the above, the Trial Court would be bound to go by the averments as made in the plaint. The veracity of the averments in the suit would, however, be decided after the leading of evidence.

In view of the aforesaid, the Court finds that there were sufficient grounds for the Trial Court to issue notice to adjudicate the matter. Accordingly, the appeal is allowed and the impugned order dated 24.11.2017 is set aside. The Trial Court is directed to recommence the proceedings and issue notice to the respondent.

At the request of the learned counsel for the appellant in view of the decision in **ICICI Bank Ltd. vs. Astha Kumar & Anr.** in FAO No. 214/2015 delivered on 06.11.2015, so as to prevent any prejudice that may be caused to the appellant apropos the hypothecated vehicle in question, the appellant's representative Mr. Sudhir Vashisht is appointed as a Receiver to take possession of vehicle bearing no. UP-16-AZ-9109, namely, AWENTURA/EMOTION. He shall take possession of the same in terms of the directions passed by this Court in FAO 51/2017 titled as **ICICI Bank Ltd. vs. Suresh & Anr.** decided on 28.02.2017. The relevant directions are reproduced hereunder:-

“12. The receiver shall take over the possession of the vehicle from the respondent 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 car to bring it to a halt to take its possession.

13. 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.

14. The receiver shall be at liberty to take the assistance of the local police, if required, for taking over possession of the vehicle. The concerned SHO shall provide assistance to the receiver as and when requested.

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

police.

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

17. At the time of taking the custody of the vehicle, the receiver shall 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.

18. The receiver shall prepare an inventory of the articles/accessories found in the vehicle and shall furnish the copy of the inventory to the person from whom the possession is taken.

19. After taking the possession of the vehicle, the receiver shall keep the vehicle in safe custody.

20. If the respondent makes payment of the outstanding instalments as on date of possession, the receiver shall release the vehicle in question to the respondent on superdari, subject to an undertaking by the respondent to the receiver for regular repayment of future monthly instalments 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.

21. If the respondent is not in a position to clear the entire outstanding instalments, the receiver shall give him another opportunity to pay the outstanding instalments within 30 days of taking over the possession of the vehicle and in case the respondent makes the payment of the outstanding instalments within the said period, the receiver shall release the vehicle to the respondent subject to the undertaking as aforementioned.

22. If the respondent does not make the payment of the outstanding amount to the appellant bank within 60 days, the receiver would be authorised to sell the vehicle in question in a 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 loan 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 appellant to fetch maximum amount from the sale of the vehicle. The receiver shall carry out video recording of the auction proceedings and shall submit the same before the Trial Court along with his final report.

23. That the receiver shall submit his first report before the Trial Court within 10 days of taking the custody of the vehicle along with the photographs and inventory mentioned above. The final report shall be submitted before the Trial Court within 10 days of the public auction along with the proceedings for public auction and video recording of the public auction.....”

The Trial Court record be returned back forthwith and the matter be listed before the Trial Court on 6th February, 2018.

The appeal and the pending application stand disposed off.

Copy of this order be given *dasti* to the learned counsel for the appellant under the signatures of the Court Master.

NAJMI WAZIRI, J

JANUARY 08, 2018

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