

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 210 OF 2015

Tata Capital Housing Finance Limited **Petitioner**

VERSUS

Vivek Mishra & Anr. **Respondents**

Ms.Nazeen Kotwal, i/b.MDP & Partners for the Petitioner.

None for the Respondents.

CORAM : R.D. DHANUKA, J.

DATED : 30th SEPTEMBER, 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 tenders an affidavit of service and states that the respondents are served. The affidavit of service is taken on record. None appeared for the respondents though served. No affidavit in reply is filed.

3. The petitioner had granted a loan of Rs.32,50,000/- to the respondent nos.1 and 2 against the execution of the Home Loan Agreement dated 5th March, 2011. On 5th March 2011, the respondents have executed in favour of the petitioner, a Memorandum recording past transactions of creation of Mortgage by deposit of title deeds, by depositing the original Title Deeds as more particularly recorded and enumerated in the Annexure 1 thereto, thereby creating equitable mortgage in favour of the petitioner on the property annexed at Ex.D to the

petition. The said loan amount was repayable in 120 monthly installments of Rs.35,088/- each by the respondents. Clause 11.2 (a) of the agreement provides for the events of default; Clause 11.3(a) provides for consequences in the event of default and Clause 13.1 provides for arbitration.

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. On 13th March, 2014 the petitioner had issued a notice calling upon the respondents to pay a sum of Rs.23,64,720/- with further interest thereon. 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 January, 2015, the respondents are liable to pay Rs.27,65,124/- @15% p.a. alongwith additional interest @ 2% per month on the aforesaid overdue amount for the defaulted period till payment/realisation and other expenses, costs, fees, charges etc.

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 property 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.

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 in terms of prayer clause (b).

iv) There shall be injunction also in terms of prayer clause (c). Such affidavit of disclosure shall be filed within four weeks from the date of communication of this order to the respondents. Petitioner is directed to convey this order to the respondents.

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.]

CERTIFICATE

Certified to be true and correct copy of the original signed order.