

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 341 OF 2015

Tata Capital Housing Finance Limited **Petitioner**

VERSUS

Mihir Kanti Nandy & Anr. **Respondents**

Ms.Aparna Wagle, i/b. MDP & Partners for the Petitioner.

None for the Respondents.

CORAM : R.D. DHANUKA, J.

DATED : 1st JULY, 2015

P.C.

This Petition is filed by the Petitioner under section 9 of the Arbitration and Conciliation Act, 1996 for seeking reliefs as prayed against the respondents.

2. Learned Counsel appearing for the petitioner states that the respondents are served and undertakes to file affidavit of service in the office of the Prothonotary and Senior Master within two weeks from today. Undertaking is accepted. None appeared for the respondents though served.

3. The petitioner had granted a loan of Rs.3,00,000/- to the respondent nos.1 and 2 against the execution of the Home Loan Agreement dated 13th October, 2010. The respondents have created equitable mortgage by way of deposit of original title deeds of the property as security and the same was recorded in Memorandum Recording Past Transactions of Creation of Mortgage by registered Mortgage Deeds with respect to the mortgaged property annexed at Ex.C to the petition. The said loan amount was repayable in installments by the

respondents.

4. It is the case of the petitioner that since the respondent nos.1 and 2 failed and neglected to repay the outstanding installments to the petitioner and thus committed default in terms of clause 11 of the said loan agreement. On 2nd December, 2013 the petitioner had issued a notice calling upon the respondents to pay a sum of Rs.33,88,249/- towards the loan amount due as on 15th November, 2013 alongwith interest @15.40% p.a. alongwith additional interest on the overdue amount. On failure on the part of the respondents to repay the amounts due to the petitioner, the petitioner has thus filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 for interim measures. None appears for the respondents though served. No affidavit-in-reply is filed.

5. Learned counsel for the petitioner invited my attention to the averments made in the petition and also to the documents annexed to the petition and states that as on 16th December, 2014, the respondents are liable to pay a sum of Rs.4,82,022/- alongwith interest @ 15.5% p.a. thereon alongwith additional interest @2% p.m. till payment or realisation.

6. A perusal of the documents annexed to the petition prima facie indicates that the respondents have committed default in making repayment of the amount. There was no response to the notice of demand. In my view, prima facie case is made out for appointment of the Court Receiver in respect of the mortgaged property described at Exhibit –C to the petition. I, therefore, pass the following order:-

- i) The Court Receiver, High Court, Bombay is appointed as a Receiver in respect of the property described at Exhibit-C to the petition with a direction to the respondents to appoint as an agent of the Court Receiver in respect of the said property

on usual terms and conditions and on payment of royalty and on furnishing security.

ii) In the event of the respondents refusing to accept such agency within two weeks from the date of such offer by the Court Receiver, the Court Receiver shall take forcible possession of the property. In that situation, the petitioner would be at liberty to apply for interim measures by filing a petition under Section 9 of the Arbitration and Conciliation Act, 1996.

iii) Till the Court Receiver takes possession of the mortgaged property, 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 said property described at Ex.C to the petition.

7. The petitioner is directed to approach the office of the Court Receiver for enforcement of this order within four weeks from today.

8. If the petitioner does not take steps for appointment of the arbitrator within four weeks from today, if not already appointed, interim order passed today to stand vacated without further reference to the Court.

9. The arbitration petition is accordingly disposed of. No order as to costs.

10. Parties as well as the Court Receiver to act on the authenticated copy of this order.

[R.D. DHANUKA, J.]