

THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 1357 OF 2014

L & T Finance Limited ... Petitioner

V/s.

Gajanan Constructions & Anr. ... Respondents

Mr. Girish Thakur for the Petitioner.
None for the Respondents.

CORAM : S.J.KATHAWALLA, J.
DATED : 7th 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 13 December, 2011 the Petitioner provided a loan of Rs.50,00,000/- to the First Respondent for Purchase of vehicles/equipments viz. (1) L & T Komatra 90 CK-3 make of 2006, bearing Serial No. A3750, (2) JCD 3DX Excavator Loader, make of 2007 bearing Chassis No. 1255459, Engine No. 4H.2152/0702021, Registration No. MH-05-AF-9099 (3) L & T Komatsu PC 200 HYDRAULIC EXCAVATOR, make of 2006, bearing serial No. NL 12415 (4) L & T

Komatsu PC 200 HYDRAULIC EXCAVATOR, make of 2006 bearing serial No. NL 12478 (“Said Vehicles/Equipments”) more particularly described in Exhibit “F” to the Petition and on the terms described in the Loan-Cum-Hypothecation Agreement dated 13 December, 2011. Under the said Agreement, the said Vehicles/Equipments were hypothecated with the Petitioner by the Respondent No.1, as security for repayment of the Loan amount.

3. The loan amount of Rs. Rs.50, 00,000/-(Rupees Fifty Lac Only) was repayable by the Respondents to the Petitioner with interest @7.90% totalling to Rs. 61,93,325/- repayable in 1st Schedule – 35 equated installments of Rs. 28,271/-, under 2nd Schedule – 35 equated installments of Rs. 21,204/-, under 3rd Schedule – 35 equated installments of Rs. 63,610/- and under 4th Schedule – 35 equated installments of Rs. 63,610/- all commencing from 15.01.2012 and ending on 15.11.2014.

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 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.42,52,302/- (Rupees Forty Two Lac Fifty Two Thousand Three Hundred Two Only) as on 11.03.2013. The Petitioner therefore became entitled to recall and have recalled the entire loan. Pursuant to receiving the Demand Cum Termination Notice dated 23.05.2013 by the Respondents, the Respondents approached the Petitioner and have made part payment of Rs. 12,30,340/- but have failed to make any payment thereafter. There was no reply to the Loan Recall Notice dated 23.05.2013. The Petitioner therefore invoked the arbitration Clause in the Loan-Cum-Hypothecation Agreement dated 13.12.2011.

5. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as the Receiver of the hypothecated Vehicles/Equipments, 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 Vehicles/Equipments. The

appointment of the receiver is necessary in order to ensure that the hypothecated Vehicles/Equipments are 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. 30,21,962/- 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 Vehicles/Equipments, more particularly described in Exhibit “F” to the Petition, with direction to take forcible physical possession of the said Vehicles/Equipments 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 Vehicles/Equipments. 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 Vehicles/Equipments 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 respects of the said Vehicles/Equipments described in Exhibit "F" to the Petition.

1. The Arbitration Petition is accordingly disposed of.

(S.J.KATHAWALLA, J.)