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-ARBP/859/13

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 859 OF 2013

L & T Finance Limited

...Petitioner

VERSUS

Vijay Shamsunder Bhosle & Anr.

...Respondent

Mr. Pramod Bhosle, i/b. Ms. Disha Karambar & Associates for the Petitioner.

CORAM: R. D. DHANUKA, J.

DATED : 24th DECEMBER, 2013

P. C.

This petition is filed by the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 seeking reliefs as prayed against the Respondents.

2. By an order dated 27th June, 2013, an interim order was passed in the above Petition by this Court. The said order along with the Petition is served on the Respondents. The learned Counsel appearing for the Petitioner tenders Affidavits of service proving service dated 23rd December, 2013. The same is taken on record. It is stated in the Affidavit that Respondents have accepted the service. Today the Petition is taken up for final hearing however, none appears for the Respondents.

3. The Petitioner had provided a loan of Rs. 33, 12,000/- to the first Respondent under a Loan-cum-Hypothecation Agreement entered into on 8th January, 2010. The loan was repayable with interest @ 7.04% per annum in 48 monthly installments of Rs. 88, 440/- commencing from 13rd February, 2010 and ending on 13rd January, 2014. The Second Respondent has

guaranteed the due repayment of the loan. Clause 12 of the Agreement provides for the events of default; Clause 13 provides consequences of default and Clause 14 provide for the rights of the Petitioner on default including repossession of the asset. Clause 17 provides for arbitration. There has been a default on the part of the Respondents. The Respondents were liable to pay to the Petitioner a sum of Rs. 16, 58,197/-. The Petitioner has invoked the provision of arbitration.

4. In the present Petition, the Petitioner has sought appointment of the Court Receiver as Receiver of the hypothecated vehicles, more particularly described in Exhibit-G to the Petition. In absence of any defense or contest by the Respondents, the averments contained in petition would have to be accepted. There has been a default in payment of the outstanding dues. It would, therefore, be necessary to safeguard the interest of the Petitioner by appointing the Court Receiver as Receiver of the hypothecated vehicles. The appointment of the Receiver is necessary in order to ensure that the vehicles are not wasted or alienated, thereby defeating the rights of the Petitioner. Section 9 empowers the Court to pass an interim measure of protection. Hence the following order.

i) The Court Receiver shall give an option to the Respondents in writing to act as agents of Receiver in respect of the said Equipment/Vehicle. The Respondents shall be given two weeks time by the Court Receiver from the date of receipt of the Court Receiver's communication letter to exercise such option. In the event of the respondent/s being desirous of acting as agents of

the Receiver, they shall be appointed as agents of the Receiver, subject to security and royalty. The Receiver shall determine the quantum of security and royalty having regard to the terms and conditions contained in the Loan-cum-Hypothecation Agreement (Exhibit -A to the Petition).

ii) In the event that the Respondents do not communicate their willingness to the Receiver to act as agents within a period of two weeks from the date of receipt of the communication from the Court Receiver, Court Receiver to take forcible possession of the vehicle and if necessary with the assistance of police from the respondent. It would be open to the Petitioner to apply to the Court for further orders including sale of the Equipment/Vehicle by private treaty.

iii) Until the Receiver takes possession, there shall be an interim injunction restraining the Respondents from alienating, encumbering, parting with possession or creating any third party right in respect of the Equipment/Vehicle described in Exhibit - G to the Petition.

5. Petition is directed to approach the office of the Court Receiver for implementation of this order with three weeks from the date of this order.

6. Parties to act upon copy of this order duly authenticated by the associate of this Court.

7. The Arbitration Petition is accordingly disposed of.

[R. D. DHANUKA, J.]