IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.815 OF 2014

Karvy Financial Services Ltd … Petitioner

Versus

Narsing Rao Pandari & Anr. … Respondents

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1354 OF 2014

Karvy Financial Services Ltd … Petitioner

Versus

Narsing Rao Pandari & Anr. … Respondents

Mr. Mayur Khandeparkar a/w Omar Khaiyam Shaikh i/b Vikas Salvi & Associates.
None for the Respondents.

CORAM : S.J. KATHAWALLA, J.
DATED : 25TH FEBRUARY, 2015

P.C.:

1. The above Petitions are filed by the Petitioner under section 9 of the Arbitration and Conciliation Act, 1996 seeking reliefs as prayed against the Respondents. The Petitions, are served on the Respondents and an Affidavit proving service is on record. The Petition is today taken up for

final hearing. Affidavit in Reply is filed, however, none appear for the Respondents.

2. By two separate Business Secured Loan Agreement dated 27th November, 2012, and 20th December, 2012 ("said Agreements), the Petitioner provided a loan of total sum of Rs.30,00,000/- (Rupees Thirty Lakhs Only) to the Respondents against the mortgage of immovable property by deposit of title deeds as described in para 6 of the Petition ("said Asset") and on the terms described in the said Agreements. Under the said Agreements, the said Asset was mortgaged with the Petitioner by the Respondent No. 1, as security for repayment of the Loan amount.

3. The Loan amount of Rs.30,00,000/- (Rupees Thirty Lakhs Only) was repayable by the Respondents to the Petitioner with interest @16 % (floating) repayable in 120 equated monthly installments of Rs.17,710/- & Rs.33,084/- (Total: Rs.51,245/- under the said Agreements) each commencing from January, 2013 (under the Agreement Ex – C to Arb. Petition No.815 of 2014) and December, 2013 (under the Agreement Ex – C to the Arb. Petition No.1354 of 2014).

4. Respondent No.2 is the co-borrower. Clause 7.1 of the said Agreements provide for the events of default; Clause 7.3 for the consequences of default; Clause 10.7 (h) 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.10,63,855/- (Rupees Ten Lacs Sixty Three Thousand Eight Hundred & Fifty Five Only) as on 26.04.2014 and Rs.21,11,275/- (Rupees Twenty One Lacs Eleven Thousand Two Hundred & Seventy Five Only) as on 26/4/2014 under the said Agreements. The events of default having taken place in terms of the said Agreements, the Petitioner became entitled to recall and have recalled the entire loan. There was no reply to the Loan Recall Notice dated 2nd January, 2014. The Petitioner therefore invoked the arbitration clause in the said Agreements dated 27th November, 2012 & 20th December, 2012.

5. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as the Receiver of the Asset, more particularly described in para 6 to the Petition. The Respondents have filed their Affidavit in Reply but have not served the same on the Peititoner. The Respondents are also not present before the Court. In any event in the Affidavit in Reply, the Respondents have admitted the loan transaction and the default committed by them. In the absence of any 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 said Asset. The appointment of the Receiver is necessary in order to ensure that the sad Asset is not wasted or alienated, thereby defeating the rights of the Petitioner. Further interim injunction in terms of prayer clause (c) also needs to be granted to protect the rights of the Petitioner. The claim of the Petitioner is over Rs.30 lakhs and unless adequately protected, the Petitioner may suffer irreparable harm and injury. Balance of convenience also warrants the grant of relief. Section 9 empowers the Court to pass an interim measure of protection. Hence, the following order is passed:

a) Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver is appointed as Receiver, High Court, Bombay in Respect of the Asset, more particularly described in para 6 to the Petition, with direction to take symbolic possession of the said Asset with police assistance, if required, and without any prior notice to the Respondents;

b) 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 Asset. The Respondents shall be given two weeks time by the Court Receiver from the date of receipt of the Court Receivers 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 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 said Agreements (Exhibit C to both the Petitions);

c) 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, the Court Receiver to take physical possession of the Asset with Police assistance, if required;

d) 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 said Asset described in para 6 to the Petition.

e) The Arbitration Petition are accordingly disposed of.

(S.J. KATHAWALLA, J.)