

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 1496 OF 2014

Reliance Capital Limited

..... Petitioner

VERSUS

Andrew Laxman Makwana & Anr.

..... Respondents

Mr. Vishal Tambat for the Petitioner.

None for the Respondents.

CORAM : R.D. DHANUKA, J.

DATED : 17th JUNE, 2015

P.C.

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

Learned counsel appearing for the petitioner states that the respondents have unclaimed the papers and proceedings as well as the notice. Affidavit of service has been already filed. None appeared for the respondents though served.

3. The Petitioner had provided a loan of Rs.21,00,000/- and Rs.2,50,000/- to the Respondents under two separate Loan Agreements both entered into on 31st August, 2013. The loan was repayable in equal monthly installments. Clause 11 of the Agreement provides for the events of default; Clause 12 provides for remedies of the lender and enforcement and Clause 23(xvi) provides for arbitration. There has been a default on the part of the Respondents. Petitioner issued two loan recall notices both dated 11th November, 2013 and called upon the respondents to pay Rs.266189.58 and Rs. 268739.82 due and

payable as on 11th November, 2013 with further interest till payment. There was no response to the notice of demand. Perusal of the record indicates that respondents have committed default in making payment of installments. The respondents were liable to pay to the petitioner a sum of Rs.266189.58 and Rs. 268739.82 with further interest thereon. The petitioner has invoked the provision of arbitration.

4. In the present Petition, the Petitioner has sought appointment of the Court Receiver as Receiver of the hypothecated asset/equipment, more particularly described in Exhibit-F 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 hypothecated asset/equipment. The appointment of the Receiver is necessary in order to ensure that the asset/equipment 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 asset/equipment at Exhibit-F. The Court Receiver shall give an option to the Respondents in writing to act as agents of Receiver in respect of the said asset/equipment. 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 Loan Agreements (*Exhibits –A and B 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 asset/equipment and if necessary with the assistance of police from the respondent. It would be open to the Petitioner to apply to the Court for further orders including sale of the asset/equipment 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 asset/equipment described in Exhibit–F to the Petition.

5. Petitioner is directed to approach the office of the Court Receiver for enforcement of this order within 4 weeks from today.

6. 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.

7. The Arbitration Petition is accordingly disposed of. No order as to costs.

8. Parties as well as the Court Receiver to act on an authenticated copy of this order.

[R.D. DHANUKA, J.]