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

ARBITRATION PETITION NO.784 OF 2015

Tata Capital Financial Services Limited	...Petitioner
V/s.	
M/s.Krishna Sales Corporation & Ors.	...Respondents

Mr.Ashish Kamat with Ms.Aparna Wagle i/b MDP & Partners for the
Petitioner.

None for the Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 9TH SEPTEMBER, 2015.

P.C. :-

1. Learned counsel appearing for the petitioner tendered affidavit of service and submits that the respondents are served with the copy of papers and proceedings along with copy of the order dated 16th April, 2015. None appeared for the respondents. The affidavit of service is taken on record.
2. By this petition filed under section 9 of the Arbitration & Conciliation Act, 1996 (for short "Arbitration Act"), the petitioner seeks an appointment of the Court Receiver in respect of the properties described in Exhibit-X, D-3 and D-2 and various other reliefs.
3. On 28th September, 2012, the petitioner sanctioned a loan of Rs.3.00 crores in favour of the respondents. On 11th October, 2012, the respondents deposited the Memorandum of Title Deeds in respect

of the first execution of Rs.3.00 crores which is annexed as Exhibit D-1 to the petition. On 13th October, 2012, the respondent no.1 through the respondent no.2 executed the agreement to hypothecate thereby agreed to create a charge on the movable properties which is Exhibit-M to the petition.

4. On 13th October, 2012, the respondent nos.3 and 4 have executed Undertaking to Mortgage the properties in Schedule-2 after clearing the dues to the Punjab National Bank which is annexed at Exhibit-N. The said property is described at Exhibit-O to the petition.

5. On 16th September, 2013, the petitioner granted further sanction of Rs.2.00 crores as and by way of loan. On 17th September, 2013, the petitioner and the respondent no.1 executed a Channel Finance Agreement for enhancement of the facility at Rs.5.00 crores. On 16th September, 2013, the respondents deposited the memorandum of title deeds with respect to the second sanction of Rs.2.00 crores in respect of the properties described in Exhibit D-3.

6. Since the respondents committed default, the petitioner issued a demand notice on 2nd December, 2014, calling upon the respondent no.1 to pay an amount of Rs.5,22,33,965.77 as on 1st December, 2014 with further interest thereon. There was neither any payment nor any response to the said notice.

7. On 6th January, 2015, the petitioner through its advocate issued a loan recall notice to the respondent nos.1 to 3 calling upon to pay a sum Rs.5,32,15,063.87 as on 1st January, 2015 and further interest thereon.

8. On 20th January, 2015, the petitioner through its advocate's letter issued a loan recall notice to the respondent nos.1 to 3 calling upon them to repay an amount of Rs.5,32,15,063.87 as on 1st January, 2015 with further interest thereon. The respondents neither repaid any amount nor responded to the said notice.

9. None appeared for the respondents though served. No affidavit in reply has been filed. The averments made in the petition are deemed to have been admitted.

10. This Court by a detailed order dated 16th April, 2015 has granted ad-interim injunction in terms of prayer (d), however, restricted to the properties in Exhibit "X" and D-3 to the petition. This Court also granted *ad-interim* measures in terms of prayer clause (c) thereby directing the respondents to file affidavit of disclosure within three weeks from the date of the said order. The respondents have not complied with the said ad-interim order in terms of prayer clause (c) so also by not filing affidavit of disclosure and have committed the breach of the said order dated 16th April, 2015.

11. A perusal of the record clearly indicates that the respondents had taken various loans and have committed default in making repayment of these loans. Insofar as the property described in Exhibit "O" is concerned, the said properties are already mortgaged in favour of the Punjab National Bank. Though the respondents had given an undertaking to clear the mortgaged debt of Punjab National Bank and to create the mortgage in favour of the petitioner, the respondents have not disclosed whether the respondents have cleared the said prior mortgage in favour of the Punjab National Bank.

12. In my view, the petitioner has thus made out a case for appointment of the Court Receiver in respect of the property described in Exhibit "X" and Exhibit "D-3" to the petition. The petitioner has also made out a case for injunction in terms of prayer clause (b) also in respect of the properties described at Exhibit "O" to the petition. I therefore pass the following order :-

i). The Court Receiver, High Court, Bombay is appointed as the receiver in respect of the properties described in Exhibit "X" and "D-3" to the petition with a direction to the Court Receiver to appoint the respondents as the agent of the Court Receiver on usual terms and conditions and on payment of royalty and on furnishing security. If the respondents do not accept the agency of the Court Receiver within two weeks from the date of offer from the office of the Court Receiver, the Court Receiver is directed to take physical possession of the properties and if necessary with the assistance of the police, described in Exhibit "X" and "D-3" to the petition and shall submit the report before this Court for further directions. In that event, the petitioner shall be at liberty to seek further interim measures.

ii). Till the Court Receiver takes possession of the properties described in Exhibit "X" and "D-3" to the petition, ad-interim order passed by this Court on 16th April, 2015 to continue.

iii). There shall also be interim order in terms of prayer clause (b) in respect of the properties described in Exhibit "O" to the petition.

iv). The petitioner is directed to approach the office of the Court Receiver for enforcement of this order within a period of four weeks from today, failing which the interim measures passed today

shall be vacated without further reference to the Court.

13. The petitioner is directed to take steps for the appointment of the learned arbitrator in accordance with the Arbitration & Conciliation Act within four weeks from today, failing which, interim order passed today to stand vacated without further reference to the Court.

14. The arbitration petition is disposed of in aforesaid terms. No order as to costs.

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

(R.D. DHANUKA, J.)

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