

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****ARBITRATION PETITION NO. 371 OF 2015****Reliance Home Finance Limited****..... Petitioner****VERSUS****Vikas Bhagwan Adsule & Anr.****..... Respondents**

Mr. Vishal Tambat for the Petitioner.

None for the Respondents.

CORAM : R.D. DHANUKA, J.**DATED : 23rd SEPTEMBER, 2015****P.C.**

This Petition is filed by the petitioner under section 9 of the Arbitration and Conciliation Act, 1996 seeking interim measures i.e. for appointment of Court Receiver in respect of the property described at Schedule No.1 of Ex.A which is mortgaged property against which the petitioner had granted a loan of to the Respondent no.1 vide two loan agreements dated 31st October, 2013 and 24th February, 2014 to the tune of Rs.13,00,000/- and Rs.1,80,000/- respectively. The said amount was payable by the respondent no.1 in installments. Clause 7 of the Agreement provides for the events of default; Clause 8 provides for remedies of the lender; clause 13 provides for securitization and Clause 17 provides for arbitration. There has been a default on the part of the Respondents. Since the respondent no.1 did not make repayment, the petitioner issued two loan recall notices both dated 21st July, 2014 thereby terminating the loan agreement and called upon the respondents to pay a sum of Rs.13,30,963.62 and Rs.1,97,814.97 as on 21st July, 2014. There was neither any repayment nor any response from any of the respondents to the said notice. According to the petitioner as on 20th November, 2014, the respondents are liable to pay a sum of Rs.13,53,670/- to the

petitioner with further interest thereon.

2. None appeared for the respondents though served. No affidavit in reply is filed.

3. In the present Petition, the Petitioner has sought appointment of the Court Receiver as Receiver in respect of the property described at Serial No.1 of Ex.A i.e. Flat No. Ground Floor, Mary Villa CHSL, Plot No.13, Samartha NGR School, Shirgaon Badlapur (East), Kulgaon, District Thane to the Petition. In absence of any defence or contest by the Respondents, the averments contained in Petition would have to be accepted. There has been a default in payment of the outstanding dues. It would, therefore, be necessary to safeguard the interest of the Petitioner by appointing the Court Receiver as Receiver of the properties. The appointment of the Receiver is necessary in order to ensure that the properties are not wasted or alienated, thereby defeating the rights of the Petitioner. Section 9 empowers the Court to pass an interim measure of protection. Hence, the following order:-

i) The Court Receiver, High Court, Bombay is appointed as a Receiver in respect of the property described at Serial No.1 of Ex.A i.e. Flat No. Ground Floor, Mary Villa CHSL, Plot No.13, Samartha NGR School, Shirgaon Badlapur (East), Kulgaon, District Thane to the Petition. The Court Receiver shall give an option to the Respondents in writing to act as agents of Receiver in respect of the said properties. The Respondents shall be given two weeks time by the Court Receiver from the date of receipt of the Court Receiver's communication letter to exercise such option. In the event of the respondent/s being desirous of acting as agents of the Receiver, they shall be appointed as agents of the Receiver,

subject to security and royalty. The Receiver shall determine the quantum of security and royalty having regard to the terms and conditions contained in the Loan Agreements (*Exhibits – B and C* to the Petition).

ii) In the event that the Respondents do not communicate their willingness to the Receiver to act as agents within a period of two weeks from the date of receipt of the communication from the Court Receiver, Court Receiver to take forcible possession of the properties and if necessary with the assistance of police from the respondent. It would be open to the Petitioner to apply to the Court for further orders including sale of the properties by private treaty.

iii) Until the Receiver takes possession, there shall be an interim reliefs in terms of prayer clause (c).

5. Petitioner is directed to approach the office of the Court Receiver for enforcement of this order within 4 weeks from today.

6. 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.

7. The Arbitration Petition is accordingly disposed of. No order as to costs.

8. Parties as well as the Court Receiver to act on an authenticated copy of this order.

[R.D. DHANUKA, J.]

CERTIFICATE

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