IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.98 OF 2015

L & T Finance Ltd. … Petitioner
V/s.
Mr. Hardip Singh Amarchand Saini & Anr. … Respondents

Ms. Shakuntala Joshi along with Ms. Nikita Pawar i/b M/s. S.I. Joshi & Co. for the Petitioner.
None for Respondents.

CORAM : S.J. KATHAWALLA, J.

DATED : 10th 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 dated 18.02.2015 is on record. The Petition is today taken up for final hearing. However, none appear for the Respondents.

2. By a Loan-cum-Hypothecation Agreement dated 18.02.2012, the Petitioner provided a loan of Rs.18,50,000/- to the first Respondent for purchase of a Vehicle, more particularly described in Exhibit "F" to the Petition. The said vehicle is hypothecated with the Petitioner by the Respondent No.1.

3. The Loan amount of Rs.18,50,000/- was repayable by the Respondents to the Petitioner with interest 6.65% p.a. in 59 monthly installments

commencing from 10.03.2012 and ending on 10.01.2017. Therefore, the aggregate amount payable by the Respondents to the Petitioner under the Loan-cum-Hypothecation Agreement was Rs.24,65,125/-.

4. Respondent No.2 has guaranteed due repayment of the loan. Clause 12 of the Agreement provides for the events of default; Clause 13 for the consequences of default; Clause 14 provides for the rights of the Petitioner on default including repossession of the Vehicle 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.12,22,110/- (Rupees Twelve Lacs Twenty Two Thousand One Hundred and Ten Only). The Petitoner therefore invoked the arbitration clause in the Agreement dated 18.02.2012.

5. 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 the 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/submissions made by the Petitioner in the Petition should not be accepted. Since 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. Section 9 empowers the Court to pass interim measures of protection. Hence, the following order:

(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 Vehicle, more particularly described in Exhibit "F" to the Petition, with a 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 an agent 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 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 said 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 respect of the Vehicle as described in Exhibit “F” to the Petition.

6. The Arbitration Petition is accordingly disposed of.

**( S.J.KATHAWALLA, J. )**