

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****ARBITRATION PETITION NO. 1068 OF 2014**

Karvy Financial Services Limited ... Petitioner

Versus

Mr. Rakesh Kumar Gupta & Ors. ... Respondents

Mr. M.B.Kale i/b. O.M.Gujar Law Chambers for the Petitioner.

None for the Respondents

CORAM: S.J.KATHAWALLA, J

DATED: 14th JANUARY, 2015

PC:

1. The above Petition is filed by the Petitioner under section 9 of the Arbitration and Conciliation Act, 1996 seeking reliefs as prayed against the Respondents. The Petition is served on the Respondents by substituted service 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 Secured Loan Agreement dated 7th May, 2013, ("said Agreement"), the Petitioner provided a loan of total sum of Rs.17,75,000/ (Rupees Seventeen Lakhs, Seventy Five Thousand 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 Agreement. Under the said Agreement, 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.17,75,000/- (Rupees Seventeen Lakhs, Seventy Five Thousand Only) was repayable by the Respondents to the Petitioner with interest @16% (floating) repayable in 120 equated monthly installments of Rs.30,279/- commencing from May, 2013 (under the Agreement Ex-A to Arb. Petition No.1068 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.19,17,004/- (Rupees Nineteen Lacs Seventeen Thousand Four Only) as on 30.04.2014 under the said Agreement. The events of default having taken place in terms of the said Agreement, the Petitioner became entitled to recall and have recalled the entire loan. There was no reply to the Loan Recall Notice dated 30th April, 2014. The Petitioner therefore invoked the arbitration clause in the said Agreement dated 7th May, 2013.

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 been duly served by substituted service i.e. by publication in two local news papers viz. 'Deccan Herald' (in English), Faridabad Edition and 'Veer Arjun' (in Hindi) Faridabad Edition on 20th December 2014. The Respondents neither filed their Reply nor are they present before the Court. 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, High Court Bombay as Receiver of the said Asset. The appointment of the Receiver is necessary in order to ensure that the said 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.19 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, High Court Bombay 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 Agreement (Exhibit-A to the Petition)

- 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 is accordingly disposed of.

(S. J. KATHAWALLA, J.)