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**OFFICE OF THE DISTRICT & SESSIONS JUDGE :NORTH-WEST & NORTH
DISTRICT: ROHINI COURTS:DELHI**

Genl.I/RC/NW & N/2020/.....8082-8109 Delhi, dated the ..29/02/2020

To

All the Ld. Judicial Officers (DHJS & DJS),
(Commercial Courts and Civil Courts),
North-West & North District,
Rohini Courts, Delhi

Subject:- Copy of order dated 13.01.2020 in CM (M) Nos. 16/2020, 17/2020, 1/2020, 19/2020, 24/2020, 25/2020, 27/2020 & copy of Judgments in FAO 49/2015 & CM (M) 1821/2019 passed by Hon'ble Ms. Justice Prathiba M. Singh, Hon'ble High Court of Delhi, New Delhi.

Madam/Sir(s)

Enclosed copy of letter bearing No. 7782-X/C-1 Dated 25.02.2020 alongwith its enclosures, received from the Hon'ble High Court of Delhi, New Delhi is being sent at your Email address available with this branch for information and necessary action.

In case, there is any change in the email address or not submitted the same may kindly be informed to General Branch-I, Rohini Courts, Delhi, so that the said order may be sent via your email address.

Thanking You,

Yours sincerely,




(Rakesh Kumar-IV)

Encl: As above

Addl. Sessions Judge (NDPS)/Officer In-charge,
Genl.Branch-I, N-W & North District,
Rohini Courts, Delhi

Copy forwarded for information and necessary action to:-

1. Personal Office to Ld. District & Sessions Judge, North and North-West District, Rohini Courts, Delhi.
2. Reader to Ld. District & Sessions Judge, North & North-West District, Rohini Courts, Delhi.
3. Dealing Official, R & I Branch, Rohini Courts, Delhi for uploading the same on LAYERS.
4. Dealing Official, Computer Branch, Rohini Courts, Delhi for uploading the same on WEBSITE.



(Branch Incharge)
Genl.Branch-I, N-W & North District,
Rohini Courts, Delhi

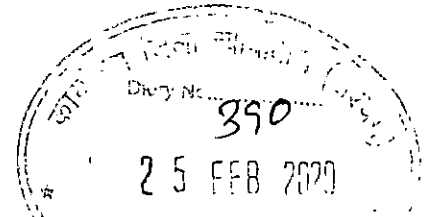
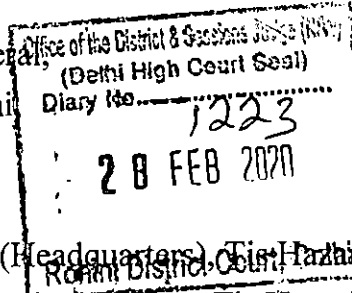
29/2/20

IN THE HIGH COURT OF DELHI AT NEW DELHI

No. 7781-X C-1 Dt.: 25/02/2020

From,

The Registrar General,
High Court of Delhi,
New Delhi.



To,

1. The District Judge (Headquarters), Tis Hazari Court, Delhi,
2. The District Judge, District-West, Tis Hazari Court, Delhi,
3. The District Judge, District-North-West, Tis Hazari Court, Delhi,
4. The District Judge, District-North, Rohini Court, Delhi,
5. The District Judge, District-East, Karkardooma Court, Delhi,
6. The District Judge, District-North-East, Karkardooma Court, Delhi,
7. The District Judge, District-Shahdara, Karkardooma Court, Delhi,
8. The District Judge, District-South, Saket Court, Delhi,
9. The District Judge, District-South-East, Saket Court, Delhi,
10. The District Judge, District-South-West, Dwarka Court, New Delhi,
11. The District Judge, District-New Delhi, Patiala House Court, New Delhi,
12. The District Judge, District-Special Judge, Rouse Avenue, New Delhi.

Sub.: Copy of orders dated 13/01/2020 in CM(M) Nos. 16/2020, 17/2020, 18/2020, 19/2020, 24/2020, 25/2020, 27/2020 & copy of judgements in FAO 49/2015 & CM(M) 1821/2019 for necessary compliance

Respected Sir/Madam

I am directed to forward herewith for information and immediate compliance the copy of orders dated 13/01/2020 passed by the Hon'ble Ms. Justice PRATHIBA M. SINGH of this Court in the above noted cases alongwith the copy of judgements in **Kamal Kumar Garewal** in (FAO 49/2015) and **Naveen Kalkal** in (CM(M) 1821/2019).

Vide orders dated 13/01/2020, the Hon'ble Court has directed to circulate the aforesaid orders alongwith with the judgements in Naveen Kalkal and Kamal Kumar Garewal to all district courts and civil judges.

You are therefore requested to circulate the aforesaid orders dated 13/01/2020 alongwith judgements in FAO 49/2015 titled "M/S ICICI BANK LTD vs. KAMAL KUMAR GAREWAL" and CM(M) 1821/2019 titled "M/s ICICI BANK LTD vs. NAVEEN KALKAL" to all the district courts and civil judges in your respective districts for necessary compliance of the same.

Thanking you.

Marked to Hd. O.C. Genl. Rg. I for circulation

Yours faithfully

जिला एवं सत्र न्यायाधीश (उत्तर-पश्चिम)
District & Sessions Judge (North-West)
रोहिणी न्यायालय, दिल्ली
Rohini Courts, Delhi

Assistant Registrar (Civil)
For Registrar General

88/2/2020 Encl. : Copy of orders dated 13/01/2020 &

Copy of Judgements in Kamal Kumar Grewal in (FAO 49/2015) and
Naveen Kalkal in (CM(M) 1821/2019)

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 13th January, 2020

+ **CM (M) 16/2020**

M/S ICICI BANK LIMITED Petitioner

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

versus

PRIYA BAVEJA Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM APPL. 980/2020 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 16/2020

2. This petition challenges the impugned order dated 21st August, 2019 in view of the fact that the application under Order XXXIX Rule 6 CPC, which was filed by M/s. ICICI Bank Ltd. (*hereinafter*, “Bank”), has not been decided by the Trial Court, despite the suit itself having been decreed.

3. The background is that the Bank had filed a suit for recovery of Rs.6,04,552.73/- against the Respondent/Defendant (*hereinafter*, “Defendant”) in which initially an application for appointment of Receiver was filed. The case of the Bank is that the Defendant had availed of a vehicle loan of Rs.8,94,000/- in respect of a car i.e., Honda City SV/MT Diesel, registered in Uttar Pradesh, which was disbursed to the Defendant under the loan cum hypothecation scheme of the Bank.

4. The Defendant had agreed to repay the loan amount, along with

interest @10.5%, in 60 equal instalments of Rs.19,216/- each. The entire amount had been disbursed to the Defendant. The Trial Court had, vide order dated 27th March, 2018, appointed a Receiver for taking possession of the car. In the said order, the Trial Court appointed one of the Bank officials as the Receiver and directed the seizure of the vehicle. The said order reads as under:

"Issue summons to defendant no.1 through all modes i.e. PF/RC/approved courier/registered post/speed post as well as affixation on filing of PF by the plaintiff within three weeks from today, returnable on 07.08.2018.

An application under Order 40 Rule 1 r/w Section 151 CPC filed on behalf of the plaintiff for appointment of receiver. Heard on the application. In view of submissions made by counsel for plaintiff and the averments made in the application, the application is allowed.

It is the case of the petitioner that petitioner financed an amount of Rs.8,94,000/- to the respondent vide loan agreement dated 23.03.2015 for the purchase of a vehicle namely "CITY/SV MT DIESEL" bearing registration No. UP-16BA-5038 and under the terms and conditions of the said agreement, the said vehicle was hypothecated in favour of the petitioner. The loan was to be repayable in 60 monthly installments of Rs. 19,216/-. For the said loan, the plaintiff bank maintained account No. LAGUR00032039643. Ld. Counsel for the petitioner has contended that defendant in terms of the Loan documents executed had paid an amount of Rs.5,38,832/- (28 EMIS) and defaulted for an amount of Rs.1,14,512/- (06 EMIS) and Rs.13,394/- towards late payment and cheque bouncing charges totalling to Rs.1,27,906/- besides future installments of Rs.4,99,616/- as on 21.02.2018. The plaintiff in terms of the loan documents executed

by the defendant, issued a notice dated 11.12.2017 upon the defendant calling to repay the loan amount. Prayer has been made for appointment of **Mr. S. Jafri**, Representative of the petitioner as the receiver to take possession of the vehicle in question. Keeping in view the totality of the facts and circumstances, and for the preservice of hypothecated vehicle, I consider it just and convenient to appoint **Mr. S. Jafri** as a Receiver to take ex-parte ad-interim possession of the hypothecated vehicle bearing registration No. **UP-16BA-5038** till final disposal of the application on merits with the following stipulations:

(i) that the receiver is directed to first give offer to the respondent for making payment of defaulted EMIs/amount before seizure of the vehicle.

(ii) that if the respondent make payment of the outstanding installments as on date of possession, the receiver shall release the vehicle in question to the respondent on Superdari subject to an undertaking by the respondents to the receiver for regular payment of future monthly installments 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.

(iii) that if the respondent is not in a position to clear the entire outstanding installments, the receiver shall give him another opportunity to pay the outstanding installments within 30 days of taking over the possession of the vehicle and in case the respondent make the payment of the outstanding installments within the said period, the receiver shall release the vehicle to the respondent subject to an undertaking as aforementioned.

(iv) that if the respondent does not make the payment of the outstanding amount to the petitioner within 60 days, the receiver, with the prior permission of the arbitrator; would be authorized to sell the vehicle in question in 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 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 petitioner to fetch maximum amount from the sale of the vehicle. The receiver shall carry out video recording of the auction proceeding and shall submit the same before the arbitrator alongwith his final report. Copy of the report shall be submitted by the receiver to the arbitrator.

(v) that the receiver may take the police aid if required. This order itself would amount to a notice/directions to the SHO of the concerned area to provide the requisite assistance to the receiver for repossession of the vehicle.

(vi) that the receiver shall give the copy of the order to the person from whose custody he takes the vehicle.

(vii) that the receiver shall issue appropriate receipt to the person from whose custody he takes the vehicle and will also note therein the condition of the vehicle.

(viii) that the receiver shall ensure that the vehicle is kept in the same condition.

(ix) that the receiver shall ensure that there possession of vehicle does not result in any breach of peace. In the event of any breach of peace, the receiver shall not proceed without assistance of police.

(x) that at the time of taking custody of the vehicle, the receiver will 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 and shall ensure that the vehicle is kept in same condition in which it was seized and ;

(xi) that the receiver shall prepare an inventory of the goods/accessories found in the vehicle and shall furnish the copy of the inventory to the person from whom the vehicle is seized,

(xii) that 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 case, the receiver shall take the possession of the vehicle from the borrower's residence only

(xiii) that the parties are at liberty to apply to the Ld. Arbitrator for modification of this order.

This order is subject to the condition that the petitioner shall refer the disputes to the Arbitrator within two months from today and inform the court about the same. This order is subject to the condition that the vehicle shall however, not be sold or disposed of or parted with without the permission of this court. The receiver shall also be bound to produce the vehicle in the court as and when required. The report be filed by the receiver within a week of the seizure of the vehicle containing all the details including that of the person from whose possession and place from where the vehicle has been seized. Copy of the order be given dasti to counsel for plaintiff."

5. A perusal of the above order shows that the taking of possession of the vehicle was subject to the condition that the vehicle shall not be sold/disposed of/parted with without the permission of the Court. Since then, the vehicle has been lying in the control of the Bank. Immediately after taking possession of the vehicle, the Bank moved an application under Order XXXIX Rule 6 CPC sometime in August, 2018 itself. Notice was issued in the application. The prayer in the said application reads as under:

"a) direct the plaintiff to sell the said vehicle namely **"HONDA CITY SV BEARING REGISTRATION NO. UP-16BA-5038"** and direct the plaintiff to adjust the sale proceeds towards the outstanding amount due and payable by the defendant to the plaintiff; and
b) pass such other/further order (s) as this Hon'ble Court may deem fit and proper in the interest of

justice.”

6. This application continues to remain pending even though the suit itself has now come to be decreed on 21st August, 2019. The Trial Court has passed a decree for a sum of Rs.6,04,552.73 with interest. The operative portion of the said order reads as under:

“12. The original documents have been exhibited and proved in the testimony of PW1 as Ex.PW1/1 to Ex.PW1/9. The witness has not been cross examined by the defendant and hence the testimony of PW1 has remained un-rebutted and unchallenged. Plaintiff has successfully proved its case. Hence, the suit of the plaintiff is accordingly decreed for the amount of Rs. 6,04,552.73/- with interest @ 6% per annum from the date of filing of the suit till its recovery/realisation. Costs of the suit and litigation charges also awarded in favour of the plaintiff and against the defendant. Decree sheet be prepared accordingly.”

7. The grievance of the Bank is that despite the application under Order XXXIX Rule 6 CPC having been filed, even in the final decree permission has not been given to the Bank for selling the vehicle.

8. It is submitted by Mr. Bhalla, ld. counsel for the Bank, that the Bank is incurring parking charges for keeping the vehicle. It is further submitted that the suit itself having been decreed, no useful purpose would be served by not selling the vehicle. Ld. counsel also submits that despite orders having been passed in *M/s ICICI Bank Ltd. v. Naveen Kalkal [CM(M) 1821/2019, decided on 23rd December, 2019]* and *M/s. ICICI Bank Limited v. Nidhi Sharma [CM (M) 1814/2019, decided on 23rd December, 2019]*, which rely upon *ICICI Bank Ltd. v. Kamal Kumar Garewal [FAO 49/2015, decided on 29th May, 2015]*, and the same having been placed

before the Trial Court, the same were not considered by the Trial Court and the application seeking permission for sale of the vehicle has simply been adjourned.

9. After hearing Id. counsel for the Bank, there is no doubt that the application under Order XXXIX Rule 6 CPC ought to have been decided by the Trial Court at the time of the final order in the suit itself. To keep the application pending, while the suit itself has been decreed, is completely irrational. The car has a limited life value which deteriorates with each passing day. The Bank ought to be permitted to sell the car to recover whatever amount it can to satisfy the decree.

10. Furthermore, the manner in which the application for Receiver is being treated by the Trial Court is completely unsatisfactory. Repeated orders have been passed by this Court in several matters including, ***Kamal Kumar Garewal (supra)*** and ***Naveen Kalkal (supra)***. Ideally, when the Trial Court is satisfied that the case for appointment of a Receiver has been made out and the Bank has taken control of the car for repayment, when the Bank approaches the Trial Court for permission to sell the vehicle, the same should be directed to be considered expeditiously, as observed in ***Naveen Kalkal (supra)***.

11. Considering that a large number of petitions have been filed today, which include suits both at the interim stage and at the final stage wherein the applications under Order XXXIX Rule 6 CPC, for permission to sell the vehicles, are simply being adjourned from time to time, it is deemed appropriate to direct that applications for sale of the vehicle, whenever filed, shall be disposed of within 60 days, except in case of any unusual or exceptional circumstances. Such orders for sale of the vehicle deserve to be

passed especially in those cases where the Defendant(s) remain *ex-parte* and does not contest the proceedings. No useful purpose would be served by leaving the vehicle to deteriorate and letting the Bank incur further charges to store and preserve the vehicle.

12. Under these circumstances, the impugned order is modified to the extent that the application under Order XXXIX Rule 6 CPC has not been dealt with by the Trial Court. The Bank is permitted to sell the vehicle through a proper public auction with notice to the Defendant. Notice be served through speed post at the last known address of the Defendant as also the location from where the vehicle was taken into possession. The Defendant is also permitted to participate in the auction, as per paragraph 14 of *Kamal Kumar Grewal (supra)*. Once the auction has taken place, in the suits where final decrees have been passed, a report shall be placed by the Bank before the Trial Court so that if the Defendant wishes to obtain any information, the same would be available to the Defendant. In those cases where the suits are still pending, the report shall be filed before the Trial Court to enable the Court to proceed with the suit and pass the final orders in the suit.

13. The present order along with the previous judgements in *Kamal Kumar Grewal (supra)* and *Naveen Kalkal (supra)* be circulated by the worthy Registrar General to all the district courts and civil judges. The petition is disposed of in the above terms. All pending applications are also disposed of.

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**PRATHIBA M. SINGH
JUDGE**

JANUARY 13, 2020/dk

Corrected and released on 15th January, 2020

CM (M) 16/2020

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EXAMINER

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 13th January, 2020

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CM (M) 17/2020

M/S ICICI BANK LIMITED

..... Petitioner

Through: Mr. Puneet Kumar Bhalla & Ms.
Chetna Bhalla, Advocates
(M:9810080772).

versus

PRADEEP KUMAR

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM APPL. 996/2020 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 17/2020

2. The present petition has been preferred by the Petitioner/Plaintiff - M/s. ICICI Bank Ltd. (*hereinafter*, “Bank”) challenging the impugned order dated 19th November, 2019, by which the Trial Court has simply adjourned the application filed by the Bank under Order XXXIX Rule 6 CPC, seeking permission to sell the hypothecated vehicle, which is currently in the Bank’s custody.

3. The Respondent/Defendant (*hereinafter*, “Defendant”) had entered into an agreement for financing of the vehicle. Due to defaults in payment by the Defendant, a suit for recovery was filed by the Bank, along with an application under Order XL Rule 1 CPC, for appointment of a receiver for the hypothecated vehicle, with power to sell. It is submitted that the receiver has already been appointed and the bank official has taken possession of the vehicle. An application under Order XXXIX Rule 6 CPC came to be filed

by the Bank seeking permission to sell the vehicle.

4. The grievance of Id. counsel for the Bank is that the application has simply been adjourned to 11th March, 2020. Ld. counsel submits that in *M/s. ICICI Bank Ltd. v. Kamal Kumar Garewal*, [FAO 49/2015, decided on 29th May, 2015], a Id. Single Judge of this Court has already passed directions as to the manner in which such cases are to be dealt with, especially in respect of loan transactions where there is a default in payment. He submits that despite these guidelines having been laid down, the Trial Courts are not following the same and are unnecessarily delaying the suit.

5. After hearing Id. counsel for the Bank and perusing the application under Order XXXIX Rule 6 CPC, as also the directions of this Court passed in *Kamal Kumar Garewal (supra)*, it is seen that the Bank has already taken possession of the vehicle. This Court in *M/s ICICI Bank Ltd. v. Naveen Kalkal* [CM(M) 1821/2019, decided on 23rd December, 2019] has already considered *Kamal Kumar Garewal (supra)* and held as under:

“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 avilment 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.

10. It is further directed that this order along with the judgement in **M/s ICICI Bank Ltd. (supra)** be circulated by the worthy Registrar General to all the District Judges, for proper circulation amongst all the Commercial Courts Judges and Civil Judges, to enable

the courts to follow the broad procedure laid down therein. In cases of this nature, since public money is involved, all steps ought to be taken to ensure that recoveries to the extent possible, ought to be enabled in accordance with law."

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, the above order was passed, following the directions in ***Kamal Kumar Garewal (supra)***.

7. Despite the above two judgements, trials courts are not considering the applications for appointment of receivers and for auction of the vehicles, diligently. The said applications are either being adjourned from time to time and in some matters continue to remain pending even though decrees have been passed, thus rendering the applications completely infructuous. In view of the above, it is directed that whenever the application for appointment of Receiver or for permission for sale are moved, the Trial Court shall consider the same expeditiously & dispose of the same within 60 days.

8. 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 ***Kamal Kumar Garewal (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.


9. The present order along with the previous judgements in ***Kamal Kumar Grewal (supra)*** and ***Naveen Kalkal (supra)*** be circulated by the worthy Registrar General to all the district courts and civil judges. The petition and all pending applications are disposed of in the above terms. *Dasti.*

SL

**PRATHIBA M. SINGH
JUDGE**

JANUARY 13, 2020/dk

Corrected and released on 15th January, 2020

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EXAMINER

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13th January, 2020

+ **CM (M) 18/2020**

M/S ICICI BANK LIMITED

..... Petitioner

Through: Mr. Puneet Kumar Bhalla & Ms.
Chetna Bhalla, Advocates
(M:9810080772).

versus

DEEPANSHU BANSAL & ANR.

..... Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

CM APPL. 1002/2020 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 18/2020

2. The present petition has been preferred by the Petitioner/Plaintiff - M/s. ICICI Bank Ltd. (*hereinafter, "Bank"*) challenging the impugned order dated 22nd October, 2019, by which the Trial Court has simply adjourned the application filed by the Bank under Order XXXIX Rule 6 CPC, seeking permission to sell the hypothecated vehicle, which is currently in the Bank's custody.

3. The Respondents/Defendants (*hereinafter, "Defendants"*) had entered into an agreement for financing of the vehicle. Due to defaults in payment by the Defendants, a suit for recovery was filed by the Bank, along with an application under Order XL Rule 1 CPC, for appointment of a receiver for the hypothecated vehicle, with power to sell. It is submitted that the receiver has already been appointed and the bank official has taken possession of the vehicle. An application under Order XXXIX Rule 6 CPC came to be filed

by the Bank seeking permission to sell the vehicle.

4. The grievance of Id. counsel for the Bank is that the application has simply been adjourned to 21st January, 2020. Id. counsel submits that in *M/s. ICICI Bank Ltd. v. Kamal Kumar Garewal*, [FAO 49/2015, decided on 29th May, 2015], a Id. Single Judge of this Court has already passed directions as to the manner in which such cases are to be dealt with, especially in respect of loan transactions where there is a default in payment. He submits that despite these guidelines having been laid down, the Trial Courts are not following the same and are unnecessarily delaying the suit.

5. After hearing Id. counsel for the Bank and perusing the application under Order XXXIX Rule 6 CPC as also the directions of this Court passed in *Kamal Kumar Garewal (supra)*, it is seen that the Bank has already taken possession of the vehicle. This Court in *M/s ICICI Bank Ltd. v. Naveen Kalkal* [CM(M) 1821/2019, decided on 23rd December, 2019] has already considered *Kamal Kumar Garewal (supra)* and held as under:

“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.

10. It is further directed that this order along with the judgement in **M/s ICICI Bank Ltd. (supra)** be circulated by the worthy Registrar General to all the District Judges, for proper circulation amongst all the Commercial Courts Judges and Civil Judges, to enable

the courts to follow the broad procedure laid down therein. In cases of this nature, since public money is involved, all steps ought to be taken to ensure that recoveries to the extent possible, ought to be enabled in accordance with law."

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, the above order was passed, following the directions in ***Kamal Kumar Garewal (supra)***.

7. Despite the above two judgements, trials courts are not considering the applications for appointment of receivers and for auction of the vehicles, diligently. The said applications are either being adjourned from time to time and in some matters continue to remain pending even though decrees have been passed, thus rendering the applications completely infructuous. In view of the above, it is directed that whenever the application for appointment of Receiver or for permission for sale are moved, the Trial Court shall consider the same expeditiously & dispose of the same within 60 days.

8. 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 Defendants. The notice would be served by way of speed post at the known address(es) of the Defendants, as also the location from where the possession of the vehicle was taken. The Defendants are also permitted to participate in the auction, in the manner explained in paragraph 14 of the judgment in ***Kamal Kumar Garewal (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.

9. The present order along with the previous judgements in *Kamal Kumar Grewal (supra)* and *Naveen Kalkal (supra)* be circulated by the worthy Registrar General to all the district courts and civil judges. The petition and all pending applications are disposed of in the above terms. *Dasti.*

sd

PRATHIBA M. SINGH
JUDGE

JANUARY 13, 2020/dk

Corrected and released on 15th January, 2020

TRUE COPY

EXAMINER

M/S ICICI BANK LIMITED

..... Petitioner

Through: Mr. Puneet Kumar Bhalla & Ms.
Chetna Bhalla, Advocates
(M:9810080772).

versus

SACHIN KUMAR

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM APPL. 1032/2020 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 19/2020

2. The present petition has been preferred by the Petitioner/Plaintiff - M/s. ICICI Bank Ltd. (*hereinafter*, "*Bank*") challenging the impugned order dated 6th November, 2019, by which the Trial Court has simply adjourned the application filed by the Bank under Order XXXIX Rule 6 CPC, seeking permission to sell the hypothecated vehicle, which is currently in the Bank's custody.

3. The Respondent/Defendant (*hereinafter*, "*Defendant*") had entered into an agreement for financing of the vehicle. Due to defaults in payment by the Defendant, a suit for recovery was filed by the Bank, along with an application under Order XL Rule 1 CPC, for appointment of a receiver for the hypothecated vehicle, with power to sell. It is submitted that the receiver has already been appointed and the bank official has taken possession of the vehicle. An application under Order XXXIX Rule 6 CPC came to be filed

by the Bank seeking permission to sell the vehicle.

4. The grievance of Id. counsel for the Bank is that the application has simply been adjourned to 11th March, 2020. Id. counsel submits that in *M/s. ICICI Bank Ltd. v. Kamal Kumar Garewal*, [FAO 49/2015, decided on 29th May, 2015], a Id. Single Judge of this Court has already passed directions as to the manner in which such cases are to be dealt with, especially in respect of loan transactions where there is a default in payment. He submits that despite these guidelines having been laid down, the Trial Courts are not following the same and are unnecessarily delaying the suit.

5. After hearing Id. counsel for the Bank and perusing the application under Order XXXIX Rule 6 CPC as also the directions of this Court passed in *Kamal Kumar Garewal (supra)*, it is seen that the Bank has already taken possession of the vehicle. This Court in *M/s ICICI Bank Ltd. v. Naveen Kalkal* [CM(M) 1821/2019, decided on 23rd December, 2019] has already considered *Kamal Kumar Garewal (supra)* and held as under:

"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.

10. It is further directed that this order along with the judgement in **M/s ICICI Bank Ltd. (supra)** be circulated by the worthy Registrar General to all the District Judges, for proper circulation amongst all the Commercial Courts Judges and Civil Judges, to enable

the courts to follow the broad procedure laid down therein. In cases of this nature, since public money is involved, all steps ought to be taken to ensure that recoveries to the extent possible, ought to be enabled in accordance with law."

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, the above order was passed, following the directions in ***Kamal Kumar Garewal (supra)***.
7. Despite the above two judgements, trials courts are not considering the applications for appointment of receivers and for auction of the vehicles, diligently. The said applications are either being adjourned from time to time and in some matters continue to remain pending even though decrees have been passed, thus rendering the applications completely infructuous. In view of the above, it is directed that whenever the application for appointment of Receiver or for permission for sale are moved, the Trial Court shall consider the same expeditiously & dispose of the same within 60 days.
8. 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 ***Kamal Kumar Garewal (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.

9. The present order along with the previous judgements in *Kamal Kumar Grewal (supra)* and *Naveen Kalkal (supra)* be circulated by the worthy Registrar General to all the district courts and civil judges. The petition and all pending applications are disposed of in the above terms. *Dasti.*

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PRATHIBA M. SINGH
JUDGE

JANUARY 13, 2020/dk
Corrected and released on 15th January, 2020

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EXAMINER

M/S ICICI BANK LIMITED

..... Petitioner

Through: Mr. Puneet Kumar Bhalla & Ms.
Chetna Bhalla, Advocates
(M:9810080772).

versus

SANTOSH KUMAR

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM APPL. 1043/2020 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 24/2020

2. The present petition has been preferred by the Petitioner/Plaintiff - M/s. ICICI Bank Ltd. (*hereinafter, "Bank"*) challenging the impugned order dated 11th December, 2019, by which the Id. Trial Court has simply adjourned the application filed by the Bank under Order XXXIX Rule 6 CPC, seeking permission to sell the hypothecated vehicle, which is currently in the Bank's custody.

3. The Respondent/Defendant (*hereinafter, "Defendant"*) had entered into an agreement for financing of the vehicle. Due to defaults in payment by the Defendant, a suit for recovery was filed by the Bank, along with an application under Order XL Rule 1 CPC, for appointment of a receiver for the hypothecated vehicle, with power to sell. It is submitted that the receiver has already been appointed and the bank official has taken possession of the vehicle. An application under Order XXXIX Rule 6 CPC came to be filed

by the Bank seeking permission to sell the vehicle.

4. The grievance of ld. counsel for the Bank is that the application has simply been adjourned to 31st March, 2020. Ld. counsel submits that in *M/s. ICICI Bank Ltd. v. Kamal Kumar Garewal*, [FAO 49/2015, decided on 29th May, 2015], a ld. Single Judge of this Court has already passed directions as to the manner in which such cases are to be dealt with, especially in respect of loan transactions where there is a default in payment. He submits that despite these guidelines having been laid down, the Trial Courts are not following the same and are unnecessarily delaying the suit.

5. After hearing ld. counsel for the Bank and perusing the application under Order XXXIX Rule 6 CPC as also the directions of this Court passed in *Kamal Kumar Garewal (supra)*, it is seen that the Bank has already taken possession of the vehicle. This Court in *M/s ICICI Bank Ltd. v. Naveen Kalkal* [CM(M) 1821/2019, decided on 23rd December, 2019] has already considered *Kamal Kumar Garewal (supra)* and held as under:

“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.

10. It is further directed that this order along with the judgement in *M/s ICICI Bank Ltd. (supra)* be circulated by the worthy Registrar General to all the District Judges, for proper circulation amongst all the Commercial Courts Judges and Civil Judges, to enable

the courts to follow the broad procedure laid down therein. In cases of this nature, since public money is involved, all steps ought to be taken to ensure that recoveries to the extent possible, ought to be enabled in accordance with law."

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, the above order was passed. following the directions in ***Kamal Kumar Garewal (supra)***.

7. Despite the above two judgements, trials courts are not considering the applications for appointment of receivers and for auction of the vehicles, diligently. The said applications are either being adjourned from time to time and in some matters continue to remain pending even though decrees have been passed, thus rendering the applications completely infructuous. In view of the above, it is directed that whenever the application for appointment of Receiver or for permission for sale are moved, the Trial Court shall consider the same expeditiously & dispose of the same within 60 days.

8. 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 ***Kamal Kumar Garewal (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.

9. The present order along with the previous judgements in *Kamal Kumar Grewal (supra)* and *Naveen Kalkal (supra)* be circulated by the worthy Registrar General to all the district courts and civil judges. The petition and all pending applications are disposed of in the above terms. *Dasti.*

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PRATHIBA M. SINGH
JUDGE

JANUARY 13, 2020/dk

Corrected and released on 15th January, 2020

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EXAMINER

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 13th January, 2020
+ **CM (M) 25/2020**

M/S ICICI BANK LIMITED

..... Petitioner

Through: Mr. Puneet Kumar Bhalla & Ms.
Chetna Bhalla, Advocates
(M:9810080772).

versus

SVMR LOGISTICS PVT LTD & ANR.

..... Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

CM APPL. 1044/2020 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 25/2020

2. The present petition has been preferred by the Petitioner/Plaintiff - M/s. ICICI Bank Ltd. (*hereinafter*, "*Bank*") challenging the impugned order dated 22nd October, 2019, by which the ld. Trial Court has simply adjourned the application filed by the Bank under Order XXXIX Rule 6 CPC, seeking permission to sell the hypothecated vehicle, which is currently in the Bank's custody.

3. The Respondents/Defendants (*hereinafter*, "*Defendants*") had entered into an agreement for financing of the vehicle. Due to defaults in payment by the Defendants, a suit for recovery was filed by the Bank, along with an application under Order XL Rule 1 CPC, for appointment of a receiver for the hypothecated vehicle, with power to sell. It is submitted that the receiver has already been appointed and the bank official has taken possession of the vehicle. An application under Order XXXIX Rule 6 CPC came to be filed

by the Bank seeking permission to sell the vehicle.

4. The grievance of ld. counsel for the Bank is that the application has simply been adjourned to 25th February, 2020. Ld. counsel submits that in *M/s. ICICI Bank Ltd. v. Kamal Kumar Garewal*, [FAO 49/2015, decided on 29th May, 2015], a ld. Single Judge of this Court has already passed directions as to the manner in which such cases are to be dealt with, especially in respect of loan transactions where there is a default in payment. He submits that despite these guidelines having been laid down, the Trial Courts are not following the same and are unnecessarily delaying the suit.

5. After hearing ld. counsel for the Bank and perusing the application under Order XXXIX Rule 6 CPC as also the directions of this Court passed in *Kamal Kumar Garewal (supra)*, it is seen that the Bank has already taken possession of the vehicle. This Court in *M/s ICICI Bank Ltd. v. Naveen Kalkal* [CM(M) 1821/2019, decided on 23rd December, 2019] has already considered *Kamal Kumar Garewal (supra)* and held as under:

“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.

10. It is further directed that this order along with the judgement in **M/s ICICI Bank Ltd. (supra)** be circulated by the worthy Registrar General to all the District Judges, for proper circulation amongst all the Commercial Courts Judges and Civil Judges, to enable

the courts to follow the broad procedure laid down therein. In cases of this nature, since public money is involved, all steps ought to be taken to ensure that recoveries to the extent possible, ought to be enabled in accordance with law."

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, the above order was passed, following the directions in ***Kamal Kumar Garewal (supra)***.

7. Despite the above two judgements, trials courts are not considering the applications for appointment of receivers and for auction of the vehicles, diligently. The said applications are either being adjourned from time to time and in some matters continue to remain pending even though decrees have been passed, thus rendering the applications completely infructuous. In view of the above, it is directed that whenever the application for appointment of Receiver or for permission for sale are moved, the Trial Court shall consider the same expeditiously & dispose of the same within 60 days.

8. 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 Defendants. The notice would be served by way of speed post at the known address(es) of the Defendants, as also the location from where the possession of the vehicle was taken. The Defendants are also permitted to participate in the auction, in the manner explained in paragraph 14 of the judgment in ***Kamal Kumar Garewal (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.

9. The present order along with the previous judgements in *Kamal Kumar Grewal (supra)* and *Naveen Kalkal (supra)* be circulated by the worthy Registrar General to all the district courts and civil judges. The petition and all pending applications are disposed of in the above terms. *Dasti.*

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PRATHIBA M. SINGH
JUDGE

JANUARY 13, 2020/dk
Corrected and released on 15th January, 2020

TRUE COPY
EXAMINER

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 13th January, 2020

+ CM (M) 27/2020

M/S ICICI BANK LIMITED

..... Petitioner

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

versus

MEENA KUMARI & ANR.

..... Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM APPL. 1122/2020 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 27/2020

2. This petition challenges the impugned order dated 27th February, 2019 in view of the fact that the application under Order XXXIX Rule 6 CPC, which was filed by M/s. ICICI Bank Ltd. (*hereinafter*, "*Bank*"), has not been decided by the Trial Court, despite the suit itself having been decreed.

3. The background is that the Bank had filed a suit for recovery of Rs.8,33,378.28/- against the Respondents/Defendants (*hereinafter*, "*Defendants*") in which initially an application for appointment of Receiver was filed. The case of the Bank is that the Defendants had availed of a vehicle loan of Rs.7,73,000/- in respect of a car i.e., Ecosport/1.5 P Titanium AT, registered in Haryana, which was disbursed to the Defendants under the loan cum hypothecation scheme of the Bank. The Defendants also availed of

a personal loan of Rs. 3,98,000 from the Bank, against the security of the same vehicle, under the Bank's personal loan cum hypothecation scheme.

4. The Defendants had agreed to repay the loan amount of Rs.7,73,000/- in 60 equal instalments of Rs.16,612/- each, along with interest @10.49% and the personal loan amount of Rs. 3,98,000 in 36 equal instalments of Rs.13,752/- each, along with interest @14.77%. The entire amount had been disbursed to the Defendants. The Trial Court had, vide order dated 27th March, 2018, appointed a Receiver for taking possession of the car. In the said order, the Trial Court appointed one of the Bank officials as the Receiver and directed the seizure of the vehicle. The said order reads as under:

"Issue summons to defendant no.1 through all modes i.e. PF/RC/approved courier/registered post/speed post as well as affixation on filing of PF by the plaintiff within three weeks from today, returnable on 07.08.2018.

An application under Order 40 Rule 1 r/w Section 151 CPC filed on behalf of the plaintiff for appointment of receiver. Heard on the application. In view of submissions made by counsel for plaintiff and the averments made in the application, the application is allowed.

It is the case of the petitioner that petitioner financed an amount of Rs.7,73,000/- to the respondent vide loan agreement dated 10.06.2015 for the purchase of a vehicle namely "ECOSPORT/1.5 P TITANIUM AT" bearing registration No.HR-29AL-2110 and under the terms and conditions of the said agreement, the said vehicle was hypothecated in favour of the petitioner. The loan was to be repayable in 60 monthly installments of Rs.16,612/-. The defendant also approached the petitioner bank for a personal loan of Rs.3,98,000/- to be repaid in 36 EMIs of Rs.13,752/-

vide documents executed on 12.01.2017. For the said loan, the plaintiff bank maintained account No.LAFDB00032774134 and SPBGC00035241434. Ld. Counsel for the petitioner has contended that defendant in terms of the Loan documents executed had paid an amount of Rs.4,98,360/- (30 EMIS) and defaulted for an amount of Rs.33,224/- (02 EMIS) and Rs.10,276/- towards late payment and cheque bouncing charges besides future instalments of Rs.4,61,748/- against the loan account no.LAFDB00032774134. The defendant has paid Rs.1,23,768/- (09 EMIs) and defaulted in repayment of Rs.55,008/- (04 EMIS) towards equated cheque bouncing charges against the loan account No. SPBGC00035241434 as on 13.02.2018. The plaintiff in terms of the loan documents executed by the defendant, issued a notice dated 16.11.2017 upon the defendant calling to repay the loan amount. Prayer has been made for appointment of Mr. Neeraj Singh, Representative of the petitioner as the receiver to take possession of the vehicle in question. Keeping in view the totality of the facts and circumstances, and for the preservice of hypothecated vehicle, I consider it just and convenient to appoint Mr. Neeraj Singh as a Receiver to take ex-parte ad-interim possession of the hypothecated vehicle bearing registration No.HR-29AL-210 till final disposal of the application on merits with the following stipulations:

(i) that the receiver is directed to first give offer to the respondent for making payment of defaulted EMIs/amount before seizure of the vehicle.

(ii) that if the respondent make payment of the outstanding installments as on date of possession, the receiver shall release the vehicle in question to the respondent on Superdari subject to an undertaking by the respondents to the receiver for regular payment of future monthly installments 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.

(iii) that if the respondent is not in a position to clear the entire outstanding installments, the receiver shall give him another opportunity to pay the outstanding installments within 30 days of taking over the possession of the vehicle and in case the respondent make the payment of the outstanding installments within the said period, the receiver shall release the vehicle to the respondent subject to an undertaking as aforementioned.

(iv) that if the respondent does not make the payment of the outstanding amount to the petitioner within 60 days, the receiver, with the prior permission of the arbitrator, would be authorized to sell the vehicle in question in 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 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 petitioner to fetch maximum amount from the sale of the vehicle. The receiver shall carry out video recording of the auction proceeding and shall submit the same before the arbitrator alongwith his final report. Copy of the report shall be submitted by the receiver to the arbitrator.

(v) that the receiver may take the police aid if required. This order itself would amount to a notice/directions to the SHO of the concerned area to provide the requisite assistance to the receiver for repossession of the vehicle.

(vi) that the receiver shall give the copy of the order to the person from whose custody he takes the vehicle.

(vii) that the receiver shall issue appropriate receipt to the person from whose custody he takes the vehicle and will also note therein the condition of the vehicle.

(viii) that the receiver shall ensure that the vehicle is

kept in the same condition.

(ix) that the receiver shall ensure that there possession of vehicle does not result in any breach of peace. In the event of any breach of peace, the receiver shall not proceed without assistance of police.

(x) that at the time of taking custody of the vehicle, the receiver will 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 and shall ensure that the vehicle is kept in same condition in which it was seized and ;

(xi) that the receiver shall prepare an inventory of the goods/accessories found in the vehicle and shall furnish the copy of the inventory to the person from whom the vehicle is seized,

(xii) that 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 case, the receiver shall take the possession of the vehicle from the borrower's residence only

(xiii) that the parties are at liberty to apply to the Ld. Arbitrator for modification of this order.

This order is subject to the condition that the petitioner shall refer the disputes to the Arbitrator within two months from today and inform the court about the same. This order is subject to the condition that the vehicle shall however, not be sold or disposed of or parted with without the permission of this court. The receiver shall also be bound to produce the vehicle in the court as and when required. The report be filed by the receiver within a week of the seizure of the vehicle containing all the details including that of the person from whose possession and place from where the vehicle has been seized. Copy of the order be given dasti to counsel for plaintiff."

5. A perusal of the above order shows that the taking of possession of

the vehicle was subject to the condition that the vehicle shall not be sold/disposed of/parted with without the permission of the Court. Since then, the vehicle has been lying in the control of the Bank. Immediately after taking possession of the vehicle, the Bank moved an application under Order XXXIX Rule 6 CPC sometime in August, 2018 itself. Notice was issued in the application. The prayer in the said application reads as under:

*“a) direct the plaintiff to sell the said vehicle namely **“ECOSPORT BEARING REGISTRATION NO. HR-29AL-2110”** and direct the plaintiff to adjust the sale proceeds towards the outstanding amount due and payable by the defendant to the plaintiff; and
b) pass such other/further order (s) as this Hon'ble Court may deem fit and proper in the interest of justice.”*

6. This application continues to remain pending even though the suit itself has now come to be decreed on 27th February, 2019. The Trial Court has passed a decree for a sum of Rs.8,33,378.28 with interest. The operative portion of the said order reads as under:

“8. The original documents have been exhibited and proved in the testimony of PW1 as Ex.PW1/1 to Ex.PW1/9. The witness has not been cross examined by the defendant and hence the testimony of PW1 has remained un-rebutted and unchallenged. Plaintiff has successfully proved its case. Hence, the suit of the plaintiff is accordingly decreed for the amount of Rs. 8,33,378.28/- with interest @ 6% per annum from the date of filing of the suit till its recovery/realisation. Costs of the suit and litigation charges also awarded in favour of the plaintiff and against the defendant. Decree sheet be prepared accordingly.”

7. The grievance of the Bank is that despite the application under Order

XXXIX Rule 6 CPC having been filed, even in the final decree permission has not been given to the Bank for selling the vehicle.

8. It is submitted by Mr. Bhalla, Id. counsel for the Bank, that the Bank is incurring parking charges for keeping the vehicle. It is further submitted that the suit itself having been decreed, no useful purpose would be served by not selling the vehicle. Id. counsel also submits that despite orders having been passed in *M/s ICICI Bank Ltd. v. Naveen Kalkal [CM(M) 1821/2019, decided on 23rd December, 2019]* and *M/s. ICICI Bank Limited v. Nidhi Sharma [CM (M) 1814/2019, decided on 23rd December, 2019]*, which rely upon *ICICI Bank Ltd. v. Kamal Kumar Garewal [FAO 49/2015, decided on 29th May, 2015]*, and the same having been placed before the Trial Court, the same were not considered by the Trial Court and the application seeking permission for sale of the vehicle has simply been adjourned.

9. After hearing Id. counsel for the Bank, there is no doubt that the application under Order XXXIX Rule 6 CPC ought to have been decided by the Trial Court at the time of the final order in the suit itself. To keep the application pending, while the suit itself has been decreed, is completely illegal and irrational. The car has a limited life value which deteriorates with each passing day. The Bank ought to be permitted to sell the car to recover whatever amount it can to satisfy the decree.

10. Furthermore, the manner in which the application for Receiver is being treated by the Trial Court is completely unsatisfactory. Repeated orders have been passed by this Court in several matters including, *Kamal Kumar Garewal (supra)* and *Naveen Kalkal (supra)*. Ideally, when the Trial Court is satisfied that the case for appointment of a Receiver has been made

out and the Bank has taken control of the car for repayment, when the Bank approaches the Trial Court for permission to sell the vehicle, the same should be directed to be considered expeditiously, as observed in *Naveen Kalkal (supra)*.

11. Considering that a large number of petitions have been filed today, which include suits both at the interim stage and at the final stage wherein the applications under Order XXXIX Rule 6 CPC, for permission to sell the vehicle, are simply being adjourned from time to time, it is deemed appropriate to direct that applications for sale of the vehicle, whenever filed, shall be disposed of within 60 days, except in case of any unusual or exceptional circumstances. Such orders for sale of the vehicle deserve to be passed especially in those cases where the Defendant(s) remain *ex-parte* and do not contest the proceedings. No useful purpose would be served by leaving the vehicle to deteriorate and letting the Bank incur further charges to store and preserve the vehicle.

12. Under these circumstances, the impugned order is modified to the extent that the application under Order XXXIX Rule 6 CPC has not been dealt with by the Trial Court. The Bank is permitted to sell the vehicle through a proper public auction with notice to the Defendants. Notice be served through speed post at the last known address of the Defendants as also the location from where the vehicle was taken into possession. The Defendants are also permitted to participate in the auction, as per paragraph 14 of *Kamal Kumar Grewal (supra)*. Once the auction has taken place, in the suits where final decrees have been passed, a report shall be placed by the Bank before the Trial Court so that if the Defendant(s) wish to obtain any information, the same would be available to them. In those cases where

the suits are still pending, the report shall be filed before the Trial Court to enable the Court to proceed with the suit and pass the final orders in the suit.

13. The present order along with the previous judgements in ***Kamal Kumar Grewal (supra)*** and ***Naveen Kalkal (supra)*** be circulated by the worthy Registrar General to all the district courts and civil judges. The petition is disposed of in the above terms. All pending applications are also disposed of.

Sef

**PRATHIBA M. SINGH
JUDGE**

JANUARY 13, 2020/dk

Corrected and released on 15th January, 2020

TRUE COPY
EXAMINER

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 23rd December, 2019

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CM (M) 1821/2019

M/S ICICI BANK LIMITED

..... Petitioner

Through: Mr. Puneet Kumar Bhalla & Ms.
Chetna Bhalla, Advocates
(M:9810080772) with Mr. Sanjeev
Bakshi, legal head north in person.

versus

NAVEEN KALKAL

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

CM APPL. 55025/2019 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 1821/2019

2. The present petition has been preferred by the Petitioner/Plaintiff - M/s. ICICI Bank Ltd. (*hereinafter*, "*Bank*") challenging the impugned order dated 5th December, 2019, by which the Id. Trial Court has simply adjourned the application filed by the Bank under Order XXXIX Rule 6 CPC, seeking permission to sell the hypothecated vehicle, which is currently in the Bank's custody.

3. The Respondent/Defendant (*hereinafter*, "*Defendant*") had entered into an agreement for financing of the vehicle. Due to defaults in payment by the Defendant, a suit for recovery was filed by the Bank, along with an application under Order XL Rule 1 CPC, for appointment of a receiver for the hypothecated vehicle, with power to sell. It is submitted that the receiver has already been appointed and the bank official has taken possession of the vehicle. Since the Defendant continued to not appear before the Court, the

application under Order XXXIX Rule 6 CPC came to be filed by the Bank seeking permission to sell the vehicle.

4. The grievance of ld. counsel for the Bank is that the application has simply been adjourned to 15th April, 2020. Ld. counsel submits that in *M/s. ICICI Bank Ltd. v. Kamal Kumar Garewal, [FAO 49/2015, decided on 29th May, 2015]*, a ld. Single Judge of this Court has already passed directions as to the manner in which such cases are to be dealt with, especially in respect of loan transactions where there is a default in payment. He submits that despite these guidelines having been laid down, the Trial Courts are not following the same and are unnecessarily delaying the suit.

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 avilment 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.

10. It is further directed that this order along with the judgement in *M/s ICICI Bank Ltd. (supra)* be circulated by the worthy Registrar General to all the District Judges, for proper circulation amongst all the Commercial Courts Judges and Civil Judges, to enable the courts to follow the broad procedure laid down therein. In cases of this nature, since public money is involved, all steps ought to be taken to ensure that recoveries to the extent possible, ought to be enabled in accordance with law.

11. The petition and all pending applications are disposed of in the above terms. *Dasti.*

Sd
PRATHIBA M. SINGH
JUDGE

DECEMBER 23, 2019dk

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M/S ICICI BANK LTD Appellant
Through: Mr. Punit K. Bhalla, Ms. Chetna
Bhalla, Ms. Isha Abrol, Mr. Rachit
Bigghe, Mr. Nitish Negi, Advs.

versus

KAMAL KUMAR GAREWAL Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT(ORAL)

1. The appellant challenged the order dated 27th January 2015, whereby the learned Trial Court has issued the summons of the suit and notice of the application under Order XL Rule 1 of the Code of Civil Procedure to the respondent. The appellant's grievance is that the learned Trial Court has not appointed the receiver to take over the possession of the vehicle at the time of issuing the summons to the respondent.

2. Brief relevant facts of this case are as under:-

2.1. In February, 2011, the respondent approached the appellant for loan of Rs.4.40 lakh to purchase RITZ Car(VDI model), whereupon the appellant bank sanctioned the loan of Rs.4.40 lakh to the respondent who executed the following documents dated 03rd February, 2011 in favour of the appellant :-

- (a) Credit facility application form along with the standard terms and conditions;
- (b) Deed of hypothecation; and
- (c) Irrevocable power of attorney.

2.2. The respondent agreed to repay the loan of Rs.4.40 lakh along with interest @ 12.50 % per annum in 60 equal monthly instalments of Rs.9,900.00 each.

2.3. On 07th February, 2011, the appellant disbursed loan of Rs.4,36,450.00 (after deducting an amount of Rs. 3,550 towards processing fee and stamp duty) to the dealer M/S Pasco Automobiles who delivered the vehicle namely RITZ car(VDI model) bearing registration No. HR-26BH-3155 to the respondent.

2.4. After payment of first EMI of Rs. 9,900.00, the respondent committed default for repayment of 46 EMIs totalling to Rs.4,55,400.00.

2.5. Vide notice dated 03rd December, 2014, the appellant recalled the loan and called upon the respondent to the pay total outstanding amount.

2.6. The respondent did not comply with the aforesaid notice dated 03rd December, 2015.

2.7. On 27th January, 2015, the appellant instituted a suit for recovery of Rs.8,08,491.09 along with an application under Order XL Rule 1 of the Code of Civil Procedure for appointment of a receiver for the hypothecated vehicle.

2.8. On 27th January, 2015, the learned Trial court issued summons of the suit and notice of the application to the respondent returnable on 17th March,

2015. However, the learned Trial Court did not appoint the receiver *ex parte* to take over the possession of the vehicle in question.

2.9. The present outstanding of the respondent is Rs.8,55,685.09.

3. Learned counsel for the appellant submits that the appellant filed an application under Order XL Rule 1 of the Code of Civil Procedure for appointment of a receiver to take over the possession of the vehicle before the Trial Court and the appellant pressed that application at the time of issuing of summons. It is submitted that the respondent is a chronic defaulter, who has defaulted in the payment of the EMIs to the appellant bank and if the *ex parte* order appointing the receiver is not passed, it would be very difficult for the appellant to recover the vehicle from the respondent. It is further submitted that after the receipt of the summons, the respondent may remove the vehicle from his residence/office to make it difficult, if not impossible, for the appointment to trace the vehicle. It is further submitted that the delay in appointment of the receiver would also result in depreciation of the value of the vehicle. It is further submitted that the delay in appointing the receiver has caused prejudice to the appellant, who became entitled to take over the vehicle in terms of the agreement at the time of recalling the loan. Learned counsel for the appellant further submits that the Trial Court has not given any reasons whatsoever for declining the appellant's prayer for appointment of an *ex parte* receiver. Learned counsel for the appellant further submits that notice to the appellant had already been dispensed with vide order dated 23rd February, 2015 since the appellant is seeking *ex parte* appointment of the receiver.

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.

16. The Trial Court record be sent back forthwith.

17. Copy of the order be given dasti to learned counsel for the appellant under signature of the Court Master.

SL

J.R. MIDHA, J.

MAY 29, 2015

rsk

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EXAMINER

