

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.251 OF 2015

M/s.Tata Capital Financial Services Ltd.

..... Petitioners

VERSUS

Yogesh Kantilal Shivarkar & Ors.

..... Respondents

Ms.Aparna Wagle, a/w.Mr.Tushar Kadam, Nazeen Kotwal, i/b. MDP & Partners
for the Petitioners.

None for the Respondents.

CORAM : R.D. DHANUKA, J.

DATED : 17th JUNE, 2015

P.C.

The petitioner has already filed affidavit of service on 12th January, 2015. Learned counsel appearing for the petitioner tenders further affidavit of service dated 17th April, 2015 and states that the ad-interim order passed by this court has been communicated to the respondent. The respondents however have not complied with the said order. None appeared for the respondents though served. No affidavit in reply is filed.

2. This Petition is filed by the petitioner under section 9 of the Arbitration and Conciliation Act, 1996 for seeking interim measures i.e. for appointment of Court Receiver, injunction and other reliefs against the respondents.

3. On 20th August, 2011 the petitioner and the respondents entered into a Home Loan Agreement in respect of loan of Rs.14,25,000/- granted to the first Respondent. Respondent nos. 1 and 2 executed Memorandum Recording Past

Transactions of Creation of Mortgage by Deposit of title deeds dated 30th August, 2011.

4. The respondents committed default in making repayment of the installments. The petitioner issued notice of demand calling upon the respondents to pay on 13th March, 2014 calling upon to pay a sum of Rs.14,78,125/- with further interest thereon. There is neither any repayment nor any reply to the notice. No reply is fled.

5. A perusal of the documents annexed to the petition prima facie indicates that the respondents have committed default in making repayment of the amount. There was no response to the notice of demand. In my view, prima facie case is made out for appointment of the Court Receiver in respect of the property described at Exhibit –E to the petition. In absence of any defence or contest by the Respondents, the averments contained in Petition would have to be accepted. There has been a default in payment of the outstanding dues. It would, therefore, be necessary to safeguard the interest of the Petitioner by appointing the Court Receiver as Receiver of the property. The appointment of the Receiver is necessary in order to ensure that the property is not wasted or alienated, thereby defeating the rights of the Petitioner. Section 9 empowers the Court to pass an interim measure of protection. Hence, the following order:-

- i) The Court Receiver, High Court, Bombay is appointed as a Receiver in respect of the property described at Exhibit-E. The Court Receiver shall give an option to the Respondents in writing to act as agents of Receiver in respect of the said 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 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 security and royalty. The Receiver shall determine the quantum of security and royalty having regard to the terms and conditions contained in the Home Loan Agreement (*Exhibit –C* to the Petition).

- ii) 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, Court Receiver to take forcible possession of the property and if necessary with the assistance of police from the respondents. It would be open to the Petitioner to apply to the Court for further orders including sale of the property by private treaty.
 - iii) Until the Receiver takes possession, there shall be an interim injunction restraining the Respondents from alienating, encumbering, parting with possession or creating any third party right in respect of the property described in Exhibit–E to the Petition.
6. Petitioner is directed to approach the office of the Court Receiver for enforcement of this order within 4 weeks from today.
7. If the petitioner does not take steps for appointment of the arbitrator within four weeks from today, if not already appointed, interim order passed today to stand vacated without further reference to the Court.
8. The Arbitration Petition is accordingly disposed of. No order as to costs.
9. Parties as well as the Court Receiver to act on an authenticated copy of this order.

[R.D. DHANUKA, J.]