THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1622 OF 2014

L & T Finance Limited ... Petitioner

V/s.

Kuldeep Singh Bath & Anr. ...Respondents

Mr. Girish Thakur For the Petitioner

None for the Respondents

CORAM: S.J.KATHAWALLA, J.

DATED: 27th JANUARY, 2015

P.C.:

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 and an affidavit proving service is on record. The petition is today taken up for final hearing. However, none appear for the Respondents.

2. By a Loan cum Hypothecation Agreement dated 30.06.2011, the Petitioner provided a loan of Rs. 16,40,000/- (Rupees Sixteen Lac Forty Thousand Only)to the First Respondent for Purchase of a Vehicle TATA LPT 3518 -2011 MODEL bearing Chassis No. MAT503010B3F15257 and Engine No. B5.91803111F63144573 ("Said Vehicle") more particularly described in Exhibit "F" to the Petition and on the terms described in the Loan-Cum-Hypothecation Agreement dated 30.06.2011. Under the said Agreement, the said Vehicle was hypothecated with the Petitioner by the Respondent No.1, as security for repayment of the Loan amount.

3. The loan amount of Rs. 16,40,000/- (Rupees Sixteen Lac Forty Thousand Only) was repayable by the Respondents to the Petitioner with @5.77 % p.a. for Schedules aggregating to Rs. 20,18,512/- (Rupees Twenty Lac Eighteen Thousand Five Hundred and Twelve Only) in 44 Monthly instalments i.e. 1st Instalment of Rs. 45,887/- X 1 and 2nd Instalment of Rs. 45,875/- X 43 commencing from 1st August, 2011 and ending on 1st March, 2015 .

4. Respondent No. 2 has guaranteed the due repayment of the loan. Clause 12 of the Loan-Cum-Hypothecation Agreement provides for the events of default; Clause 13 for the consequences of default; Clause 14 provides for the right of the Petitioner on default including repossession of the assets. Clause 17 provides for the 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. 8,83,015/- (Rupees Eight Lac Eighty Three Thousand and Fifteen Only) as on 14.11.2013. The events of default having taken place in terms of the Loan-Cum-Hypothecation Agreement, the Petitioner became entitled to recall and have recalled the entire loan. The Respondent No. 1 pursuant to Receipt of loan recall notice dated 11.12.2013 made a payment of Rs. 2,76,805/- towards the outstanding amount of Rs. 8,83,015/- but has failed to pay any amount thereafter and therefore the Respondents have become liable to pay to the Petitioner sum of Rs. 6,13,347/- as on 01.07.2014. The Petitioner therefore invoked the arbitration Clause in the Loan-Cum-Hypothecation Agreement dated 30.06.2011.

5. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as the Receiver of the hypothecated Vehicle, more particularly described in Exhibit "F" to the petition. The Respondents have not filed their Affidavit 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 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 as Receiver of the hypothecated Vehicle. The appointment of the Receiver is necessary in order to ensure that the hypothecated Vehicle is not wasted or alienated, thereby defeating the rights of the Petitioner. Further interim injunction in terms of the prayer clause (e) also needs to be granted to protect the rights of the Petitioner. The claim of the Petitioner is over Rs. 6,13,347/- 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 interim measures of protection. Hence the following order is passed:

(i) Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver is appointed as Receiver in respect of the Hypothecated Vehicle, more particularly described in Exhibit "F" to the Petition, with direction to take forcible physical possession of the said Vehicle with police assistance, if required, and without any prior notice to the Respondents;

(ii) 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 Vehicle. The Respondents shall be given two weeks time by the Court Receiver from the date of receipt of the Court Receiver's communication/letter to exercise such an option. In the events of the Respondent/s being desirous of acting as agents of the Court 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 Loan Cum Hypothecation Agreement (Exhibit "A" to the Petition);

(iii) In the event that the Respondents do not communicate their willingness to the Receiver to act as agent within a period of two weeks from the date of receipt of the communication from the Court Receiver, it would be open to the Petitioners to apply to the court for further orders including sale of the Vehicle by private treaty;

(iv) 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 Vehicle described in Exhibit "F" to the Petition.

6. The Arbitration Petition is accordingly disposed of.

(S.J.KATHAWALLA, J.)