

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****ARBITRATION PETITION NO. 1323 OF 2014**

Tata Capital Housing Finance Ltd.

... Petitioner

Versus

Ganesan S. & Anr.

... Respondents

Ms. Aparna Wagle i/b MDP & Partners for the Petitioner.

None for Respondents.

CORAM : S.J. KATHAWALLA .J.**DATED : 11th March, 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 Respondent by substituted service and an Affidavit proving service dated 18-02-2015 is on record. The Petition is taken up for final hearing. However, none appear for the Respondents.

2. By a Home Loan Agreement dated 17th November, 2011, the Petitioner provided a loan of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) to the first Respondents for purchase of a new flat more particularly described in Exhibit-E to the Petition. By a Memorandum Recording Past Transactions of Creation of Mortgage by Deposit of Title Deeds dated 17th November, 2011, the said flat was mortgaged with the Petitioner by the Respondents.

3. The Loan amount of Rs.15,00,000/- was repayable by the Respondents to the Petitioner with interest @ 10.75 % per annum (variable) in

156 monthly installments commencing from 9th January, 2012 and ending on 9th December, 2024.

4. Clause 7.1 (a) of the Home Loan Agreement provides for the events of default; Clause 7.2 (a) and 7.2 (b) for the consequences of default; Clause and 7.3 (c) provides for the rights of the Petitioner on default. Clause 12.11 (a) 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.14, 83,703/- (Rupees Fourteen Lakhs Eighty Three Thousand Seven Hundred and Three Only) as on 29th July, 2014. The Petitioner therefore invoked the arbitration clause in the Agreement dated 17th November, 2011.

5. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as the Receiver of the mortgaged property, more particularly described in Exhibit "E" 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 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 mortgaged property. The appointment of the Receiver is necessary in order to ensure that the mortgaged property is not wasted or alienated, thereby

defeating the rights of the Petitioner. Section 9 empowers the Court to pass interim measures of protection. Hence, the following order:

(i) Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver, High Court, Bombay is appointed as Receiver in respect of the mortgaged property, more particularly described in Exhibit “E” to the Petition, with direction to take forcible physical possession of the said mortgaged property 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 agents of the Receiver in respect of the said mortgaged property. 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 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 Loan Agreement (Exhibit “C” to the Petition) ;

(iii) 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, it would be open to the Petitioner to apply to the Court for further orders;

(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 mortgaged property described in Exhibit “E” to the Petition.

6. All concerned to act on an ordinary copy of this order, duly authenticated by the learned Associate of this Court.

7. The Arbitration Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)