

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

ARBITRATION PETITION NO. 497 OF 2015

L & T Finance Limited

... Petitioner

V/s.

Sanjay Manishankar Abhyankar
and another

... Respondents

Mr. S. Godse i/b Vivek Patil for the petitioner.
None for respondent.

CORAM : K. K. TATED, J.

DATED : 24/02/2016

PC.:

Heard learned counsel for the petitioner.

2) Though the respondents are duly served, none appeared on behalf of them when the matter called out. Advocate for the petitioner placed on record the affidavit of service dated 17/11/2015 showing that petition is duly served on respondents.

3) By this petition under section 9 of Arbitration and Conciliation Act, 1996, petitioner is seeking appointment of Court Receiver, High Court, Bombay in respect of suit property as described in Exhibit 'F' i.e. Model No : New Tipper 1 No. AMW 2518 FBT, Chasis no : MBYB24900BGA19318, Engine No: 11G84011267.

4) It is the case of the petitioner that by loan-cum-hypothecation agreement dated 10/10/2011, they advanced sum of Rs. 21,20,000/- and disbursed to the respondent no. 1 by way of loan with interest. As per the terms and conditions of the said agreement, respondent no. 1 was supposed to repay the entire loan amount along with interest by 47 monthly installments. He further submits that respondent no. 1 also executed demand promisory note dated 10/10/2011 for sum of Rs. 21,20,000/- in favour of petitioner. He submits that even respondent no. 2, guarantor executed deed of guarantee dated 10/10/2011. He submits that as respondent no. 1 failed and neglected to pay monthly installment regularly, they issued a legal notice dated 02/02/2015 to both the respondents calling upon them to repay a sum of Rs. 8,63,185/- with interest. They also stated in the said legal notice that petitioner is invoking arbitration clause of loan-cum-hypothecation agreement dated 10/10/2011 which reads thus:

“17. Arbitration:

17.1 Any question dispute or difference that arises between parties or any of them touching or concerning this agreement or any condition herein contained or as to the rights, duties or liabilities of parties hereto or any of them either during the continuance of the agreement or after termination or purported termination hereof shall be referred to the sole Arbitrator to be

appointed by the Lender, according to the provisions of Arbitration & Conciliation Act, 1996 and rules thereunder and any amendment thereto from time to time shall apply.

17.2 The award of the arbitrator shall be final, conclusive and binding on all the parties, and all the parties undertake to carry out the award immediately without any delay. The venue of the arbitration shall be Mumbai.”

5) Learned counsel for the petitioner submits that in spite of the said legal notice, both respondents failed and neglected to clear their outstanding. Hence, petitioner filed present petition under section 9 of the said Act.

6) Learned counsel for the petitioner submits that on the date of filing of petition, a sum of Rs. 8,63,185/- with interest was due and payable by the respondents. He submits that petitioner has apprehension that respondents, to defeat the petitioner's claim, may create third party right, title and interest in respect of suit property. He submits that if third party rights created, then it will be very difficult for the petitioner to recover their dues. He submits that in the interest of the justice, this Hon'ble Court be pleased to appoint Court Receiver in respect of property as described in Exhibit 'F' and also restrain respondents from creating any third party right, title and interest of the said vehicle. He submits that if order of injunction and appointment of Court Receiver is not passed, irreparable loss will be caused to the

petitioner. He submits that petitioner have good chance of success before Arbitrator Tribunal.

7) Heard learned counsel for the petitioner at length. There is no dispute that petitioner by loan-cum-hypothecation agreement dated 10/10/2011, advanced sum of Rs. 21,20,000/- to the respondent no. 1 for purchasing a vehicle as described in Exhibit 'F' i.e. Model No : New Tipper 1 No. AMW 2518 FBT, Chasis no : MBYB24900BGA19318, Engine No: 11G84011267. Though, petitioner by their legal notice dated 02/02/2015 called upon the respondents to clear their outstanding, they failed and neglected to do so. Hence, petitioner filed present petition under section 9 of Arbitration and Conciliation Act, 1996 to protect their interest during the pendency of the matter before Arbitrary Tribunal.

8) Considering these facts, I am of the opinion that petitioner has made out case for allowing this petition.

9) Hence, following order.

(i) Pending the hearing and final disposal or Arbitration Proceedings or at any time after making out the Arbitral Award, before it is enforced in accordance with section 36 of the Arbitration and Conciliation Act, 1996, Court Receiver, High Court, Bombay is appointed as a Court Receiver under Order XL of Code of Civil Procedure, 1908 to take

possession of the vehicle as described in Exhibit 'F' i.e. Model No : New Tipper 1 No. AMW 2518 FBT, Chasis no : MBYB24900BGA19318, Engine No: 11G84011267.

(ii) If respondents failed to hand over the possession of the suit vehicle to the Court Receiver, Court Receiver is permitted to take forcible possession of the suit vehicle as described in Exhibit F, if necessary, with the help of police.

(iii) Court Receiver to appoint respondent no. 1 as an agent of the Court Receiver of the property as described in Exhibit F, if respondent no. 1 agrees to act as an agent on usual terms and conditions on the basis of loan agreement, payment of royalty and security deposit, within 4 weeks from the date of communication in writing, from the office of Court Receiver.

(iv) If respondent no. 1 failed to act as an agent of Court Receiver within stipulated as stated herein above, Court Receiver is directed to hand over the possession of the vehicle to the petitioner.

(v) Till Court Receiver takes possession of the vehicle as described in Exhibit F, respondents are restrained by an order of injunction from creating any third party right, title and interest in respect of property as described in Exhibit F.

(vi) If petitioner failed to lodge this order in the office of Court

Receiver within 6 weeks from today, interim protection granted in favour of petitioner shall stand vacated, without referring back to the court.

(vii) Petition stands disposed of accordingly.

(K.K.TATED, J.)