IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1725 OF 2014

L & T Finance Ltd. … Petitioner

Versus

Hiralal Vithal Gajjam … 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 Respondent. The Petition, is served on the Respondent and an Affidavit proving service is on record. The Petition is today taken up for final hearing. However, none appear for the Respondent.

2. By a Loan Cum Hypothecation Cum Guarantee Agreement ("said Agreement") dated 6th July, 2011, the Petitioner provided a loan of Rs.6,00,000/- (Rupees Six Lakhs Only) to the first Respondent for purchase of MAHINDRA XYLO E4, having engine no. BVB4F15214 and chassis no. MA1YA2BVNB2F49667 and Registration No. MH13AZ1117 ("said Asset") more particularly described in Exhibit-E to the Petition

and on the terms described in the Loan Cum Hypothecation Cum Guarantee Agreement dated 6th July, 2011. Under the said agreement, the said asset was hypothecated with the Petitioner by the Respondent, as security for repayment of the Loan amount.

3. The Loan amount of Rs.6,00,000/- (Rupees Six Lakhs Only) was repayable by the Respondent to the Petitioner with interest @ 14% repayable in 60 equated monthly installments of Rs.13,800/- each commencing from 07/07/2011 and ending on 09/06/2016.

4. Respondent also guaranteed the due repayment of the loan. Clause 17 of the Loan Cum Hypothecation Cum Guarantee Agreement provides for the events of default; Clause 18 provides for the consequences of event of default; Clause 23 provides for Arbitration. There has been a default on the part of the Respondent and the Respondent failed to pay to the Petitioner a sum of Rs. 3,65,685/- (Rupees Three Lakhs Sixty Five Thousand Six Hundred Eighty Five Only) due as on 31st July 2014. The events of default having taken place in terms of the Loan Cum Hypothecation Cum Guarantee Agreement, the Petitioner became entitled to recall and have recalled the entire loan. There was no reply to the Loan Recall Notice dated 26th July 2014. The Petitioner therefore invoked the arbitration clause in the Loan Cum Hypothecation Cum Guarantee Agreement dated 6th July, 2011.

5. In the present Petition, the Petitioner has sought

appointment of the Court Receiver, High Court Bombay as the Receiver of the hypothecated asset, more particularly described in Exhibit “E” to the Petition. The Respondent has not filed their Affidavit in Reply and is also not present before the Court. In absence of any defense or contest by the Respondent, 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 Respondent has 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 as Receiver of the Hypothecated Asset. The appointment of the Receiver is necessary in order to ensure that the said asset is not wasted or alienated, thereby defeating the rights of the Petitioner. Further interim injunction in terms of prayer clause (e) also needs to be granted to protect the rights of the Petitioner. The claim is over Rs.3.65 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) Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver is appointed as Receiver in respect of the said asset, more particularly described in Exhibit “E” to the

Petition, with direction to take forcible physical possession of the said asset with police assistance if required, and without any prior notice to the Respondent;

(ii) The Court Receiver shall within a period of two weeks after taking possession, give an option to the Respondent, in writing to act as an agent of the Receiver in respect of the said asset. The Respondent shall be given two weeks time by the Court Receiver from the date of receipt of the Court Receivers communication/ letter to exercise such option. In the event of the Respondent being desirous of acting as an agent of the Receiver, he shall be appointed as agent 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 Cum Hypothecation Cum Guarantee Agreement (Exhibit A to the Petition)

(iii) In the event that the Respondent does not communicate his willingness to the Receiver to act as an agent 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 sale of the said Asset by private treaty;

(iv) There shall also be an interim injunction restraining the Respondent from disposing of, alienating, encumbering, and parting with possession or creating any third party rights in respect of the said Asset described in Exhibit “E” to the Petition.

(v) The Arbitration Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)