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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 28th December, 2020

+ **W.P.(C) 11236/2020 & CM APPL. 35037/2020**
+ **W.P.(C) 11237/2020 & CM APPL. 35038/2020**
+ **W.P.(C) 11238/2020 & CM APPL. 35039/2020**
+ **W.P.(C) 11239/2020 & CM APPL. 35040/2020**
+ **W.P.(C) 11240/2020 & CM APPL. 35041/2020**
+ **W.P.(C) 11241/2020 & CM APPL. 35042/2020**
+ **W.P.(C) 11242/2020 & CM APPL. 35043/2020**

ICICI BANK

..... Petitioner

Through: Mr. Punit K. Bhalla and Mr. Chetan
Bhalla, Advocates. (M: 9810080772)

versus

JAIN LOGISTICS & ORS.

.... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

Prathiba M. Singh, J.(Oral)

1. This hearing has been done by video conferencing.
2. These are six petitions filed by ICICI Bank, challenging orders dated 24th December, 2020 passed by the DRAT by which the Petitioner's applications for early hearing of their applications seeking permission to auction the commercial vehicles was rejected by the DRAT and the Petitioner- Bank (*hereinafter, "Bank"*) was asked to approach the DRT once again.
3. The background is that the Bank had sanctioned various loan facilities to the Respondents - Jain Logistics Ltd., which is a partnership firm, and the said borrower had defaulted from time to time. The Bank had, thereafter,

approached the DRT seeking recovery of the amounts due to it. Except in W.P.(C) 11240/2020 and W.P.(C) 11242/2020, in the other cases, the DRT had appointed a receiver to take possession of the hypothecated commercial vehicles against which the loans were sanctioned. It is the submission of Mr. Punit K. Bhalla, ld. counsel that in all the petitions, the borrower has voluntarily surrendered the vehicles as it did not have the capacity to clear the loan amounts. The surrender letters have been placed on record. One sample surrender letter reads as under:

“Under the aforesaid Loan Agreement, I undertook to pay the monthly installments on the due dates mentioned therein. However, I could not pay the installements due to which sum of Rs.7,61,58,931.37 is outstanding in loan account. Consequently the vehicle has been voluntarily surrendered to Rajesh Sharma who is recovery agent on behalf of the ICICI Bank Limited on 7th, 8th & 9th Dec 2020. As I am not in a position to settle the account and to take back the vehicle, I request you to sell it against best possible price it will fetch in its “as an where in condition”. I further undertake to pay the shortfall arising post disposal of the vehicle if any as per the terms and conditions.”

4. Pursuant to the said surrender letters, the Bank is stated to have taken possession of all the commercial vehicles and they are currently in the custody of the Bank. The Bank, thereafter, moved applications before the DRT seeking permission to auction/dispose of the vehicles. This was, however, adjourned by the DRT. Early hearing applications were also moved which were not considered. Hence, the present petitions.

5. The submission of Mr. Punit K. Bhalla, ld. counsel is that the annual

accounts of the Bank have to be declared by the end of the calendar year i.e., 31st December, 2020. The vehicles are lying in the godowns of the Bank and there is no impediment in disposing of the same. He thus prays for permission for the Bank to dispose of these vehicles.

6. Heard ld. counsel for the Bank. The vehicles in the present case have been surrendered by the borrower voluntarily, as is clear from the surrender letters. Thus, issuance of notice is dispensed with. In most of the matters even Receivers were appointed and the vehicles are in the Bank's possession. With every passing day their value would be depreciated. This Court is of the opinion that no useful purpose is served in allowing commercial vehicles of high value to be kept unused in the Bank's godown. Under such circumstances, this Court is inclined to allow the prayer of the Bank to dispose of the vehicles so that the best value for these vehicles can be recovered.

7. Following the judgment of this Court in *M/s. ICICI Bank Ltd. v. Naveen Kalkal [CM(M) 1821/2019, decided on 23rd December, 2019]*, the Bank is permitted to dispose of the vehicles by a public auction in terms of the guidelines laid down in *Naveen Kalkal (supra)*. After the auction has been conducted and the value of the vehicles is recovered, a detailed report shall be placed before the DRT by the official of the Bank who has been appointed as the Receiver in these cases. The entire auction process shall be conducted strictly in accordance with the guidelines laid down in *Naveen Kalkal (supra)*. The relevant portion of the said order is extracted hereinbelow:

“5. After hearing ld. counsel for the Bank and perusing the application under Order XXXIX Rule

6 CPC, handed over to Court today, as also the directions of this Court passed in **M/s ICICI Bank Ltd. (supra)**, it is seen that the Bank has already taken possession of the vehicle. The Defendant, having continued to remain away from the Court, the Trial Court has repeatedly directed filing of fresh process fee and service by publication.

6. Considering that the value of vehicles is likely to deteriorate as time passes on and also considering that there is a steep maintenance cost on the Bank, for preservation of the vehicles, a Ld. Single Judge of this Court under similar circumstances had passed the following directions in **M/s ICICI Bank Ltd. (supra)**:

“4. On careful consideration of the submissions made learned counsel for the appellant, this Court is satisfied that the appellant has made out a case for ex parte appointment of a receiver. The appeal is, accordingly, allowed and Mr. Venkat Rao, representative of the appellant bank is appointed as receiver to take the possession of Ritz car bearing registration No. HR-26BH-3155.

5. 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.

6. 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.

7. 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.

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

9. 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. 10. 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.

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

12. 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.

13. 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 the outstanding instalments within the said period, the receiver shall release the vehicle to the respondent subject to an undertaking as aforementioned.

14. If the respondent does not make the payment of the outstanding amount to the appellant bank within 60 days, the receiver, with the prior permission of the Trial Court, 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. Whenever such an application for permission to auction the vehicle is made, the Trial Court shall adjudicate the same within 30 days of filing of the application. The receiver shall carryout video recording of the auction proceedings and shall submit the same before the Trial Court along with his final report.

15. 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.”

7. A perusal of the above directions shows that in a similar matter, the Court has followed a particular procedure for dealing with the vehicles and vehicle loans. A similar approach can be followed by this Court. In general, whenever the Court finds that the availment of the loan itself is admitted, either due to the payment of some instalments or on the basis of documents, the Court can appoint a Receiver for taking the possession of the vehicle. The vehicle can be taken either from address given in the loan application or from any other location where it may be found. The directions given in paragraphs 5 to 15 above can be prescribed as a general procedure to be followed for taking possession of the vehicle, precautions to be taken during the same, preservation of evidence as to the status of the vehicle and maintenance of the safe custody of the vehicle. The Court's judgment above has also made adequate provisions for the

payments by the Defendant, even after the possession is taken. If the payments are not made, a proper course of action would be permission for sale by public auction as per paragraphs 13 and 14 of the judgment extracted above.

*8. The procedure laid down in **M/s ICICI Bank Ltd. (supra)**, thus, ought to be followed generally by the Trial Courts while dealing with the Banks' suits, which involve vehicle loan. The preservation of the vehicle initially and thereafter permitting the public auction is essential in order to ensure that the value of the vehicle is not eroded and the Bank does not incur the additional expenses, maintenance for parking space etc. Thus, whenever the application for appointment of Receiver or for permission for sale are moved, the Trial Court shall consider the same expeditiously.*

*9. Under these circumstances, it is directed that the Bank would be entitled to sell the vehicle through a proper public auction with written notice to the Defendant. The notice would be served by way of speed post at the known address(es) of the Defendant, as also the location from where the possession of the vehicle was taken. The Defendant is also permitted to participate in the auction, in the manner explained in paragraph 14 of the judgment in **M/s ICICI Bank Ltd. (supra)**. Once the auction has taken place, strictly in terms of the said judgment, a report shall be filed before the Trial Court for further proceedings."*

8. No notice has been issued in these petitions to the Respondents as the surrender of the vehicles was voluntary in nature. Thus, directing service of the Respondents would not serve any useful purpose. In any event in terms of the guidelines in *Naveen Kalkal (supra)*, the bank would give advance

intimation to the borrower by Speed post. In addition, it is directed that a telephonic call and a message on the mobile number of the Respondent, shall also be given in addition prior to putting the vehicles in a public auction.

9. With these observations, the petitions, along with all pending applications, are disposed of.

PRATHIBA M. SINGH, J
(VACATION JUDGE)

SUBRAMONIUM PRASAD, J
(VACATION JUDGE)

DECEMBER 28, 2020

dj/T