

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.370 OF 2015

Tata Capital Financial Services Limited **Petitioner**

VERSUS

Om Sai Construction Company & Anr. **Respondents**

Mr.Nikhil Mehta, i/b. KMC Legal Venture for the Petitioner.

CORAM : R.D. DHANUKA, J.

DATED : 1st JULY, 2015

P.C.

This Petition is filed by the petitioner under section 9 of the Arbitration and Conciliation Act, 1996 for seeking interim measures i.e. for appointment of Court Receiver, injunction and other reliefs against the respondents.

2. Mr. Mehta, learned counsel for the petitioner states that the respondents are served and undertakes to file affidavit of service within one week from today. Affidavit of service shall be filed within one week from today in the Office of the Prothonotary and Senior Master. Undertaking is accepted. None appeared for the respondents though served.

3. The Petitioner had provided a loan of Rs.39,60,600/- to the first Respondent under Loan-Cum-Hypothecation-Cum-Guarantee Agreement dated 18th January, 2013 annexed at Ex.A. The loan was repayable in equated monthly installments. Clause 17 of the Agreement provides for the events of default; Clause 18 provides consequences of default and rights of the Petitioner on default including repossession of the asset. Clause 23 provides for arbitration. There has

been a default on the part of the Respondents. Petitioner issued loan recall notice dated 14th March, 2014 and called upon the respondents to pay Rs.53,05,351.26 with further interest thereon. There was no response to the notice of demand. Perusal of the record indicates that respondents have committed default in making payment of installments. The respondents were liable to pay to the petitioner a sum of Rs.53,05,351.26. The petitioner has invoked the provision of arbitration.

4. In the present Petition, the Petitioner has sought appointment of the Court Receiver as Receiver of the hypothecated asset, more particularly described in prayer clause (a) 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 asset. The appointment of the Receiver is necessary in order to ensure that the asset 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 asset described in prayer (a) of 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 asset. 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-Cum-Guarantee 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 asset 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 asset by private treaty.
 - iii) Until the Receiver takes possession, 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 asset described in prayer (a) to the Petition.
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.]