

922-ARBP/1153/2013

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.1153 OF 2013

L & T Finance Limited, a Company
)Petitioner

V/s.

M/s. Premshankar Chaube & Anr.
)Respondents

Ms Shakuntala Joshi i/b M/s S.I. Joshi & Co., for
Petitioner.

None for Respondents.

CORAM : R.D.DHANUKA J.
DATED : 24th December, 2013

P.C.

1. 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. The Arbitration Petition is served on the Respondents. The learned Counsel appearing for the Petitioner tenders Affidavit of service proving service dated 12th 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 appeared for the Respondents.

3. The Petitioner had provided a loan of Rs. 20,51,000/- (Rupees Twenty Lakhs Fifty One Thousand only) to the first Respondent under a Loan Agreement entered into on 30th August, 2012. The loan was repayable with interest @6.74% per annum in 46 monthly installments i.e. 1st installment of Rs. 56,950/- and 2nd to 46th installments of Rs.56,600/-. 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 provides 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. 22,98,794/-. 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-F to the Petition. In absence of any defence or contest by the Respondents, the averments contained in the 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 is 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 within a period of two weeks after taking possession give an option to the Respondents, in writing to act as agents of Receiver in respect of the said vehicles. 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 an 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 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 help of police. It would be open to the petitioner to apply to the Court for further orders including sale of the vehicles 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 vehicles described in Exhibit F to the Petition.

5. Petitioner is directed to approach the office of the Court Receiver for enforcement of this order within 3 weeks from today.

6. The Arbitration Petition is accordingly disposed of. No order as to costs.

(R.D. DHANUKA, J.)