

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.1012 OF 2014

Tata Capital Housing Finance Limited **Petitioner**

VERSUS

Vallabu Sandeep & Anr. **Respondents**

Ms.Nazneen Kotwal, i/b. MDP & Partners for the Petitioner.

None for the Respondents.

CORAM : R.D. DHANUKA, J.

DATED : 17th JUNE, 2015

P.C.

Learned counsel appearing for the petitioner states that respondents are served by publication in the local newspaper pursuant to the order passed by this court on 11th March, 2015 and undertakes to file affidavit of service within one weeks from today in the office of the Prothonotary and Senior Master. Undertaking is accepted. None appeared for the respondents though served.

2. By this petition filed under Section 9 of the Arbitration and Conciliation Act, 1996, the petitioner seeks interim measures i.e. for appointment of the Court Receiver in respect of the property described at Exhibit-E to the petition, for injunction and for other reliefs.

3. On 4th February, 2012, the petitioner sanctioned a home loan in favour of respondents for an amount of Rs.17,19,004/- which was to be repaid in 240 monthly installments of Rs.17,452/-. The respondents entered into a home loan

agreement on 27th February, 2012. The respondents executed memorandum recording past transactions of creation of mortgage by Deposit of Title Deed dated 27th February, 2012.

4. It is the case of the petitioner that out of the said 240 installments, as on 16th June, 2014, the respondents had failed to pay 11 monthly installments. The petitioner issued a notice on 20th October, 2013 calling upon the respondents to make payment of the then outstanding installments. There was neither any repayment nor any response to the said notice.

5. On 13th March, 2014, the petitioner issued a notice calling upon the respondents to pay Rs.18,20,062/- alongwith further interest thereon. There was neither any repayment nor any reply to the said notice.

6. According to the petitioner as on 16th June, 2014, a sum of Rs.18,87,521/- alongwith further interest thereon is due and payable by the respondents to the petitioner. Since no reply is filed, the averments made in the arbitration petition are deemed to have been admitted.

7. I have perused the arbitration petition alongwith the documents annexed thereto. In my prima facie view, the respondents have committed default in making repayment of the installments to the petitioner. There is no response to the notice of demand. In my prima facie view, the petitioner has good chances of success in the arbitration proceedings. The petitioner has made a prima facie case for appointment of the Court Receiver in respect of the property described in Ex.E to the petition. I, therefore, pass the following order:-

- i) The Court Receiver, High Court, Bombay is appointed as a Receiver in respect of the property described at Exhibit-E to the petition with a direction to the respondents to appoint as an agent of the Court Receiver in respect of the said property on usual terms and conditions and on payment of royalty and on furnishing security. In the event of the respondents refusing to accept such agency within two weeks from the date of such offer by the Court Receiver, the Court Receiver shall take forcible possession of the property. In that situation, the petitioner would be at liberty to apply for further interim measures by filing a separate petition under Section 9 of the Arbitration and Conciliation Act, 1996.
 - ii) Till the Court Receiver takes possession of the property described in Ex.E to the petition, there shall be an interim injunction in terms of prayer clause (b).
 - iii) There shall be also relief in terms of prayer clause (c). Such affidavit of disclosure shall be filed within four weeks from the date of communication of this order.
 - iv) The petitioner is directed to convey this order to the respondents as well as to the office of the Court Receiver.
 - v) The petitioner is also directed to approach the office of the Court Receiver for implementation of this order within three weeks from today.
 - vi) The parties as well as office of the Court Receiver to act on the authenticated copy of this order.
8. The arbitration petition is accordingly disposed of. No order as to costs.

[R.D. DHANUKA, J.]