

# Icici Bank Ltd vs Pawan Kumar Gaur & Anr on 2 December, 2021

**Author: Prateek Jalan**

**Bench: Prateek Jalan**

\$~58 (2021 Cause List)

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 13632/2021

ICICI BANK LTD

Through: Ms. Chetna Bhalla, Mr. Rachit  
Biggle, Advocates.

versus

PAWAN KUMAR GAUR & ANR.

Through: Appearance not given.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 02.12.2021 The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

CM APPL. 43051/2021 (for exemption) Exemption allowed, subject to all just exceptions. This application stands disposed of.

W.P.(C) 13632/2021

1. By the present writ petition, the petitioner- ICICI Bank Limited ["the Bank"] seeks permission to put a vehicle repossessed by it on auction sale.

2. The Bank has filed proceedings before the Debts Recovery Tribunal ["DRT"] for recovery of its dues against the respondent. The vehicle has been repossessed pursuant to the orders passed by the DRT. The petitioner has now filed an application before the DRT to permit auction sale of the vehicle. However, as the DRTs in Delhi are, at present, non-functional for want of Presiding Officers, the Bank has approached this Court by way of the present petition under Article 226 of the Constitution.

3. Ms. Chetna Bhalla, learned counsel for the Bank, submits that the vehicle is lying in the custody of the Bank, and its value will depreciate further if urgent measures are not taken for its sale.

4. As the DRTs and the Debts Recovery Appellate Tribunal ["DRAT"] in Delhi are without Presiding Officers, and a Chairperson respectively this Court has had occasion to consider several petitions for relief which would normally lie before the DRT. In certain cases, on account of urgency, the Court has also transferred proceedings to a functional DRT in exercise of the power under Section 17A(2)

of the Recovery of Debts and Bankruptcy Act, 1993 ["RDB Act, 1993"]. The provision of Section 17A(2) of the RDB Act requires proceedings to be transferred to another DRT, within the jurisdiction of the DRAT, Delhi. The only functional DRT within the jurisdiction of the DRAT, Delhi is the DRT, Jaipur, which is handling urgent work of all the three DRTs in Delhi in addition to the cases pending before the DRT, Jaipur.

5. In these circumstances, having regard to the nature of the relief sought, I am of the view that transfer of the proceedings is not required at this stage. I have been informed in connected proceedings that the procedure for appointment of Presiding Officers of the DRTs in Delhi is at an advanced stage, and the Government is also considering the question of vesting the additional charge upon any other Presiding Officer in accordance with law.

6. The petitioner's application can be decided by the DRT upon appointment of a Presiding Officer or by vesting of additional charge upon any other Presiding Officer.

7. Ms. Bhalla draws my attention to two judgments of this Court, which, according to her, support the proposition that repossessed vehicles can be sold without reference to the borrowers. In the judgment dated 23.12.2019 in CM (M) 1821/2019 [M/S ICICI Bank Limited vs. Naveen Kalkal], this Court permitted sale in a case where the borrower had not appeared before the Trial Court at all. A Division Bench of this Court, by a judgment dated 28.12.2020, in W.P.(C) 11236/2020 and connected matters, also permitted sale in case where the vehicles have been surrendered voluntarily by the borrowers. In paragraph 8 of the judgment, this factor has been noticed as the reason why notice is not required to be issued in the petitions. In the present case, these factors will have to be examined by the DRT. Ms. Bhalla states that the service has in fact been effected upon them by all permissible methods and they have not entered appearance. These contentions may be examined by the DRT.

8. The writ petition is, therefore, disposed of with liberty to the Bank to approach the concerned DRT for expeditious hearing of its application, upon appointment of the Presiding Officers or entrustment of additional charge to any other Presiding Officer. In the event no arrangements have been made in respect of the concerned DRT even in the next three months, the petitioner may approach the DRAT or this Court for transfer of the proceedings to a functional DRT, or for such other relief as it may be entitled to in law.

PRATEEK JALAN, J DECEMBER 2, 2021/'vp'/