

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.552 OF 2014

Kotak Mahindra Bank Limited ... Petitioner

Versus

Firoz Nizam Ladji & Ors ... Respondents

Ms. Siddhi Doshi i/b. Mr. Vinod Juwale for the Petitioner.

None for Respondents.

CORAM: S.J. KATHAWALLA, J.

DATED: 6TH JANUARY, 2015

P.C.:

1. The above Petition is filed by the Petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 seeking reliefs as prayed against the Respondents. The Petition is served on the Respondents and an Affidavit proving service dated 17th July, 2014 is on record. The Petition is today taken up for final hearing. However, none appear for the Respondents.

2. By a Loan Agreement dated 27th December, 2010, the Petitioner provided a loan of Rs.23,50,000/- (Rupees Twenty Three Lakhs Fifty Thousand Only) to the Respondent No. 1 for purchase of Vehicle – JCB - 432ZX more particularly described in Exhibit- E to the Petition. By a Deed of Hypothecation also dated 27th December, 2010 the said Vehicle – JCB - 432ZX was hypothecated with the Petitioner by the Respondent No. 1.

3. The Loan amount of Rs. 23, 50,000/- was repayable by the Respondents to the Petitioner with interest @ 6.7% per annum in 35 monthly installments commencing from 10th February, 2011 and ending on 10th December, 2013. Therefore, the aggregate amount payable by the Respondents to the Petitioner under the Loan Agreement was Rs. 12,13,779/-.

4. Respondent No.2 has guaranteed the due repayment of the loan. Clause 5.1 of the Agreement provides for the events of default; Clause 5.3 for the consequences of default; Clause 5.3 (b) provides for the rights of the Petitioners on default including repossession of the asset. Clause 11.16 & 11.17 provides for arbitration. There has been a default on the part of the Respondents. The Respondents were liable to pay to the Petitioner a sum of Rs 13,39,142.53/- (Rupees Thirteen Lakhs Thirty Nine Thousand One Hundred and Forty Two and Fifty Three Paise only). The Petitioner therefore invoked the arbitration clause in the Agreement dated 27th December, 2010.

5. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as the Receiver of the hypothecated Vehicle – JCB - 432ZX, more particularly described in Exhibit “E” to the Petition. The Respondents have not filed their Affidavit in Reply and are also not present before the Court. In absence of any defense or contest by the Respondents, the averments contained in the Petition have remained uncontroverted. I see no reason why the statements / submissions made by the Petitioner in the Petition

should not be accepted. Since the Respondents have defaulted in the repayment of the outstanding dues, it is just and necessary to safeguard the interest of the Petitioner by appointing the Court Receiver as Receiver of the hypothecated Vehicle – JCB - 432ZX. The appointment of the Receiver is necessary in order to ensure that the hypothecated Vehicle – JCB- 432ZX is not wasted or alienated, thereby defeating the rights of the Petitioner. Section 9 empowers the Court to pass interim measures of protection. Hence, the following order :

(i) Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver is appointed as Receiver in respect of the Vehicle – JCB - 432ZX, more particularly described in Exhibit “E” to the Petition, with direction to take forcible physical possession of the said Vehicle – JCB - 432ZX with police assistance, if required and without any prior notice to the Respondents;

(ii) The Court Receiver shall within a period of two weeks after taking possession, give an option to the Respondents, in writing to act as an agent of the Receiver in respect of the said Vehicle – JCB - 432ZX. 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 an option. In the event of the Respondents being desirous of acting as agents of the Receiver, they shall be appointed as agents of the Receiver, subject to deposit of security and payment of royalty. The Receiver shall determine the quantum of security

and royalty having regard to the terms and conditions contained in the Loan Agreement (Exhibit “A” to the Petition);

(iii) In the event that the Respondents not communicating 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, it would be open to the Petitioner to apply to the Court for further orders including sale of the Vehicle – JCB - 432ZX by private treaty;

(iv) There shall also be an interim injunction restraining the Respondents from disposing of, alienating, encumbering, parting with possession or creating any third party rights in respect of the three tippers described in Exhibit “E” to the Petition.

6. The Arbitration Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)