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IN THE HIGH COURT OF DELHI  
AT NEW DELHI  
C.M.(M) NO. 1821 OF 2019

MEMO OF PARTIES

**IN THE MATTER OF:**  
M/S ICICI BANK LIMITED,  
HAVING ITS REGISTERED OFFICE AT:  
ICICI BANK TOWER, NEAR CHAKLI CIRCLE,  
OLD PADRA ROAD, VADODARA 390007,  
GUJARAT, INDIA.  
HAVING ITS BRANCH OFFICE AT:  
E-BLOCK, VIDEOCON TOWER,  
JHANDEWALAN EXTENSION,  
NEW DELHI-110055.  
THROUGH ITS AUTHORISED REPRESENTATIVE  
MR. PARAMJEET SINGH ...PETITIONER

Versus

NAVEEN KALKAL,  
S/O SH. SURAJ BHAN,  
(BORROWER)  
R/O HOUSE NO.A-84, HARI VIHAR,  
KAKRAULA VILLAGE,  
DWARKA,  
DELHI-110043. ....RESPONDENT

**FILED BY:**

*[Signature]*  
(PUNIT K.BHALLA) (CHETNA BHALLA)  
BHALLA AND BHALLA LAW OFFICES  
ADVOCATES FOR PETITIONER  
FLAT NO.GF-1, GOPALA TOWER,  
25, RAJENDRA PLACE, NEW DELHI

NEW DELHI  
DATED: 17.12.2019

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

*Date of decision: 23<sup>rd</sup> 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 5<sup>th</sup> 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 15<sup>th</sup> April, 2020. Ld. counsel submits that in *M/s. ICICI Bank Ltd. v. Kamal Kumar Garewal, [FAO 49/2015, decided on 29<sup>th</sup> 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*

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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

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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.*

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**PRATHIBA M. SINGH**  
**JUDGE**

**DECEMBER 23, 2019dk**

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IN THE HIGH COURT OF DELHI  
AT NEW DELHI  
C.M.(M) NO. 1814 OF 2019

MEMO OF PARTIES

**IN THE MATTER OF:**

**M/S ICICI BANK LIMITED,**

**HAVING ITS REGISTERED OFFICE AT:**

**ICICI BANK TOWER, NEAR CHAKLI CIRCLE,**

**OLD PADRA ROAD, VADODARA 390007,**

**GUJARAT, INDIA.**

**HAVING ITS BRANCH OFFICE AT:**

**E-BLOCK, VIDEOCON TOWER,**

**JHANDEWALAN EXTENSION,**

**NEW DELHI-110055.**

**THROUGH ITS AUTHORISED REPRESENTATIVE**

**MR. PARAMJEET SINGH**

**...PETITIONER**

Versus

**NIDHI SHARMA**

**D/O SH. VINOD DIXIT,**

**(BORROWER)**

**R/O E-108, AURA CHIMERA,**

**RAJ NAGAR EXTENSION,**

**GULMOHOR TOWER,**

**GHAZIABAD, U.P-201017.**

**....RESPONDENT**

**FILED BY:**

*hcu*

**(PUNIT K. BHALLA) (CHETNA BHALLA)**

**BHALLA AND BHALLA LAW OFFICES**

**ADVOCATES FOR PETITIONER**

**FLAT NO. GF-1, GOPALA TOWER,**

**25, RAJENDRA PLACE, NEW DELHI**

**NEW DELHI**

**DATED: 17.12.2019**



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

*Date of decision: 23<sup>rd</sup> December, 2019*

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**CM (M) 1814/2019**

**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

**NIDHI SHARMA**

..... Respondent

Through: None.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J.(Oral)**

**CM APPL. 54936/2019 (exemption)**

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

**CM (M) 1814/2019**

2. The present petition has been preferred by the Petitioner/Plaintiff - M/s. ICICI Bank Ltd. (*hereinafter*, "Bank") challenging the impugned order dated 27<sup>th</sup> November, 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 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 19<sup>th</sup> May, 2020. Ld. counsel submits that in *M/s. ICICI Bank Ltd. v. Kamal Kumar Garewal, [FAO 49/2015, decided on 29<sup>th</sup> 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 the 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.

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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.

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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 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 the 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 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 Court while dealing with the Bank's suits, which involve vehicle loan. The preservation of the vehicle initially and thereafter permitting the public auction is essential in order to ensu-

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, 2019/dk**

AN APPEAL UNDER ORDER 41 RULE 11 READ WITH SECTION 104 OF THE CODE OF CIVIL PROCEDURE AGAINST THE ORDER DATED 18.12.2019 PASSED BY THE COURT OF MS KAMINI KUMAR GREWAL, DELHI IN SUIT NO. 1814/2019  
**TRUE COPY**  
**EXAMINER**

CM (M) 1814/2019

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**IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**F.A.O. NO. 49 OF 2015**

**MEMO OF PARTIES**


**IN THE MATTER OF:**

**M/S ICICI BANK LIMITED,  
HAVING ITS REGISTERED OFFICE AT:  
LANDMARK, RACE COURSE CIRCLE,  
VADODARA-39007.  
HAVING ITS BRANCH OFFICE AT:  
E-BLOCK, VIDEOCON TOWER,  
JHANDEWALAN EXTENSION,  
NEW DELHI-110055.  
THROUGH ITS AUTHORISED REPRESENTATIVE  
MR. MOHIT GROVER ...APPELLANT**

**Versus**

**KAMAL KUMAR GREWAL GAREWAL  
S/O SH. JAGAT SINGH,  
R/O. HOUSE NO.622, SECTOR-22B,  
GURGAON, HARYANA-122002. ...RESPONDENT**

**FILED BY:**

  
**(PUNIT K. BHALLA) (CHETNA BHALLA)  
BHALLA AND BHALLA LAW OFFICES  
ADVOCATES FOR APPELLANT  
FLAT NO.GF-1, GOPALA TOWER,  
25, RAJENDRA PLACE, NEW DELHI**

**NEW DELHI  
DATED: 10.02.2015**

**AN APPEAL UNDER ORDER 43 RULE ONE READ  
WITH SECTION 104 OF THE CODE OF CIVIL  
PROCEDURE AGAINST THE ORDER DATED  
27.01.2015 PASSED BY THE COURT OF MS KAMINI  
LAU, A.D.J., DELHI IN SUIT NO. 201/2015 TITLED  
AS "ICICI BANK LIMITED VERSUS KAMAL  
KUMAR GREWAL"**

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

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FAO 49/2015

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Date of decision : 29<sup>th</sup> May, 2015

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 27<sup>th</sup> 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 03<sup>rd</sup> February, 2011 in favour of the appellant :-

FAO 49/2015

Page 1 of 1



- (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 07<sup>th</sup> 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 03<sup>rd</sup> 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 03<sup>rd</sup> December, 2015.

2.7. On 27<sup>th</sup> 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 27<sup>th</sup> January, 2015, the learned Trial court issued summons of the suit and notice of the application to the respondent returnable on 17<sup>th</sup> 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 23<sup>rd</sup> 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

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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.

(21)

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.

MAY 29, 2015  
rsk



Sd  
J.R. MIDHA, J.

TRUE COPY

EXAMINED

IN THE DELHI HIGH COURT OF NEW DELHI

No. 2432-X

C-1Dt: 18/01/2020

From,

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

To,

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

CM (M) 1821/2019

M/s ICICI Bank Limited Vs. Naveen Kalkal

and

CM (M) 1814/2019

M/s ICICI Bank Limited Vs. Nidhi Sharma

Respected Sir/Madam,

I am directed to forward herewith for information and immediate compliance of copies of order dated 23.12.2019 passed by the Hon'ble Ms. Justice Prathiba M. Singh of this Court in above noted cases alongwith a copy of judgment dated 29.05.2015 passed in FAO 49/2015 titled as M/s ICICI Bank Ltd. Vs. Kamal Kumar Garewal.

Vide orders dt. 23.12.2019 passed in aforementioned petitions, the Hon'ble Court has directed for proper circulation of the Orders dated 23.12.2019 alongwith the judgment in FAO 49/2015 amongst all the Commercial Courts Judges and Civil Judges, to enable the courts to follow the broad procedure laid down therein.

You are, therefore, requested to ensure circulation of order dated 23.12.2019 passed in CM (M) 1821/2019 and CM (M) 1814/2019 respectively alongwith judgment dated 29.05.2015 passed in FAO 49/2015, amongst all the Commercial Courts Judges and Civil Judges.

OIC (General)

Dess (nos)  
18.01.2020

Yours faithfully

*R. Sharma*

Joint Registrar (Appellate)  
For Registrar General

Encl: Copy of Order dt. 23.12.2019 passed in CM (M) 1821/2019  
Copy of order dated 23.12.2019 passed in CM (M) 1814/2019  
Copy of Judgment dated 29.05.2015 passed in FAO 49/2015  
Memo of Parties.

OFFICE OF THE DISTRICT & SESSIONS JUDGE (HQs): DELHI

No. 2982-3021 Genl./J.Cir./HCS/2020

Dated, Delhi the 21 JAN 2020

**Subject:** *Copy of order dated 23.12.2019 passed by Hon'ble Ms. Justice Pratibha M. Singh, Hon'ble High Court of Delhi in CM (M) 1821/2019 & CM (M) 1814/2019 titled as "M/s ICICI Bank Limited Vs. Naveen Kalkal and M/s ICICI Bank Limited Vs Nidhi Sharma".*

Copy of the letter no. 2432-X C-1 dated 18.01.2020 along with copy of order dated 23.12.2019 passed by Hon'ble Ms. Justice Pratibha M. Singh, Hon'ble High Court of Delhi, New Delhi in CM (M) 1821/2019 titled as "M/s ICICI Bank Limited Vs. Naveen Kalkal and CM (M) 1814/2019 titled as "M/s ICICI Bank Limited Vs. Nidhi Sharma" alongwith copy of judgment dated 29.05.2015 passed by Hon'ble Mr. Justice J.R. Midha in FAO 49/2015 titled as "M/s ICICI Bank Ltd. Vs. Kamal Kumar Garewal" received from the Ld. Registrar General, Hon'ble High Court of Delhi, New Delhi is circulated for information and immediate compliance to:-

1. All the District Judges of Commercial Courts, Additional District Judges and Civil Judges posted in Central District, Tis Hazari Courts, Delhi.
2. The Chairman, Website Committee, Tis Hazari Courts, Delhi with the request to direct the concerned official to upload the same on the Website of Delhi District Courts.
3. The Director (Academics), Delhi Judicial Academy, Dwarka, New Delhi for information as requested vide letter no.DJA/Dir.(Acad)/2019/4306 dated 06.08.2019.
4. For uploading the same on Centralized Website through LAYERS.



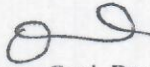
(CHARU AGGARWAL)  
Officer-In-Charge, Genl. Branch, Central  
Addl. District & Sessions Judge  
Tis Hazari Courts, Delhi.

Encl.: As above/2982-3021  
No. 156 / Genl./J.Cir./HCS /2020

Dated, Delhi the 21 JAN 2020

Copy to:

The Ld. Registrar General, Hon'ble High Court of Delhi, New Delhi for information.



Officer-In-Charge, Genl. Branch, Central  
Addl. District & Sessions Judge  
Tis Hazari Courts, Delhi