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

ARBITRATION PETITION NO.548 OF 2015
WITH
ARBITRATION PETITION NO.367 OF 2015

Tata Capital Housing Finance Ltd. ...Petitioner
V/s.
Navin G. Hegde & Ors. ...Respondents

Mr.Mayur Khandeparkar with Mr.Ashok Paranjape and Ms.Aparna Wagle i/b MDP & Partners for the Petitioner.

Mr.Sovin Hegde - Respondent No.3 present in person.

CORAM : R.D. DHANUKA, J.
DATE : 11TH JUNE, 2015.

P.C. :-

1. Mr.Khandeparkar, learned counsel appearing for the petitioner in both these matters states that the respondents are served and tenders the affidavit of service. The affidavit of service is taken on record. Respondent No.3 – Sovin Hegde is present in Court and states that the respondents desire that the matter be settled out of Court by selling the mortgaged flats in question. No affidavit in reply is filed, though served. The other respondents are absent.

2. In both these arbitration petitions, which are filed under section 9 of the Arbitration & Conciliation Act, 1996, the petitioner

seeks an appointment of the Court Receiver, injunction and for other interim measures.

Facts in Arbitration Petition No.548 of 2015 :

3. On 8th October, 2010, the petitioner has sanctioned a loan of Rs.7.00 crores to the respondents, which was repayable in 180 monthly installments. On 31st October, 2010, the parties executed a home loan agreement. On 11th November, 2010, the respondents created an equitable mortgage by way of deposit of original title documents for the properties described in Exhibit-C to the petition. In the month of July, 2014, the respondents committed default in repayment of the loan.

4. On 14th August, 2014, the petitioner issued notice of demand, calling upon the respondents to repay a sum of Rs.6,91,98,506/- as on 21st July, 2014 with rate of interest @ 12.50% per annum. The respondents have neither replied to the said notice nor repaid any amount.

5. According to the petitioner as on 11th January, 2015, the respondents are liable to pay a sum of Rs.7,32,77,164/- along with interest at 12.50% p.a. as also penal interest at 1.8% per month compounded monthly as dues.

6. It is the case of the petitioner that on 7th March, 2015, the petitioner made an attempt to serve the papers and proceedings in

the aforesaid two petitions by RPAD and courier. However, all the packets returned with remark - “Returned Shifted”. The petitioner again made an attempt to serve the respondents with the papers and proceedings on 19th March, 2015 by hand delivery. However, the respondents avoided the delivery.

7. By an order dated 30th March, 2015 passed by this Court, this Court directed the petitioner to issue advertisements in two local newspapers. The publication of the notice was accordingly done by the petitioner on 8th April, 2015.

8. On 16th April, 2015, none of the respondents appeared before this Court. This Court has made *prima-facie* observations and granted *ad-interim* injunction in terms of prayer clause (b) and also directed the respondents to file an affidavit of disclosure in terms of prayer clause (c). None of the respondents have filed any affidavit in reply, including the affidavit of disclosure till date.

9. Mr.Khandeparkar, learned counsel for the petitioner also invited my attention to the notice issued by Phoenix ARC Private Limited by invoking the provisions of SARFAESI Act against respondent no.6, who is one of the co-borrower in this petition *inter-alia* giving notice for sale of other properties of respondent No.6. Even according to the said notice, respondent no.6 has to pay a sum of Rs.59,07,76,718/- with further interest thereon to the said Phoenix

ARC Private Limited. Respondent No.3, who is present in Court, does not dispute issuance of the said notice by the said Phoenix ARC Private Limited.

10. Respondent No.3 states that there are other creditors also of the respondents. However, they have no claim insofar as the properties, which are the subject matter of these petitioners are concerned. He submits that the respondents had been paying the installments till early 2015 and proposes to settle the matter out of Court in near future. Respondent No.3 also proposes to send such proposal for out of Court settlement to the petitioner shortly.

11. A perusal of the record, *prima-facie* indicates that the respondents have taken loan and have committed default in repaying some of the installments. According to the petitioner, in Arbitration Petition No.548 of 2015, the petitioner has to recover a sum of Rs.7,32,77,164/- as on 17^{th} January, 2015 with further interest at 12.50% and also penal additional interest at 1.8% per month compounded as dues. There is no reply to the notice of demand. A perusal of the notice issued by Phoenix ARC Private Limited indicates that even the third party has to recover substantial amount from respondent No.6. Respondent No.3, who is present in Court, does not dispute that there are other creditors of the respondents.

12. In my *prima-facie* view, the petitioner has good chances of

succeeding in the arbitration. The property which is the subject matter of mortgage, is thus required to be secured by appointment of the Court Receiver. I therefore, pass the following order :-

a). Court Receiver, High Court, Bombay is appointed as receiver in respect of the mortgaged flats described in Exhibit-C to the petition in Arbitration Petition No.548 of 2015 with a direction to appoint respondent No.3, who is stated to be in possession of the said flat, as an agent on the usual terms and conditions, including payment of royalty and on furnishing security. It is made clear that if respondent No.3 does not accept the agency of the Court Receiver within four weeks from the date of such offer on the terms and conditions proposed by the Court Receiver, the Court Receiver to take forcible possession of the said property, described in Exhibit-C to the petition. It is made clear that the Court Receiver would be entitled to take police assistance, if necessary, for the purpose of implementing this order. In that event the petitioner would be at liberty to apply for further interim measures by filing separate petition.

b). Till the Court Receiver takes possession of the mortgage property, the respondents shall not create any third party rights, alienate, encumber, part with possession in respect of the said property in favour of any party.

c). The petitioner is directed to approach the office of the

Court Receiver within three weeks from today, failing which the interim order passed by this Court to stand vacated without further reference to the Court.

Facts in Arbitration Petition No.367 of 2015 :

13. The petitioner in this case has granted a loan of Rs.3.00 crores on 8th October, 2010, which was repayable in 180 monthly installments. The respondents have created mortgage in respect of the flat described in Exhibit-E to the petition. The respondents have committed default. There is no reply to the notice issued by the petitioner on 14th August, 2014 nor any repayment is made.

14. For the reasons recorded aforesaid, I pass the similar order in respect of flat described in Exhibit-E in Arbitration Petition No.367 of 2015 on similar terms.

15. There will be also an order of injunction in Arbitration Petition No.367 of 2015 on similar terms stated aforesaid.

16. All the respondents are directed to file affidavit of disclosure to comply with the order passed by this Court on 16th April, 2015 in terms of prayer clause (c). Such affidavit of disclosure shall be filed within three weeks from today. It is made clear that if the respondents file the affidavit of disclosure, the petitioner shall be at liberty to apply for further interim measures, if need so arises.

17. It is made clear that despite this order passed by this

Court, if the respondents propose to make proposal for settlement, this order will not preclude the parties to settle the matter amicably.

18. Both the arbitration petitions are disposed of. No order as to costs.

19. The Court Receiver as well as the parties to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)