

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
***ORDINARY ORIGINAL CIVIL JURISDICTION***  
**ARBITRATION PETITION NO.279 OF 2015**

**Tata Capital Financial Services Limited** ..... **Petitioner**

**VERSUS**

**Mangal Madan Gundecha & Anr.** ..... **Respondents**

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

None for the Respondents.

**CORAM : R.D. DHANUKA, J.**

**DATED : 1<sup>st</sup> JULY, 2015**

**P.C.**

Learned counsel appearing for the petitioner states that respondents are served. Though respondents have filed Vakalatnama, have not filed affidavit in reply. She submits that the respondents have also not complied with the ad-interim order passed by this court on 23<sup>rd</sup> March, 2015. None appeared for the respondents when the matter was called out.

2. By this petition filed under Section 9 of the Arbitration and Conciliation Act, 1996, the petitioner seeks interim measures i.e. for appointment of the Court Receiver in respect of the mortgaged property described at Exhibit-F to the petition, for injunction and for other reliefs.

3. The petitioner had granted a loan of Rs.9,60,000/- to the respondent nos.1 and 2 against the execution of the Loan Agreement dated 29<sup>th</sup> May, 2009 and memorandum recording past transactions of creation of mortgage by Deposit of Title Deeds dated 29<sup>th</sup> May, 2009. 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 11.2(b) of the said loan agreement. On 21<sup>st</sup> June, 2014, the petitioner had issued a notice calling upon the respondents to pay a sum of Rs.13,21,493/- alongwith interest @19.5% p.a. alongwith additional interest 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 6<sup>th</sup> January, 2015, the respondents are liable to pay a sum of Rs.13,21,493/- along with interest @ 19.5% p.a. thereon with additional interest @2% 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 –F 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-F 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 restraining the Respondents from alienating, encumbering, parting with possession or creating any third party right in respect of the said property described at Ex.F to the petition.

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.]**