

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****ARBITRATION PETITION NO.621 OF 2014**

Tata Capital Housing Finance Ltd.

... Petitioner

Versus

Anyaneyulu Manikonda & Ors.

... Respondents

Mr. Mayur Khandeparkar, a/w Mr. Tushar Kadam i/b MDP & Partners 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 today taken up for final hearing. However, none appear for the Respondents.

2. This Court by Order dated 31st May 2013 appointed The Court Receiver, High Court, Bombay as Receiver in respect of the mortgaged property described in Exh. E to the petition and directed that till the Court Receiver takes possession of the property described in Exh. E there shall be ad interim relief in respect of prayer clause (d). The Respondents were also directed to disclose on oath, their personal movable and immovable assets within two weeks of the Order. The Respondents have not filed any Affidavit

disclosing their assets. Affidavit of Service_dated 6th June 2013 has been filed by the Petitioner.

3. The Court Receiver's representative visited the mortgaged properties at Exh. E to the petition on 18th June 2013 and made Report dated 21st June 2013 stating that none was present for the Respondents when the representative of the Court Receiver visited the suit properties. The Report states that the six suit flats were in vacant condition and not occupied by anyone as internal work is incomplete and that main doors of the suit flats were found open with no arrangement made to close the doors.

4. This Court by Order dated 25th April 2014 granted Order for substituted service to advertise the Petition and the next date of hearing in one English and one local language newspaper as the copies of the ad-interim Order dated 31st May 2013 sent by the Petitioner's Advocates to the Respondents were returned undelivered.

5. The Petitioner has advertised the Petition and the next date of hearing in "Vartha News Papers" on 11th June 2013 and in "The Indian Express" on 11th June 2013. The copies of the same have been tendered in Court.

6. The Counsel for the Petitioner has tendered photographs of the building in which the mortgaged flats are situated including the photographs of the mortgaged flats described in Exh. E and the same have been perused by this Court. The Counsel for the Petitioner further submits that the construction of

the said building is completed and about 90% of the flats therein are occupied.

7. By a Home Loan Agreement dated 16th June 2011, the Petitioner provided a loan of Rs.2,00,00,000/- (Rupees Two Crores only) to the Respondents for purchase of six new flats more particularly described in Exhibit-E to the Petition. By a Memorandum Recording Past Transactions of Creation of Mortgage by Deposit of Title Deeds dated 18th August 2011, the said flat was mortgaged with the Petitioner by the Respondents.

8. The Petitioner submits that the Loan amount of Rs. 2,00,00,000/- was repayable by the Respondents to the Petitioner with interest @ 11 % per annum (variable) in 180 monthly installments.

9. Clause 7.1 (a) of the Home Loan Agreement provides for the events of default; Clause 7.2 (a) and 7.2 (b) for the consequences of default; Clause and 7.3 (c) provides for the rights of the Petitioner on default. Clause 12.11 (a) provides for arbitration. There has been a default on the part of the Respondents and the Respondents failed to pay to the Petitioner a sum of Rs.1,94,67,118/- (Rupees One Crore Ninety Four Lacs Sixty Seven Thousand One Hundred and Eighteen only) as on 9th May 2013. The Petitioner therefore invoked the arbitration clause in the Agreement dated 16th June, 201.

10. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as the Receiver of the mortgaged property, 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. As 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 mortgaged property. The appointment of the Receiver is necessary in order to ensure that the mortgaged property 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 mortgaged property, more particularly described in Exhibit "E" to the Petition, with direction to take forcible physical possession of the said mortgaged property 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 mortgaged property. 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 respondent/s 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 having royalty regard to the terms and conditions contained in the Loan Agreement (Exhibit "C" to the Petition) ;

(iii) 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, it would be open to the Petitioner to apply to the Court for further orders;

(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 mortgaged property described in Exhibit "E" to the Petition.

11. All concerned to act on an ordinary copy of this order, duly authenticated by the learned Associate of this Court.

12. The Arbitration Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)