

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

ARBITRATION PETITION NO. 487 OF 2015

L and T Finance Ltd. ... Petitioner
V/s.
Bhimlal L. Sahu (Borrower) and another ... Respondents

Mr. Sandesh Godse i/b Vivek Patil and Associates for the petitioner.
None for respondents.

**CORAM : K. K. TATED, J.
DATED : 24/02/2016**

P.C.:

1. Heard the learned counsel for the petitioner.
2. Learned counsel for the petitioner submits that he received instructions not to press the present petition against respondent no. 2 and he seeks liberty to delete the name of respondent No.2. Same is permitted.
3. The learned counsel for the petitioner submits that they served respondent no. 1 by hand delivery. To that effect, petitioner placed on record affidavit of service dated 23/11/2015.
4. This is a petition under section 9 of Arbitration and Conciliation Act, 1996 for appointment of a Court Receiver and an order of injunction restraining the respondents from creating any third party right, title and interest in respect of property as described in Exhibit 'F' i.e. Model: JCB 3DX BACKHOLE LOADER, Chasis No : 18420989, Engine No : H00044720.

5. It is the case of petitioner that as per loan-cum-hypothecation agreement dated 15/02/2013, respondent no. 1 borrowed sum of Rs. 19,00,000/- from the petitioner. As per the said agreement, respondent agreed to repay the said loan amount along with interest by 35 monthly installments. He further submits that the respondent also executed demand promissory note dated 15/02/2013 for sum of Rs.19,00,000/- with interest.

6. The learned counsel for the petitioner submits that as the respondents failed and neglected to repay the said borrowed amount by monthly installments in time, the petitioner issued legal notice dated 11/02/2015 calling upon the respondent to repay the sum of Rs. 11,77,356/-. He submits that in spite of the said legal notice, respondent failed and neglected to repay the borrowed amount. He submits that as on today, they had to recover the sum of Rs. 11,77,356/- with future interest at the rate of 36% per annum and cost as per loan agreement dated 15/02/2013.

7. Learned counsel for the petitioner submits that if respondent creates third party right, title and interest in respect of the suit property, then it will be very difficult for them to recover their dues. He submits that petitioner had apprehension that respondent, to defeat the petitioner's claim, may create third party right, title and interest in respect of the suit property. He submits that in the interest of justice, this Hon'ble Court be pleased to appoint Court Receiver of the suit property with all the powers as per order XL of Code of Civil Procedure, 1908 to take possession of the suit property and if required with the

help of police and hand over the possession to the petitioner. He further submits that respondent be restrained by an order of injunction from creating any third party right, title and interest in respect of the property as described in Exhibit 'F' during the pendency of the Arbitration proceedings. He submits that if relief as claimed by the petitioner is not granted, irreparable loss will be caused to them.

8. Heard learned counsel for the petitioner. Though respondent no.1 is duly served, no one appeared on behalf of him when the matter was called out. There is no dispute that respondent executed loan-cum-hypothecation agreement dated 15/02/2013 for Rs. 19,00,000/- with interest. The borrower also executed promissory note dated 15/02/2013. Though the petitioner, by their legal notice dated 11/02/2015, called upon the respondents to repay the loan amount with interest, he failed and neglected to do so.

9. Considering these facts, I am satisfied that petitioner has made out a case for allowing this petition in terms of prayer clause (a) & (e).

10. Hence, following order is passed:

(i) Pending the hearing and final disposal of Arbitration Proceedings or at any time after making Arbitral Award, but before it is enforced in accordance with section 36 of Arbitration and Conciliation Act, 1996, the Court Receiver, High Court, Bombay is appointed as Court Receiver under Order XL Rule of Code of Civil Procedure, 1908 to take possession of suit property as described in Exhibit 'F' i.e. Model: JCB 3DX BACKHOLE LOADER, Chasis No : 18420989, Engine No : H00044720.

(ii) If the respondent failed to hand over the possession of property as per exhibit- F to the Court Receiver, the Court

Receiver is permitted to take forcible possession with the help of police, if necessary.

(iii) After taking possession, the Court Receiver shall give an option to act as an agent of the Court Receiver to respondent in respect of the said property.

(iv) The respondent shall be given 2 weeks time by the Court Receiver from the date of receipt of Court Receiver's communication letter to exercise such option.

(v) In the event of the respondent being desirous of acting as agent of the Court Receiver, they shall be appointed as agent of the Court Receiver, subject to security and royalty.

(vi) The Court Receiver shall determine the quantum of security and royalty on the basis of loan-cum-hypothecation agreement dated 15/02/2013 exhibit – A to the petition.

(vii) In the event that the respondent does not communicate their willingness to the Receiver to act as agent within 2 weeks from the date of receipt of the communication from the Court Receiver, the Court Receiver to take forcible possession of the assets from the respondents, if necessary with the assistance of the concerned police authority.

(viii) After taking possession of the assets as described in exhibit – F and if the respondent failed to act as Court Receiver's agent within stipulated time as stated hereinabove, the Court Receiver to hand over possession of the same to the respondent for safe custody.

(ix) Until the Court Receiver takes possession, there shall be interim injunction restraining the respondent from alienating, incumbering, parting with possession or creating any third party right in respect of the assets as described in exhibit-F to the petition.

(x) It would be open to the petitioner to apply to the court for further orders.

(xi) The petitioner is directed to approach the office of the Court Receiver for enforcement of the order within 4 weeks.

(xii) If the petitioner fails to lodge this order in the office of the Court Receiver, within stipulated time as stated hereinabove, interim protection shall stand vacated, without further reference to the court.

(xiii) The arbitration petition stands disposed of accordingly.

(xiv) No order as to costs.

(K.K.TATED, J.)