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

ARBITRATION PETITION NO.399 OF 2015

Citicorp Finance (India) Ltd. ...Petitioner
V/s.
Mr.Srinivas G.Mhatre & Anr. ...Respondents

Ms.Sharayu Pednekar, i/b. Vivek Patil & Associates for the Petitioner.

None for the Respondents.

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

P.C. :-

1. 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. Statement is accepted. The respondents are also conveyed ad-interim order passed by this Court on 8th May, 2015. The affidavit of service is taken on record. None appears for the respondents though served. No affidavit in reply is filed.

3. By a detailed ad-interim order passed by this Court on 8th May, 2015, this Court has granted interim measures in terms of prayer clauses (e) and (f) of the arbitration petition.

4. The Petitioner had provided a loan of Rs.19,00,000/- to the first Respondents under a Loan-cum-Hypothecation Agreement entered into on 22nd July, 2013. The loan was repayable in 33 equated monthly installments. Clause 5 of the agreement provides for the events of default; Clause 6 provides for the rights of the Petitioner on default and Clause 16 provides for arbitration. There has been a default on the part of the Respondents. Petitioner issued legal notices dated 12th August 2014, 10th September 2014 and 14th October 2014 and called upon the respondents to pay Rs. 14,83,736.45 with further interest thereon. There was no response to the notice of demand. A perusal of record indicates that respondents have committed default in making payment of installments. The petitioner has invoked the provision of arbitration.

5. In the present petition, the petitioner has sought appointment of the Court Receiver as Receiver of the hypothecated construction equipment, more particularly described in Exhibit-F 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 hypothecated construction equipment. The appointment of the Receiver is necessary in order to ensure that the construction equipment is 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 construction equipment at Ex.F. The Court Receiver shall give an option to the respondents in writing to act as agents of Receiver in respect of the said construction equipment. 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-cum-Hypothecation Agreement (Exhibit –A 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 construction equipment and if necessary with the assistance of police from the respondents. It would be open to the petitioner to apply to the Court for further orders including sale of the construction equipment by private treaty.

iii) Till the Receiver takes possession, ad-interim order passed by this Court on 8th May, 2015 to continue.

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

7. 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.

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

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

(R.D. DHANUKA, J.)

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