

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****ARBITRATION PETITION NO. 1118 OF 2015**

Aditya Birla Finance Limited,)
A non Banking Finance Company)
incorporated under the Companies Act,)
1956, and having its Corporate Office at)
One India Bulls Centre, Tower – 1,)
18th Floor, Jupiter Mills Compound,)
841, Senapati Bapat Marg, Elphinstone)
Road, Mumbai – 400 013) **..... Petitioner**

Versus

1. Mr. Carnet Elias Fernandes,)
Adult, Indian Habitant having its address)
at “Vemalayan”, 397, Bawadiakalan,)
Hoshangabad Road, BHOPAL – 462 026)

2. Mrs. Everlyn C. Fernandes, Adult,)
Indian Habitant having its address at)
“Vemalayan”, 397, Bawadiakalan,)
Hoshangabad Road, BHOPAL – 462 026) **..... Respondents**

Mr.Bhavik Manek, a/w. Mr.Rahul Mehta, i/b. KMC Legal Venture for the Petitioner.

Mrs.Shobha Menon, Senior Advocate, a/w. Mr.Brijesh Pathak for Respondent Nos. 1 and 2.

CORAM : R.D. DHANUKA, J.

RESERVED ON : 19th AUGUST, 2015

PRONOUNCED ON : 4th SEPTEMBER, 2015

JUDGMENT :

By this petition filed under section 9 of the Arbitration and Conciliation Act, 1996, the petitioner seeks appointment of the Court Receiver of the property

described in Ex.'U' to the petition and to handover physical and vacant possession thereof to the petitioner with liberty to dispose off the said property, seeks injunction against the respondents from dealing, selling, alienating, disposing and/or creating third party rights in respect of the said property and for other reliefs. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. Sometime in the month of September 2012, respondent nos. 1 and 2 approached the petitioner for a loan to the extent of Rs.18 crores for the purpose of infusion of equity/quasi equity unsecured loan in GEI and to takeover the existing loan from HDFC bank.

3. On 27th September, 2012, the petitioner issued a sanctioned letter in favour of the respondents which was duly accepted by the respondents. The petitioner and respondent no.1 executed facility agreement for the total amount of Rs.18 crores. Under the said agreement, the respondents agreed to repay to the petitioner the said amount at an agreed rate of interest i.e. at the floating rate of 12.90% per annum linked to the petitioner's long term reference rate less margin of 3.10%. The respondents also agreed to pay penal interest in case of default in repayment of the facility on due dates to the petitioner.

4. Respondents also signed KYC forms, demand promissory note promising to pay the entire loan amount with agreed interest to the petitioner, executed letter of continuity for demand promissory note dated 28th September, 2012 confirming that the said promissory note shall be continuing security for any borrower by respondents at any time to the petitioner, executed a declaration cum confirmation deed thereby declaring and confirming the mortgage by deposit of title deeds in

respect of immoveable properties dated 24th September, 2012 described in Ex.'U' and Net Worth Certificate dated 1st December, 2011 issued by the chartered accountants of respondent no.1.

5. It is the case of the petitioner that pursuant to the said agreement, the petitioner had disbursed the loan to the respondents in two parts i.e. (1) on 9th October, 2012 a sum of Rs.5,49,84,932/- and (2) on 23rd November, 2012 a sum of Rs.12,46,00,000/-.

6. The respondents availed of three more facilities from the petitioner wherein there are certain defaults according to the petitioner. The facilities, amount stood changed from Rs.18 crores to Rs.21,06,87,404/-.

7. By their letter dated 31st October, 2014, the petitioner requested the respondents to clear the overdue sum of Rs.3,03,43,841/- without prejudice to their rights which the respondents failed and neglected to pay as on 31st October, 2014. It is the case of the petitioner that various postdated cheques provided by the respondents towards the due repayment of the loan stood dishonoured when presented for payment for the reasons 'Insufficient Funds'. The petitioner through their advocates' letter dated 26th November, 2014 issued under section 138 of the Negotiable Instruments Act, 1881 called upon the respondent no.1 to pay the outstanding liability of Rs.3,40,58,423/-. The respondents did not make any payment in response to the said notice. The petitioner has already initiated action under section 138 of the Negotiable Instruments Act, 1881 against respondent no.1.

8. By their advocate's notice dated 8th January, 2015, the petitioner called upon

the respondents jointly and/or severally to pay a sum of Rs.22,91,51,703/- as on 8th January, 2015 together with further interest @ 24% per annum making it clear that in case of failure on the part of the respondents, the petitioner would be constrained to have invoked the arbitration clause as contained in the loan agreement. The said notice was duly delivered upon the respondents. The respondents neither paid any amount in response to the said notice nor gave any response thereto.

9. The petitioner referred the matter to arbitration by appointing Mr.Noshir F.Kumana, advocate and solicitor to arbitrate upon the disputes taken place between the parties under the arbitration agreement. A copy of the said letter was also sent to the respondents.

10. By their letter dated 6th February, 2015, the respondents raised an objection to the appointment of the learned arbitrator and requested that the reference to the learned arbitrator be withdrawn.

11. The respondents appeared before the learned arbitrator in the first meeting through their advocates and filed Vakalatnama. The parties argued before the learned arbitrator on the point of jurisdiction in the first meeting. The learned arbitrator however held that the said issue could not be resolved by way of argument but requires evidence to be laid in that regard and that issue would be framed in that regard.

12. On 13th February, 2015, the learned arbitrator dealt with the issue of jurisdiction and took a prima facie view that the jurisdiction of the court and the arbitral tribunal was at Mumbai and therefore he shall proceed with the arbitration proceedings. The learned arbitrator also rejected the allegations of the respondents

of bias against him. The learned arbitrator also rejected the contention raised by the respondents that the learned arbitrator could not have been appointed by the learned advocate representing the petitioner.

13. According to the petitioner, as on 31st March, 2015 the respondents are liable to pay amount of Rs.23,65,07,643/- with further interest thereon at the rate of 12.5% per annum from 1st April, 2015 upto payment and/or realization thereof.

14. It is the case of the petitioner that the respondents were habitual defaulters and have not paid the legitimate dues of the petitioner despite requests, reminders and personal follow up. It is pleaded by the petitioner that whenever the petitioner insisted upon the respondents to make due repayment of the said outstanding loan, the respondents had fraudulently evaded to make the due repayment of the said loan. It is averred by the petitioner that the petitioner apprehends that in order to defeat the claim of the petitioner, the respondents are most likely to transfer, sell and/or alienate and/or dispose off their assets/properties both moveable and immoveables and create third party rights in respect of the same thereby defeating the legitimate claims of the petitioner.

15. Mr.Manek, learned counsel appearing for the petitioner invited my attention to various documents executed by and between the parties and also the averments made in the petition as well as the defence raised by the respondents in their affidavit in reply. He also referred to some of the paragraphs of the affidavit in rejoinder.

16. It is submitted by the learned counsel for the petitioner that the agreement was signed and executed by the petitioner through its branch office at Mumbai. All

process of approval/sanction had taken place at the office of the petitioner located at Mumbai. My attention is invited to clause 22.1 of the facility agreement and it is submitted that this court has exclusive jurisdiction to try, dispose of the present petition. He submits that under the said provisions, the parties had agreed that the venue for conducting the arbitration proceedings shall be Mumbai. It was also agreed that the courts in the city of Mumbai shall have exclusive jurisdiction over all aspects governing the interpretation and enforcement of the said agreement, the security and other documentation pursuant thereto. He submits that both the parties have signed the said facility agreement. He submits that thus the material part of the cause of action had arisen within the jurisdiction of this court and thus the present proceedings has to be entertained by this court only.

17. It is submitted that the respondents have committed default in making repayment of the loan amount with interest. Various post-dated cheques issued by the respondents are dishonoured and are returned by the bankers on presentation on due dates by the petitioner with the remark 'exceed funds'.

18. Learned counsel for the petitioner invited my attention to clause 13 of the facility agreement which provides for the events of default. He submits that the respondents have committed various breaches in repayment of the loan amount as well as interest and thus have committed defaults set out in clause 13 of the said facility agreement. He placed reliance on clause 15.1 which provides for consequences of default. He submits that the immovable property described in Ex.U is mortgaged in favour of the petitioner and was a security given to the petitioner to secure the loan amount with interest. He submits that under the said provision of clause 15.1, the petitioner can seek recovery of the mortgaged property. He submits that in the statement of claim filed before the learned

arbitrator, the petitioner has simplicitor applied for recovery of the money lent and advanced. No reliefs for enforcement of the mortgage are claimed by the petitioner before the learned arbitrator in the statement of claim. He submits that the financial condition of the respondents being very critical, claims of the petitioner is required to be protected by appointment of the receiver of the mortgaged property and by granting various interim reliefs as prayed in the present petition. He submits that under section 9(ii) (d), this court has power to appoint a receiver in respect of the mortgaged property to secure the amount in dispute in the arbitration though there is no dispute for enforcement of the mortgage in the arbitral proceedings.

19. Mrs. Shobha Menon, learned senior counsel for the respondents on the other hand submits that since the petitioner has prayed for physical possession of the immovable properties situated at Bhopal in the State of Madhya Pradesh, the present proceedings filed by the petitioner would be a suit for land and the petitioner not having obtained any leave under clause 12 of the Letters Patent, this court has no jurisdiction to entertain, try and dispose off the present petition. She submits that only the appropriate court at Bhopal would have exclusive jurisdiction to entertain the present proceedings. In support of this submission, learned senior counsel invited my attention to prayer clauses (a) and (b) of the petition and would submit that since the petitioner is claiming possession and control over those properties which are located outside the territorial jurisdiction of this court, the present proceedings are outside the jurisdiction of this court.

20. It is submitted by the learned senior counsel that the agreement stamp papers were purchased at Bhopal. The respondents are carrying on business at Bhopal. She submits that the facility agreement as well as various agreements were

executed at Bhopal. She submits that the petitioner has forged and fabricated clauses 22.1 and 22.6 of the facility agreement and have substituted the words 'Bhopal' by 'Mumbai'. She submits that the respondents were not even given copy of the said agreement by the petitioner. It is submitted that the respondents have already filed a complaint before the Officer-in-Charge/Station House Officer, Police Station, Misrod, Bhopal for such forgery and fabrication. The respondents have also preferred a writ petition against the petitioner and others before the High Court of Madhya Pradesh (11671 of 2015). She submits that the Madhya Pradesh High Court has already issued a notice to the petitioner and others. The said writ petition is pending.

21. Learned senior counsel placed reliance on the judgment of this court in case of ***India Spinning and Weaving Co.Ltd. vs. Climax Industrial Syndicate AIR 1926 Bombay page (1)*** and in particular paragraphs 6 to 8 and also judgment of this court in case of ***Hatimbhai Hassanally vs. Framroz Eduljee Dinshaw AIR 1927 Bombay 278*** and in particular paragraphs 40 to 75 and would submit that since the mortgaged property is situated outside the territorial jurisdiction of this court and the suit being suit for land, the leave under clause 12 of the Letters Patent was mandatory and the petitioner not having obtained under clause 12, the present petition under section 9 is not maintainable.

22. Learned senior counsel for the respondents placed reliance on the judgment of Supreme Court in case of ***Excel Dealcomm Private Limited vs.Asset Reconstruction Company (India) Limited & Ors. 2015 SCC Online SC 295 in Civil Appeal No.3272 of 2015*** in support of the submission that in case of suit for land when the property is situated outside the territorial jurisdiction of this court, leave under clause 12 was mandatory.

23. Learned senior counsel placed reliance on the judgment of Calcutta High Court in case of ***Cityscape Developers (Pvt.) Ltd. vs. Alka Builders (Pvt.) Ltd.*** 199 SCC Online Cal 500 and in particular paragraphs 5 and 26 in support of the submission that the suit was for land and without leave under clause 12 of the Letters Patent, present proceedings could not have been filed by the petitioner.

24. Learned senior counsel placed reliance on the judgment of Calcutta High Court in case of ***Zoom Developers Pvt. Ltd. vs. The Small Tools Manufacturing Co. of India Ltd. & Ors.***, 2006 SCC OnLine Cal 629 and in particular paragraphs 23, 26, 34, 37, 44 and 48 and would submit that since the petitioner has prayed for possession of the immovable property which is situated outside Greater Mumbai, the present petition is not maintainable without obtaining the leave under clause 12 of the Letters Patent.

25. Learned senior counsel placed reliance on the judgment of this court in case of ***Kotak Mahindra Finance Ltd. vs. T.Thomas Educational Trust, Chennai and others***, 2004(1)Mh.L.J.1112 and in particular paragraphs 2, 4 to 6 thereof in support of the submission that since no part of cause of action has arisen at Mumbai, even if the parties had agreed that the dispute would be subject to the jurisdiction of court at Mumbai, this court cannot entertain the present petition on the ground that parties cannot confer jurisdiction even by consent, if such court does not have jurisdiction.

26. It is submitted by the learned senior counsel for the respondents that since the petitioner has efficacious remedy available under section 17 of the Act and since the reliefs claimed in the present petition can be claimed before the learned arbitrator, the present proceedings filed under section 9 are not maintainable.

27. It is submitted by the learned senior counsel for the respondents that in any event, the petitioner has not prima facie shown before this court that the balance of convenience is in favour of the petitioner and thus on this ground also, no interim measures can be granted in favour of the petitioner. She submits that the balance of convenience would be in favour of the respondents and the present proceedings can be entertained only by the appropriate court at Bhopal, Madhya Pradesh.

28. Mr.Manek, learned counsel for the petitioner in rejoinder submits that the agreement was signed and executed by the petitioner through its Branch Officer, Mumbai. The loan was sanctioned through office of the petitioner located at Mumbai. The parties in the arbitration agreement have agreed that the court at Mumbai would have jurisdiction to entertain, try and dispose off the present proceedings. It is submitted that the venue of the arbitration proceedings should be at Mumbai. It is submitted that the respondents have not disputed these averments made by the petitioner. He placed reliance on the judgment of this court in case of ***Konkola Copper Mines (PLC) vs. Stewarts and Lloyds of India Limited, 2013(5) Bom.C.R.29*** and in particular paragraphs 12, 13, 15 to 17 and submits that since the place of arbitration is admittedly at Mumbai, these proceedings filed under section 9 of the Arbitration and Conciliation Act, 1996 are maintainable in this court even on that ground.

29. Learned counsel for the petitioner distinguished the judgment relied upon by the learned senior counsel for the respondents on the ground that the present proceedings are not suit proceedings but is a petition filed under section 9 for interim measures. He submits that in any event, the petitioner has applied for interim measures under section 9 of the Arbitration Act so as to secure the claims made by the petitioner. Learned counsel invited my attention to the prayers in the

statement of claim filed before the learned arbitrator and would submit that the petitioner in the statement of claim has not applied for enforcement of the mortgage or for recovery of possession.

30. Learned counsel for the petitioner placed reliance on the judgment of this court in case of ***L & T Finance Limited vs. Saumya Mining Ltd. 2014(5) Bom.C.R.448*** and in particular paragraph 23 and would submit that since the proceeding filed under section 9 of the Arbitration Act is not a suit and in view of the fact that the material part of the cause of action has arisen at Mumbai, no leave under clause 12 of the Letters Patent was required.

31. Learned counsel for the petitioner placed reliance on the judgment of Division Bench of this court in case of ***Tata Capital Financial Services Limited vs. Deccan Chronicle Holdings Limited and Anr. 2013(2) Arbitration Law Reporter 181 (Bom)*** and in particular paragraphs 32 to 45 of the said judgment and it is submitted that since the material part of cause of action has been arisen within the territorial jurisdiction of this court, the present petition is maintainable in this court. The said judgment is also relied upon in support of the submission that though the petitioner has not applied for enforcement of the mortgage in the arbitral proceedings, the petitioner is entitled to apply for appointment of the Court Receiver in respect of the mortgaged property under section 9(2)(b), (d) and (e) even if the mortgaged property cannot be the subject matter of dispute in arbitration.

32. It is submitted by the learned counsel for the petitioner that at the relevant time, the respondents was operating from its Mumbai office situated at Ground Floor, Central Plaza, 166, CST Road, Kalina, Santacruz (East), Mumbai 400 098.

It is submitted that since both the parties at the relevant time were operating from Mumbai and since the facility agreement was also being executed by the petitioner through its branch office at Mumbai as also the parties intended to confer jurisdiction to Courts at Mumbai, the concerned representative noticed that the seat of arbitration and jurisdiction of the Courts was being inadvertently inserted by the respondent no.1 at Bhopal requested the respondent no.1 to have corrected the same. The constituted attorney of the respondent no.1 accordingly made corrections and then got inserted signatures at both the places where the said correction was made i.e. Bhopal to Mumbai.

33. Learned counsel for the petitioner submits that the claim of the petitioner is not denied by the respondents in the affidavit in reply. He submits that learned senior counsel has not addressed to this court on merits of the matter. The respondents have not even filed the written statement before the learned arbitrator though adjournments have been taken by the respondents for filing written statement. He submits that the respondents are delaying the outcome of the arbitral proceedings and thus interim measures as prayed by the petitioner be granted.

34. Learned counsel for the petitioner also invited my attention to the other two loan agreements entered into between the parties which were between the sister companies of the respondents and the petitioner which were also signed by the same signatory on behalf of the respondents thereby conferring jurisdiction of the court at Mumbai in case of any dispute between the parties.

REASONS AND CONCLUSIONS

35. I shall first decide the issue raised by the respondents whether this court has jurisdiction to entertain, try and dispose off the present petition or not.

A perusal of the agreement entered into between the parties and more particularly clauses 22.1 to 22.6 clearly indicates that the parties have agreed that the dispute between the parties shall be referred to the arbitration. The venue for conducting the arbitration proceedings shall be at Mumbai. The dispute shall be subject to exclusive jurisdiction of the courts in the city of Mumbai. A perusal of the record indicates that the respondents had raised the issue of jurisdiction before the learned arbitrator which has been already negatived by the learned arbitrator. The said arbitration proceedings are still pending before the learned arbitrator.

36. Be that as it may, it is not in dispute that at the relevant time, the respondents were operating from its Mumbai office situated at Santacruz (East), Mumbai 400 098. The respondents have not denied that the agreement was signed and executed by the petitioner through its branch office at Mumbai. All processes of approval/sanction had taken place through the office of the petitioner located at Mumbai. In my view since the material part of the cause of action had arisen within the jurisdiction of this court, this court has jurisdiction to entertain, try and dispose off the present petition in view of the agreement entered into between the parties. The place of arbitration is at Mumbai. The parties have agreed that dispute shall be subject to the jurisdiction of the Court at Mumbai. This court has thus jurisdiction to entertain, try and dispose off the present petition.

37. Insofar as submission of the learned senior counsel for the respondents that the present proceedings are in the nature of suit for land and in view of the mortgaged property having situated outside the territorial jurisdiction of this court, without obtaining leave under clause 12 of the Letters Patent, this court cannot exercise jurisdiction to entertain, try and dispose off the present petition is concerned, in my view the present proceedings filed under section 9 of the

Arbitration and Conciliation Act, 1996 cannot be equated with a suit for land. In my view the arbitration petition under section 9 cannot be considered as a suit but is a proceedings inter alia praying for interim measures under section 9 of the Arbitration Act. The final reliefs are claimed by the petitioner before the learned arbitrator by filing statement of claim. The judgment relied upon by the learned senior counsel for the respondents in case of ***Hatimbhai Hassanally*** (supra), judgment of this court in case of ***Kotak Mahindra Finance Ltd.***(supra), judgment of Calcutta High Court in case of ***Cityscape Developers (Pvt.) Ltd.*** (supra), judgment of Calcutta High Court in case of ***Zoom Developers Pvt. Ltd.***(supra) and thus do not assist the case of the respondents.

38. This court in case of ***L & T Finance Limited vs. Saumya Mining Ltd.*** (supra) has already taken a view that if material part of cause of action had arisen at Mumbai no leave under section 12 of the Letters Patent is required to be obtained for filing a petition under section 9 of the Arbitration Act. I am respectfully bound by the said judgment.

39. Division Bench of this court in case of ***Konkola Copper Mines (PLC)*** (supra) has held that since the place of the arbitration is at Mumbai, court at Mumbai will have jurisdiction to entertain the proceedings arising out of such dispute. In the loan agreement also the place of arbitration agreed is at Mumbai. I am respectfully bound by the said judgment.

40. A perusal of the ruling given by the learned arbitrator on the issue of jurisdiction clearly indicates that the learned arbitrator has rejected the plea of the respondents that the agreement is alleged to be fabricated by the petitioner or that the proceedings cannot be held at Mumbai. This court at this stage cannot even

otherwise go into the validity of the said ruling rendered by the learned arbitrator in the present proceedings.

41. Insofar as submission of the learned senior counsel for the respondents that considering the prayers in the present petition for recovery of the possession of the immovable property situated outside Mumbai which was mortgaged in favour of the petitioner and thus no such relief for recovery of the possession even otherwise could be granted by this court is concerned, I have perused the statement of claim filed by the petitioner before the learned arbitrator. It is not in dispute that in the statement of claim filed by the petitioner, there is no prayer for enforcement of the mortgage or for recovery of possession of those properties. Be that as it may, even if the petitioner has prayed for appointment of the Court Receiver with a direction to take forcible possession of the immovable property from the respondents and to handover the same to the petitioner is concerned, the said relief at the first instance is not a substantive or the final relief prayed by the petitioner but is only by way of an interim measures.

42. This court in case of ***Tata Capital Financial Services Limited vs. Deccan Chronicle Holdings Limited and Anr.*** (supra) has held that even if a party had prayed for larger relief, he can withdraw such relief and/or mould it and apply for smaller reliefs. Even court can mould and/or grant smaller relief though larger reliefs are claimed by a party before it. Court cannot reject the entire petition merely on that ground.

43. Be that as it may, this court has already taken a view in case of ***Tata Capital Financial Services Limited vs. Deccan Chronicle Holdings Limited and Anr.*** (supra) that the proceedings under section 9 for interim measures cannot be

equated with the proceedings filed in a pending suit for referring the parties for arbitration under section 8 of the Arbitration Act. In my view, the principles laid down by this court in the said judgment can be extended in the present proceedings under section 9. The reliefs under section 9 for appointment of the Court Receiver in respect of the mortgage property through in respect of which no reliefs are claimed by the petitioner in the statement of claim, can still be granted in respect of the said properties to secure the claims of the petitioner under section 9 (ii) (d) of the Arbitration Act. This court has held in the said judgment that the court can grant interim measures under section 9(ii)(b), (d) and (e) even if the property or things are not subject matter of the dispute in arbitration. This court has also held that even if the petitioner gives up its claim for enforcement of mortgaged properties, interim measures can still be granted under section 9, even if the petitioner has made claim for recovery of money claim simplicitor in the statement of claim. I am respectfully bound by the said judgment.

44. Insofar as submission of the learned senior counsel that the criminal complaint as well as writ petition filed by the respondents against the petitioner are pending in the High Court of Madhya Pradesh in respect of the alleged fabrication of the facility agreement is concerned, this proceedings are not stayed or this court cannot refuse to grant interim measures in the present proceedings merely on the basis of the pendency of the said writ petition or complaint filed by the respondents against the petitioner.

45. Insofar as submission of the learned senior counsel that the petitioner has efficacious alternate remedy of filing an application under section 17 of the Arbitration and Conciliation Act before the learned arbitrator and thus this court shall not grant any interim measures in this proceedings filed under section 9 of the

Arbitration Act is concerned, in my view there is no merit in this submission of the learned senior counsel for the respondents. Under the provisions of Arbitration and Conciliation Act, 1996, the court as well as the arbitral tribunal has power to grant various interim measures as set out in those provisions. Merely because the petitioner can seek certain interim measures by making an application before the arbitral tribunal under section 17, there is no bar against such party from applying for interim measures before the court, which application can be made by such party before or during the arbitral proceedings or at any time after making of the arbitral award but before it is enforced in accordance with section 36. A perusal of section 9 clearly indicates that the power of court under section 9 to grant interim measures is wider than power of an arbitrator. An arbitrator cannot appoint a Court Receiver. There is thus no merit in this submission of the learned senior counsel.

46. Insofar as submission of the learned senior counsel that the petitioner has not made out any case for appointment of Court Receiver is concerned, a perusal of the record prima facie indicates that the respondents have not dealt with the allegations of the petitioner on merits of the claim. The respondents have not disputed that there were default committed or that the post-dated cheques issued by the respondents were dishonoured and were returned with the remark 'exceeds arrangement'. The respondents have not disputed its liability to the petitioner. On the other hand, it is the apprehension of the petitioner that the respondents may create third party rights or alienate all its property including mortgaged properties so as to deprive the petitioner on its legitimate dues. It is the case of the petitioner that the petitioner has good chances of succeeding in the arbitral proceedings and if the interim measures are not granted, the petitioner would not be able to recover any amount from the respondents.

47. In my prima facie view, the respondents have committed default in making repayment of the loan under the facility agreement. The petitioner has good chances of succeeding in the arbitral proceedings. According to the petitioner, as on 31st March, 2015, the respondents are liable to pay to the petitioner a sum of Rs.23,65,07,643/- with further interest thereon at the rate of 12.5% per annum from 1st April, 2015 till payment. In my view, the petitioner has thus made out a case of appointment of the Court Receiver so as to secure the substantial amount of claim of the petitioner. In my view, such relief for appointment of Court Receiver can be granted by this court under section 9(ii)(d) and (e). I, therefore, pass the following order :-

(a) Court Receiver, High Court, Bombay is appointed as a Receiver in respect of the property of the respondents described in Ex.'U' to the petition with a direction to appoint the respondents or any person found in possession of the said properties as an agent of the Court Receiver on usual terms and conditions including payment of royalty and on furnishing security. It is made clear that if the respondents or such third party do not accept the agency of the Court Receiver on the usual terms and conditions within two weeks from the date of such offer, the Court Receiver shall have power to take physical possession of the said property and if necessary, with assistance of police. The petitioner would be in that event at liberty to apply for further interim measures under section 9 of the Arbitration and Conciliation Act.

(b) Till the Court Receiver takes possession of the property described at Ex.'U', there shall be an injunction in respect of

such properties in terms of prayer clause (g) excluding the word 'dealing'.

(c) The respondents are also directed to disclose on oath by filing an affidavit the details of their assets whether encumbered or unencumbered within four weeks from today and serve a copy of such affidavit upon the petitioner's advocate simultaneously.

(d) Arbitration petition is disposed of in the aforesaid terms.
No order as to costs.

(R.D. DHANUKA,J.)

CERTIFICATE

“ I certify that this judgment uploaded is a true and correct copy of original signed judgment.”

Uploaded by : K.V.Mayekar

Uploaded on 04/09/2015