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

ARBITRATION PETITION NO.845 OF 2015

Tata Capital Housing Finance Ltd.	...Petitioner
V/s.	
Sureshkumar C. Pariyar & Anr.	...Respondents

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

None for the Respondents.

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

P.C. :-

1. By this petition filed under section 9 of the Arbitration & Conciliation Act, 1996, the petitioner seeks an appointment of the Court Receiver and injunction in respect of the property described in Exhibit "D" to the petition and seeks various other reliefs.

2. On 24th February, 2011 the petitioner sanctioned a home loan of Rs.20,85,000/- in favour of the respondents which was repayable in 120 equal monthly installments of Rs.31,749/- with interest. The parties entered into a home loan agreement on 22nd March, 2011. In furtherance of the said home loan agreement, the respondents executed in favour of the petitioner a Memorandum recording past transactions of creation of Mortgage by deposit of Title

Deeds on 25th March, 2011 of the properties described in Exhibit "D".

3. Since the respondents committed default in making loan payment, the petitioner through its advocate issued a notice on 22nd May, 2014 and called upon the respondents to repay a sum of Rs,22,17,670/- with further interest thereon. The respondents have neither repaid any amount, nor responded to the said notice.

4. The petitioner apprehends that the respondents may create third party rights in respect of the said mortgaged properties which are secured in favour of the petitioner.

5. Pursuant to the ad-interim order passed by this Court on 23rd March, 2015, this Court has granted ad-interim injunction in terms of prayer clause (b) and has also directed the respondents to disclose on oath the details of the movable and immovable properties, both encumbered and un-encumbered owned by the respondents. Pursuant to the said order passed by this Court, the respondents have filed an affidavit on 13th April, 2015. It is stated in the affidavit that the respondents owned three shops which are already mortgaged in favour of the petitioner. It is stated that in addition to those three shops, the respondents do not own any movable or immovable properties. In the said affidavit, it is mentioned that there are no other encumbrances created in the said mortgaged properties. It is also stated that the respondents had taken loan for carrying out

sweet shop business from the said shops. It is stated that part of the loan is outstanding. None appeared for the respondent when the matter was called out.

6. With the assistance of learned counsel for the petitioner, I have perused the pleadings and documents annexed to the petition and also affidavit of disclosure filed by the respondents.

7. I am of the prima-facie view that the respondents have committed default in making repayment of the loan amount. The petitioner apprehends that the respondents may create third party rights in respect of the mortgaged properties. On perusal of the affidavit of disclosure, it is clear that the respondents do not have other properties except the mortgaged properties. In my view, the petitioner has good chances of succeeding in the arbitral proceedings. The claim of the petitioner is thus required to be protected. The petitioner has made out a case for appointment of the Court Receiver in respect of the mortgaged properties. 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, and if necessary with the assistance of the police and shall submit a report before this Court for further directions. In that event the petitioner would be at liberty to apply for further interim measure.

iii) Till the Court Receiver takes possession of the mortgaged property, there shall be an interim injunction in terms of prayers (d) and (e).

8. The petitioner is directed to approach the office of the Court Receiver for enforcement of this order within four weeks from today, failing which the interim order passed today to stand vacated without further reference to the Court.

9. If the petitioner has not appointed any arbitrator, the same shall be appointed in accordance with the provisions of the Arbitration & Conciliation Act, 1996 within four weeks from today, failing which the order passed today to stand vacated without further reference to the Court.

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

11. 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.”