IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 103 OF 2015

L & T Finance Limited ... Petitioner
Versus
M/s Shree Ganoba Enterprises & Anr. ...Respondents

Mr. Girish Thakur For the Petitioner
None for the Respondents

CORAM: S.J.KATHAWALLA, J.

DATED: 11th March, 2015

P.C.:

1. The above Petition is filed by the Petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 (the Act) seeking reliefs as prayed against the Respondents. The Petition is served on the Respondents and an affidavit proving service is on record. The petition is taken up for final hearing. However, none appear for the Respondents.

2. By a Loan cum Hypothecation Agreement dated 31.01.2012, the Petitioner provided a loan of Rs. 40,20,000/- (Rupees Forty Lac Twenty Thousand Only) to the First Respondent for Purchase of Vehicles viz. (i) TATA 2518 (2012) bearing Chassis No. MAT448046C2A00210 and Engine No. B5.91803111L63206235 and Registration No. MH-48-J-9192 and (ii) TATA 2518 (2012) bearing Chassis No. MAT448046C2A00209 and Engine No.

B5.91803111L63208533 and Registration No. MH-43-Y-9192 ("the said vehicles") more particularly described in Exhibit "F" to the Petition and on the terms described in the Loan-Cum-Hypothecation Agreement dated 31.01.2012. Under the said Agreement, the said Vehicles were hypothecated with the Petitioner by the Respondent No.1, as security for repayment of the Loan amount.

3. The loan amount of Rs. 40,20,000/- (Rupees Forty Lac Twenty Thousand Only) was repayable by the Respondents to the Petitioner with interest @6.90% totaling to Rs. 48,73,632/- as set out in the Agreement dated 31st January, 2012.

4. Respondent No. 2 has guaranteed the due repayment of the loan. Clause 12 of the Loan-Cum-Hypothecation Agreement provides for the events of default; Clause 13 for the consequences of default; Clause 14 provides for the right of the Petitioner on default including repossession of the assets. Clause 17 provides for arbitration. There has been a default on the part of the Respondents and the Respondents failed to pay to the Petitioner a sum of Rs. 11,18,956/- as on 13/11/2014. The events of default having taken place in terms of the Loan-Cum-Hypothecation Agreement, the Petitioner became entitled to recall and have recalled the entire loan. There was no reply to the Loan Recall Notice Dated 15/12/2014. The Petitioner therefore invoked the

arbitration Clause in the Loan-Cum-Hypothecation Agreement dated 31.01.2012.

4. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as the Receiver of the hypothecated vehicle, more particularly described in Exhibit “F” to the petition. The Respondents have not filed their Affidavit in Reply and are also not present before the court. In absence of any defense or contest by the Respondents, the averments contained in the Petition have remained uncontroverted. I see no reason why the statements/submission made by the Petitioner in the Petition should not be accepted. As the Respondents have defaulted in the repayment of the outstanding dues, it is just and necessary to safeguard the interest of the Petitioner by appointing the Court Receiver as Receiver of the hypothecated Vehicle. The appointment of the receiver is necessary in order to ensure that the hypothecated Vehicle is not wasted or alienated, thereby defeating the rights of the Petitioner. Further interim injunction in terms of prayer clause (e) also needs to be granted to protect the rights of the Petitioner. The claim of the Petitioner is over Rs.11,18,956/- and unless adequately protected, the Petitioner may suffer irreparable harm and injury. Balance of convenience also warrants the grant of relief. Section 9 empowers the court to pass interim measures of protection. Hence the following order is passed:

(i) Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver, High Court, Bombay is appointed as Receiver in respect of the Hypothecated Vehicle, more particularly described in Exhibit "F" to the Petition, with direction to take forcible physical possession of the said Vehicle with police assistance, if required, and without any prior notice to the Respondents;

(ii) 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 the Receiver in respect of the said 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 an option. In the event of the Respondent/s being desirous of acting as agents of the Court Receiver, they shall be appointed as agents of the Receiver, subject to deposit of security and payment of 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);

(iii) 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, it would be open to the Petitioners to apply to the court for further orders including sale of the Vehicle by private treaty;

(iv) There shall also be an interim injunction restraining the respondents from disposing of alienating, encumbering, parting with possession or creating any third party rights in respects of the said Vehicle described in Exhibit "F" to the Petition.

5. The Arbitration Petition is accordingly disposed of.

(S.J.KATHAWALLA, J.)