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

APPEAL (L) No. 798 OF 2015
IN
ARBITRATION PETITION No. 1393 OF 2014
WITH
NOTICE OF MOTION (L) No. 2948 OF 2015
WITH
NOTICE OF MOTION (L) No. 2949 OF 2015

B. Sravan Kumar S/o Late B. Kondaiah ... Appellant
/Applicant

Vs.

Tata Capital Housing Finance Ltd. & Ors. ... Respondents

Mr. Vinay Bhanushali, for the Appellant / Applicant.

Mr. Bhavik Manek a/w Tushar Kadam i/b MPD & Partners, for the
Respondents.

Mr. V. S. Palandkar, Assistant of Court Receiver, High Court, Bombay.

CORAM : V. M. KANADE, &
A. K. MENON, JJ.

DATE : OCTOBER 23, 2015

PC.

1. For the reasons stated in the affidavit in support of notice of motion, the delay caused in filing the appeal is condoned. The Notice of Motion (L) No. 2949 of 2015 is accordingly allowed and disposed of in terms of prayer clause (a).

2. The Appellant is aggrieved by an order passed by the learned Single Judge, dated 3.9.2015, in a petition filed under Section

9 of the Arbitration and Conciliation Act, 1996. By the said order, the learned Single Judge was pleased to - (i) appoint the Court Receiver in respect of the property, described at Exhibit “E” to the petition, with a direction to appoint the occupant / occupants as agents of the Court Receiver; and (ii) further direct the Respondents to execute agency agreement.

3. It is an admitted position that Respondent Nos. 1 and 2 have taken a loan from the Petitioner and created a mortgage in respect of the property, described at Exhibit “E” to the petition. It is not in dispute that Respondent Nos. 1 and 2 had committed default in repayment of loan amount. According to original Respondent Nos. 1 and 2, the Appellant herein did not vacate the said mortgaged property and he continued to occupy the same illegally. Reliance is placed on an order passed by the VIIth Junior Civil Judge, City Civil Court Hyderabad. It is submitted that the Appellant is a third party to the proceeding, and in view of the judgment of the Apex Court in the case of – ***Sukanya Holdings Pvt. Ltd., Appellants Vs. Jayesh H. Pandya & Anr., Respondents*** [AIR 2003 SC 2252] the order of Court Receiver should not have been passed in the arbitration petition.

4. In our view, this submission is without any substance. The learned Single Judge, after taking into consideration the entire material on record has also examined the claim of the Appellant herein and has found that the City Civil Court, Hyderabad has not granted any order in favour of the Appellant and in fact has observed that

Respondent No. 3 (Appellant herein) is in possession of the property. It is further submitted that there is no further order passed by the High Court of Andhra Pradesh. Lastly, the learned Single Judge was pleased to direct that the Court Receiver should be appointed and the occupant / occupants should be appointed as agents of the Court Receiver. We do not see any reason to interfere with the said well reasoned order. Hence, appeal is dismissed. It is clarified that period of two weeks, within which the agency agreement was to be executed, is extended by four weeks. It is further clarified that Court Receiver shall take possession immediately.

5. In view of dismissal of the appeal, Notice of Motion (L) No. 2948 of 2015 taken out therein does not survive and is accordingly disposed of.

Sd/-
[A. K. MENON, J.]

Sd/-
[V. M. KANADE, J.]

Vinayak Halemamath