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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.842 OF 2015

Tata Capital Housing Finance Limited ...Petitioner
V/s.
Anil Kumar Goel & Ors. ...Respondents

Mr.Nilesh Gala, i/b.Law Square for the Petitioner.

CORAM : R.D. DHANUKA, J.
DATE : 9TH SEPTEMBER, 2015.

P.C. :-

1. Learned Counsel appearing for the petitioner states that the respondent nos.1 to 5 are already served and the petitioner seeks interim measures only against respondent nos.1 to 5. None appeared for the respondent nos.1 to 5 though served. Insofar as the respondent no.6 is concerned, the respondent no.3 is the partner of respondent no.6, who has been served with the copy of the papers and proceedings and thus the respondent no.6 is also aware of the present proceedings.

2. By this petition filed under section 9 of the Arbitration & Conciliation Act, 1996 the petitioner seeks appointment of the Court Receiver in respect of the property described at Exhibit “D” to the petition and for various other reliefs. The petitioner has sanctioned a home loan in favour of th respondent nos.1 to 5 on 24th February, 2013 for an amount of R.17,60,000/-, repayable in 180 monthly equal installments of Rs.22,268/-. The parties entered into a loan agreement

on 28th February, 2013 for the said loan amount of Rs.17,60,000/-. On 28th February, 2013, the respondents executed in favour of the petitioner a Memorandum Recording Past Transactions of Creation of Mortgage by Deposit of Title Deeds of the property described in Exhibit "D" to the petition.

3. Since the respondent nos.1 to 5 committed default of repayment of the loan amount, on 26th February,2014, the petitioner called upon the respondents to repay a sum of Rs.18,92,890/- along with further interest thereon. The respondents neither repaid any amount nor responded to the said notice.

4. According to the petitioner as on 31st March, 2015, the respondent nos.1 to 5 are liable to pay to the petitioner a sum of Rs,22,00,820/- with further interest thereon.

5. Clauses 11.1 and 11.2 provide for events of default. Clause 11.3 provides for consequences of event of default. Clause 13.1 provides for arbitration.

6. A perusal of record prima-facie indicates that the respondents have committed default in making repayment of the loan amount and there was no response to the notice of demand. The petitioner has good chances of succeeding in the arbitration proceedings. The petitioner apprehends that the respondents may create third party rights in respect of the mortgaged property and thus has prayed for appointment of the Court Receiver and injunction. In my view, the petitioner has made out a prima-facie case for appointment of the Court Receiver. 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 property described at Exhibit "D" with direction to the Court Receiver to appoint respondent nos.1 to 5 or any one of them as an agent of the Court Receiver on usual terms and conditions and on payment of royalty and furnish security. If the respondents or any of them who does not accept the agency of the Court Receiver within two weeks from the date of the said offer by the office of the Court Receiver, the Court Receiver shall take forcible possession in respect of the property and if necessary with the assistance of the police and shall submit a report before this Court for further directions. In that event the petitioner would be at liberty for further interim measures.

ii). Till the Court Receiver takes possession of the property described at Exhibit “D” to the petition thereof, interim injunction in terms of prayer clause (b).

7. Petitioner is directed to approach the office of the Court Receiver for enforcement of this order within 4 weeks from today, failing which interim order to stand vacated without further reference to this Court.

8. The Arbitration Petition is accordingly disposed of. No order as to costs.

9. Parties as well as the Court Receiver to act on an authenticated copy of this order.

(R.D. DHANUKA, J.)

“Certified to be true and correct copy of original signed order.”