IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1363 OF 2014

Tata Motors Finance Limited … Petitioner

Versus

Nallapaneni Nageshwara Rao and Anr. … Respondents

Ms. Saloni Thakkar a/w Mr. Yuvraj Choksy i/b. Wadia Ghandy & Co. for the Petitioner
None for the Respondents.

CORAM : S. J. KATHAWALLA, J .
DATE : 27TH JANUARY, 2015

P.C.:

1. Heard Advocate for the Petitioner. None appear for the Respondents. The Respondents have been served with a copy of the captioned Petition.

2. The facts of the matter are briefly summarized, as follows:

2.1. Sometime between November, 2011 to July, 2012, the Petitioner and the Respondents entered into 33 [thirty three] Loan cum Hypothecation Agreements for the purpose of advancing certain sums to the Respondents for (i) purchasing vehicles / chassis and (ii) availing body building services [“**Loan Cum Hypothecation Agreements**”] and the Respondents borrowed amounts aggregating to Rs.2,41,02,250/- from the Petitioner. As against the total amounts advanced as aforesaid, certain motor vehicles / chassis / body building parts, details whereof have been given in **Exhibit D** to the Petition, were hypothecated in favour of the Petitioner["**Hypothecated Assets**"].

2.2. As per the Loan cum Hypothecation Agreements, the Respondents were obliged to repay the amounts advanced in Equal Monthly Installments ["**EMIs**"]. The Respondents, however, failed to make payments of the EMIs and consequently, on 25th November, 2013, the Petitioner addressed 33 [thirty three] Loan Recall Notices to the Respondents under the respective Loan cum Hypothecation Agreements.

3. The Advocate for the Petitioner states that the Respondents have been served with this Petition on 6th May, 2014, and with notice of final hearing of the petition on 20th November, 2014.

4. The Advocate for the Petitioner submits that the Petitioner is in the process of initiating arbitration proceedings and appointing an arbitrator. However, the Hypothecated Assets are today in the possession of the Respondents. The Petitioner apprehends that pending the hearing and disposal of the arbitration proceedings, the Respondents shall deal with and/or alienate the Hypothecated Assets with a view to defeat, delay or obstruct the recovery of the loan amount by the Petitioner. The Respondents have not filed their Affidavit in Reply. They have also not come forward to oppose the Petition. In view thereof, the statements / submissions made in the Petition have remained uncontroverted.

5. The primary relief sought in the present Petition is appointment of Court Receiver in respect of the Hypothecated Assets.

6. In light of the above facts and circumstances, the Court Receiver of this Court is appointed as Receiver in respect of the Hypothecated Assets. The Respondents are directed to disclose the location of the Hypothecated Vehicles to the Court Receiver. The Court Receiver shall take symbolic possession of the Hypothecated Assets and give the Respondents an opportunity to act as an agent in respect of the Hypothecated Assets upon execution of an Agency Agreement and payment of such royalty as the Court Receiver may fix having regard to the facts of the case. In the event the Respondents do not express their willingness to act as an Agent or otherwise fail to execute the Agency Agreement or pay the Royalty fixed by the Court Receiver, the Court Receiver shall proceed to take physical possession of the Hypothecated Vehicles if necessary with the assistance of the local police and submit his report seeking directions for sale of the said vehicle.

7. The Arbitration Petition is accordingly disposed of.

(S. J. KATHAWALLA, J.)