

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1605 OF 2014

M/s Shriram Equipment Finance Co. Limited ... Petitioner

V/s

Mrs. Gurudeep Kaur Darshan
Singh Saini (since deceased) and others ..Respondents

Mangesh M. D. Patel for the Petitioner
None for the Respondent.

CORAM : S.J.KATHAWALLA, J.

DATE : 27th JANUARY 2015

P.C.

1. This 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 upon the Respondents and an Affidavit proving service dated 19th January 2015 is taken on record. The Petition is taken up for final hearing. However, none appear for the Respondents.

2. The Petitioner had provided a loan of Rs. 85,00,000/- to the first Respondent under a Loan - Cum- Hypothecation Agreement

entered into on 20.04.2011. The loan was repayable with interest at the rate of @ 10.04% per annum in 47 monthly equated installments of Rs. 2,53,481/-. Clause 5 of the agreement provides for the events of the default; Clause 6 provides for the rights of the Petitioner on default including repossession of the asset. Clause 15 provides for arbitration. There has been default on the part of the Respondents. The Respondents are liable to pay to the Petitioner a sum of Rs. 34,98,963/-. The Petitioner has invoked the provision for arbitration.

3. Thereafter Petitioner filed Arbitration Petition No. 346 of 2013 before this Court. This Court (Coram: R. D. Dhanuka, J.) vide order dated 17th April, 2013, appointed the Court Receiver in respect of the equipment, more particularly described in Exhibit "J" to the instant Petition, with direction to take forcible possession of the said equipment with police assistance, if required, without any prior notice to the Respondents. The Court Receiver was directed to give an option to the Respondents to use the said equipment as his agent upon deposit of security any payment of royalty. It was clarified in the order that if the Respondents do not communicate their willingness to the Court 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 including for sale of the equipment by private treaty.

4. The minutes of Court Receiver annexed to the petition shows that after taking possession of the said equipment, the Court Receiver gave an option to the Respondent No. 1 to use the equipment as the agent of Court Receiver. However, the Respondents did not accept the offer made by the Court Receiver.

5. On 30th July 2014 the advocate appearing for Respondent no.1 informed the Petitioner that the Respondent No. 1 has passed away and also provided the particulars of the legal heirs of Respondent No.1. The legal heirs of Respondent No.1 were thereafter joined as party Respondents to the above petition.

6. On perusal of the Petition and documents annexed thereto I am prima facie satisfied that the amount as claimed is due and payable by the Respondents to the Petitioner. Respondents are not coming forward to use the equipment as the agent of the Court Receiver by executing the agency agreement and by paying the requisite royalty amount and security amount. Moreover the equipment shall keep on deteriorating and the value of the

equipment will be diminished, if the equipment is not put up for sale. Hence the following order.

(i) Pending the arbitration proceeding and any award that may be made therein the Petitioner is allowed to have the said equipment valued by a Government approved Valuer and sell the hypothecated vehicle bearing no. NL-02-G-7165 more particularly set out in Exhibit J hereto by way of private treaty or public auction as deemed fit by the Petitioner and credit the sale proceeds in the loan account of the Respondent. However, before sale of the vehicle the Petitioner will in writing provide all particulars to the Respondents about the sale, including the price at which the vehicle is proposed to be sold and shall confirm the sale 15 days after such notice/particulars are received by the Respondents.

(ii) After the sale the Court Receiver is directed to handover the possession of the hypothecated vehicle/equipment to the purchaser and the Court Receiver will be discharged without passing the accounts.

7. The Arbitration Petition is accordingly disposed of.

All parties, including the Court Receiver to act on a copy of this order duly authenticated by the Associate of this court.

{ S. J. KATHAWALLA, J. }