

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1598 OF 2014

TATA Capital Financial Services Limited ... Petitioner

Versus

M/s. Om Sai Engineering Services & Ors. ... Respondents

Mr. Nilesh Gala i/b. Law Square for the Petitioner.
None for 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 Agreement dated 16th May, 2011 ("said Agreement"), the Petitioner provided a loan of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) to the Respondents for expansion of their business. Under the said Agreement, the Respondent No.1 is the Borrower of the said Loan, Respondent No.2 is the Co-Borrower and a partner of Respondent No.1 while Respondent Nos.3 and 4 are partners of Respondent No.1.

3. The Loan amount of Rs. 25,00,000/- (Rupees Twenty Five

Lakhs Only) was repayable by the Respondents to the Petitioner with interest @ 18.75% repayable in 24 equal installments of Rs. 1,25,718/- each.

4. Clause 5 of the Loan Agreement provides for the events of default; Clause 6 for the rights and remedies available to the Petitioner. Clause 11 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.6,01,944 (Rupees Six Lakhs One Thousand Nine Hundred and Forty Four Only) as on 24.07.14. The events of default having taken place in terms of the Loan Agreement, the Petitioner became entitled to recall and have recalled the entire loan. There was no reply to the Loan Recall Notice dated 8th May 2014. The Petitioner therefore invoked the arbitration clause in the Loan Agreement dated 16th May 2011.

5. In the present Petition, the Petitioner has inter alia sought an order of injunction against the Respondents from disposing of the properties described in Exhibit D-1 to the Petition and directions to the Respondents to file a detailed affidavit disclosing their assets on oath and restraining them from selling, transferring, etc., the assets disclosed by them in compliance with the directions given to them by this Court. The Respondents have not filed their Affidavit in Reply and are also not present before the Court. In absence of any defence 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 making the Petition absolute in terms of prayer clauses (b) and (d). The claim of the Petitioner is over Rs. 6.01 lakhs 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 an interim measure of protection. Hence, the following order is passed:

(i) The Petition is made absolute in terms of prayer clauses (b) and (d) which are reproduced hereunder :

“(b) The Respondents by themselves, their servants and/or agents be restrained by an order and injunction of this Hon’ble Court from selling, alienating, disposing and/or creating third party rights in respect of their properties listed in Exhibit D1 hereto accordingly;

(d) The Respondents be ordered to file a detailed Affidavit disclosing all their assets on oath so as to cover the legitimate claim of the Petitioner in respect of the aforesaid Loan Agreement and the Respondents by themselves, their servants and agents be restrained by an order and injunction of this Hon’ble Court from selling, transferring, creating any charge or interest or dealing with their said assets mentioned

in their said Affidavit on oath in any matter whatsoever;

(ii) The Affidavit of disclosure of assets be made by the Respondents within a period of two weeks from the date of communication of this order to the Respondents.

(iii) The Arbitration Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)