

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.132 OF 2015

Tata Capital Housing Finance Limited **Petitioner**

VERSUS

Sameer Kishor Rao Deshpande & Anr. **Respondents**

Ms. Nelly Mehta, i/b. MDP & Partners for the Petitioner.

None for the respondents.

CORAM : R.D. DHANUKA, J.

DATED : 17th JUNE, 2015

P.C.

This Petition is filed by the petitioner under section 9 of the Arbitration and Conciliation Act, 1996 seeking interim measures i.e. for appointment of Court Receiver, injunction and other reliefs 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 one week from today. Undertaking is accepted. None appeared for the respondents though served.

3. The petitioner had granted a loan of Rs.17,00,000/- to the respondent nos.1 and 2 against the execution of the Home Loan Agreement dated 26th November, 2011 and memorandum recording past transactions of creation of mortgage by Deposit of Title Deed dated 30th November 2011. 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 7 of the said loan agreement. On 24th July, 2014 the petitioner had issued a notice calling upon the respondents to pay a sum of Rs.17,39,111/- along with interest @11% p.a. 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.17,45,340/- along with interest @ 11% p.a. thereon with additional interest @2% p.a. per month 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 –D 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 asset described at Exhibit-D 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. 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.

- ii) Till the Court Receiver takes possession of the mortgaged property, there shall be an interim injunction in terms of prayer clause (b).

7. Petitioner is directed to approach the office of the Court Receiver for enforcement of this order within 4 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 an authenticated copy of this order.

[R.D. DHANUKA, J.]