

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 375 OF 2016

Reliance Capital Limited Limited

...Petitioner

Versus

Neha A. Adhikari & Anr.

...Respondents

Adv. Pragati Salpe i/b Adv. Vishal Tambat for the Petitioner.

None for the Respondents

CORAM: S.J. KATHAWALLA, J

Dated: 21ST APRIL 2016

PC:

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 by R.P.A.D. and an Affidavit proving service dated 07th April 2016 is on record. The Petition is today taken up for final hearing. Affidavit in Reply is not filed ; and none appear for the Respondents.

2. By Secured Loan Agreement dated 29th October 2010, ("Said Agreement"), the Petitioner provided a loan of total sum of Rs.53,59,599/- (Rupees Fifty Three Lakhs, Fifty Nine Thousand, Five Hundred, Ninety Nine Only) to the Respondents against the mortgage of immovable property by deposit of title deeds as described in Exhibit A of the Petition ("said Asset") and on the terms described in the said Agreement. Under the said Agreement, the said Asset was mortgaged with the Petitioner by the Respondent No.1, as security for repayment of the Loan amount.

3. The Loan amount of Rs.53,59,599/- (Rupees Fifty Three Lakhs, Fifty Nine Thousand, Five Hundred, Ninety Nine Only) was repayable by the Respondents to the Petitioner with interest @12% (floating) repayable in 180 equated monthly installments of Rs.64,324/- commencing from 15th October,2010 (under the Agreement Exhibit -B to Arbitration Petition No.375 of 2016).

4. Respondent No.2 is the co borrower. Clause 2:8 of the said Agreements provide for the events of default; Clause 7 for the consequences of default; Clause 17 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.49,93,555/ (Rupees Forty Nine Lakhs, Nine Three Thousand, Five Hundred, Fifty Five Only) as on 03rd November 2015 under the said Agreement. The events of default having taken place in terms of the said Agreement, the Petitioner became entitled to recall and have recalled the entire loan. There was no reply to the Loan Recall Notice dated 06th April 2015, The Petitioner therefore invoked the arbitration clause in the said Agreement dated 29th October 2010.

5. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as the Receiver of the Asset, more particularly described in Exhibit A to the Petition. The Respondents have been duly served by R.P.A.D. by the Petitioner's advocate notice dated 08th March 2016. The Respondents neither filed their reply nor are present before the Court. In the absence of any 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. Section 9 empowers the Court to pass an interim measure of protection. 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 appointing the Court Receiver as Receiver of the said 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(c) also needs to be granted to protect the rights of the Petitioner. The claim of the Petitioner is over Rs.49 lakhs and unless adequately protected, the Petitioner may suffer irreparable harm and injury. Balance of convenience also warrants the grant of relief. Hence, the following order is passed:

- a) Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver is appointed as Receiver, High Court, Bombay in respect of the Asset, more particularly described in Exhibit A to the Petition, with direction to take symbolic possession with police assistance, if required, and without any prior notice to the Respondents;
- b) The Court Receiver shall within a period of two weeks after taking possession, give an option to the Respondents, in writing to act as an agent of the Receiver in respect of the said Asset. The Respondents 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/s being desirous of acting as agents of the Receiver, they shall be appointed as agents 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 said Agreement (Exhibit-B to the Petition);
- c) 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, the Court Receiver to take physical possession with Police assistance, if required;
- d) There shall also be an interim injunction restraining the Respondents from disposing of, alienating, encumbering, parting with possession or creating any third party rights in respect of the said Asset described in Exhibit A to the Petition.

e) A copy of this order shall be forthwith served on the Respondents by hand delivery and also by Speed Post A.D.

e) The Arbitration Petition is accordingly disposed of.

(S. J. KATHAWALLA, J.)