IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1440 OF 2014

Tata Capital Housing Finance Limited … Petitioner

V/s

Mr. M Ravishankar and Anr. ...Respondents
Ms. Nelly Mehta i/b MDP & Partners for the Petitioner
None for the Respondents

CORAM : S.J.KATHAWALLA, J.

DATE : 11th MARCH 2015

P.C.

1. This Petition is filed by the Petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 seeking reliefs as prayed against the Respondents. The Advocates for the Petitioner had dispatched by R.P.A.D./Courier, a copy of the Petition to the Respondents. The packets containing copies of the Petition were returned and received back, with the remark "Addressee left" and "Address not found". Thereafter, in terms of the Order dated 7th January 2015, the Petitioner issued advertisements in two local newspapers one being "Vartha", Hyderabad Edition in the local language i.e. Telugu and the other being "Deccan Chronicle" Hyderabad Edition in English. An Affidavit proving substituted service in compliance of the aforesaid Order is taken on record. The Petition is taken up for final hearing. However, none appear for the Respondents.

2. The Respondents have obtained a loan from the Petitioner Tata Capital Housing Finance Limited. According to the Petitioner, in the month of December 2011, the Respondent No. 1 being the Applicant and the Respondent No. 2 being the Co-applicant had approached the Petitioner with a request for a home loan. A loan of Rs. 34,50,000/- ("the said loan") was sanctioned by the Petitioner to the Respondents vide its Sanction letter dated 30th December 2011 on terms and conditions mentioned therein. The said Sanction Letter has been signed by the Respondents in acceptance thereof. A loan agreement dated 24th January 2012 ("the said agreement") was thereafter executed by and between the Petitioner and Respondents whereunder the Respondents inter alia agreed and undertook that in case of delay in payment of the loan installments or interest or any other monies on the respective due dates as stipulated therein, the Respondents shall pay overdue interest at the rate of 2% per month over and above the prevailing interest rate on the aforesaid overdue amount for the defaulted period till payment/realization and other expenses, costs, fees, charges, etc. as per Article 2.2 of the said agreement. Article 2 of the said agreement pertains to payment of loan, interest and other charges. Article 7.1 pertains to events of default. Article 7.2 pertains to consequences in the event of default and Article 12. 11 pertains to arbitration.

3. In consideration of the loan granted by the Petitioner, the Respondents executed Memorandum dated 29th January 2012 recording past transactions of creation of Mortgage by deposit of original Title Deeds as more particularly recorded and enumerated in the Annexure 1 thereto, thereby creating equitable mortgage in favour of the Petitioner on the property being Flat No. 502, 4th Floor, Ashish Enclave, H. No. 12-13-677/74 and 12-13-677/67, Street No. 1, Tarnaka, Secunderabad, Hyderabad - 500 017 as more particularly described in the schedule at Exhibit “E” to the Petition.

4. According to the Petitioner, the Respondents have availed and utilized the home loan disbursed by the Petitioner under Loan Account No. 9068970 for Rs. 34,50,000/- repayable along with interest @ 11% p.a. (variable) in 240 monthly installments of Rs. 35,610/- commencing from 24th January, 2012 and ending on 9th June 2033 each at the relevant time, the amount of the monthly instalments varying with the interest, (the interest rate being variable during the entire tenure of the loan till full repayment). As on 16th June 2014, the Respondents failed and neglected to pay the monthly installments on time and hence are in default in respect thereof to the tune of 15 monthly installments, aggregating to a sum of Rs. 544,650/- in respect of the said monthly installments being due and payable by the Respondents.

5. The Respondents failed and neglected to repay the outstanding monthly installments. The said failure on the part of the Respondents to pay the outstanding monthly installments constitutes an event of default in terms of Clause 7.1 a) of the said agreement. Despite repeated requests and reminders, the Respondents have failed to cure the defaults and make payments of the amounts due and payable under the agreement. The Petitioner therefore instructed its erstwhile Advocates to issue a legal notice for recall of the entire loan and for invocation of arbitration. Accordingly, on 26th June 2013, a Notice was sent to the Respondents by the Petitioner's erstwhile Advocates calling upon them to repay to the Petitioner a sum of Rs.35,15,321/- along with interest thereon at the rate of 10.9% (variable) interest per annum on the aforesaid overdue amount till payment/realization within a period of 10 days from the date of the said Notice, failing which, the said Notice be treated as Notice invoking arbitration against the Respondents and for enforcement of securities created in favour of the Petitioner and exercise all or any of the rights available to the Petitioner. The Petitioner states that on the failure on the part of the Respondents to respond to the Petitioner's requests and reminders, and repay the amounts due and payable to the Petitioner within 10 days from the date of the said Notice, it is evident that the Respondents do not have any intention to pay the amounts due and payable to the Petitioner and thus the disputes, differences, claims etc., have arisen between the Respondents on one part and the Petitioner on the other part and in that event, the Notice to be treated as Notice under Clause 12.11 (a) of the said agreement invoking arbitration.

6. The Petitioner has therefore sought appointment of the Court Receiver, High Court, Bombay, as a Receiver in respect of the mortgaged property described in the Schedule at Exhibit "E" to the Petition. The Respondents have not filed their affidavits 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 reasons 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 Court Receiver as Receiver in respect of the mortgaged property described in the Schedule at Exhibit “E” to the Petition. The appointment of Court Receiver is necessary in order to ensure that the said mortgaged property is not wasted or alienated, thereby defeating the rights of the Petitioner. Further interim injunction also needs to be granted to protect the rights of the Petitioner. The claim of the Petitioner as on 16th June 2014 is Rs. 39,76,303/- and unless adequately protected, the Petitioner may suffer irreparable harm and injury. The balance of convenience also warrants the grant of relief. Section 9 of the Act empowers the Court to pass an interim measure of protection. Hence the following order is passed:

(i) Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver, High Court, Bombay, is appointed as Receiver in respect of the mortgaged property described in the Schedule at Exhibit “E” to the Petition. The Court Receiver shall take symbolic possession of the mortgaged property described in the Schedule at Exhibit “E” to the Petition and after preparing an inventory of the same file his report before this Court and seek further directions qua the said mortgaged property.

(iii) Pending the hearing and final disposal of the arbitration proceedings, there shall be an injunction restraining the Respondents from selling, alienating, encumbering, parting with the possession and/or creating third party rights in respect of the mortgaged property described in the Schedule at Exhibit “E” to the Petition.

(iv) The Respondents are directed to disclose on Affidavit all the immovable properties, movable assets and other encumbered and unencumbered properties of the Respondents within a period of four weeks from the date of receipt of this order and to forthwith forward a copy of the Affidavit of such disclosure to the Advocates for the Petitioner.

7. The Arbitration Petition is accordingly disposed of with liberty to the Petitioner to make appropriate application seeking further reliefs.

8. All parties, including the Court Receiver to act on a copy of this order duly authenticated by the Learned Associate of this Court.

{S.J. KATHAWALLA, J}