

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COURT RECEIVER'S REPORT NO. 183 OF 2016
IN
ARBITRATION PETITION NO. 61 OF 2014**

Tata Capital Financial Services Limited

... Petitioner

V/s

Doshion Private Limited & Ors.

...Respondents

*Mr. Mayur Khandeparkar a/w Ms. Nelly Mehta and Mr. Abhishek Padwalkar i/b
MDP & Partners for the Petitioner.*

None for the Respondents.

2nd Assistant to the Court Receiver present.

CORAM : S.J.KATHAWALLA, J.

DATE : 1st July 2016

P.C.

1. This Report is filed by the office of the Court Receiver, High Court, Bombay in the captioned Petition filed by the Petitioner under Section 9 of the Arbitration and Conciliation Act, 1996. The Report is served upon the Advocates for the parties to the Petition. In the aforesaid Report, the Court Receiver has *inter alia* sought the following direction:

“a) Whether the Court Receiver shall take forcible physical possession of the suit premises i.e. Unit No. 16 from the third party, with the help of police assistance, to comply with the directions passed by this Hon’ble Court vide Order dated 16th February 2015?”

2. This Court vide an Order dated 16th February 2015 had disposed of the captioned Petition in accordance with the Consent Terms executed by and between the parties. In terms of the said Consent Terms, the parties to the

captioned Arbitration Petition were to perform their respective obligations enumerated thereunder. Clause 13 of the said Consent Terms reads as under:

“13. The Respondents hereby agree that in the event of any default on their part in payment of any installment or in fulfilling any term or obligation specified herein and the adherence to the understanding between the Parties in terms hereof, or in pursuance hereto, then the Petitioner shall give an opportunity to the Respondents, to rectify the default and/or to repay the amount in respect of which default has been committed, within a period of 30 (thirty) days from the date of such default. In the event of the default not being rectified and/or the required amounts not being paid, the Petitioner after the expiry of the said period of 30 (thirty) days will not be required to give any notice or intimation to the Respondents, the liability of the Respondents being admitted and shall be entitled to proceed against the Respondents and their properties and these Consent Terms shall operate as a decree on default and the Court Receiver, High Court, Bombay shall stand appointed as Receiver of the properties of the Respondents, which have been offered as security to the Petitioner, without any further reference to this Hon’ble Court and with all powers under Order XL Rule 1 of the Code of Civil Procedure 1908, who shall proceed to take physical possession of the said properties within 15 (fifteen) days after the aforesaid period of 30 (thirty) days, with the help of police assistance, if necessary and proceed to sell the same by public auction or by private treaty, (all costs, charges and expenses for the sale to be borne by the Respondents) and to hand over the sale proceeds from such sale to the Petitioner towards appropriation against the amounts due and outstanding to the Petitioner in terms hereof. The Respondents undertake to unconditionally co-operate with the Court Receiver as well as the Petitioner for the sale of the said properties, till the amounts are realized by the Petitioner towards complete settlement and satisfaction of its dues payable by the Respondents jointly and/or severally.”

3. According to the Petitioner, a sum of Rs. 1,76,78,000/- (Rupees One Crore Seventy Six Lakhs Seventy Eight Thousand Only) has been received from

the sale of the property described in the Schedule at Exhibit "O" to the Arbitration Petition. Further, a sum of Rs. 1,03,00,000/- (Rupees One Crore Three Lakhs Only) was received by the Petitioner on 7th April 2015. The Petitioner has also received a sum of Rs. 3,50,00,000/- (Rupees Three Crores Fifty Lakhs Only) from the sale of the property described in the Schedule at Exhibit "N" to the Arbitration Petition, on 9th April 2015. Under Clause 8 of the Consent Terms, the Respondents had also agreed to make payment of Rs. 2,30,00,000/- (Rupees Two Crores Thirty Lakhs Only) on or before 30th April 2015. Despite repeated requests and reminders, the said amount has not been paid to the Petitioner. The Petitioner had also addressed a letter dated 28th September 2015 to the Respondents with a copy thereof marked to Mr. Dhirajal Doshi being the father of the Respondent No. 3, also being the mortgagor as well as the personal guarantor having guaranteed the repayment of the amount of the outstanding loan and hence liable for the repayment thereof, jointly and/or severally with the Respondents. Despite receipt of the said letter dated 28th September 2015, the Respondents and the said Mr. Dhirajal Doshi have failed to make any efforts to rectify the defaults committed by them.

4. The Petitioner informs that the property mortgaged in favour of the Petitioner being Unit No. 16 admeasuring 1152 sq. ft. (Built-up area) Ground Floor in the building known as Ashok Industrial Estate bearing Survey No. 86 (Pt), 87 (Pt), 151-A (Pt-1), 153 (Pt-1) situated at Agra Road, Mulund, Mumbai has been found in occupation of one Mr. Kantibhai Badala on the basis of a Leave and License Agreement dated 1st July 2015. It is pertinent to note that the said Leave and License Agreement (copy of which was furnished to the Petitioner and

which has been produced before this Court) is not registered as required under Section 55 of the Maharashtra Rent Control Act, 1999.

5. When the captioned matter was listed on 9th June 2016, the following order was passed :

“1. Mr. Kantibhai Badala, Proprietor of Le Laminates and Mr. Dhirajlal Doshi are directed to remain present before this Court on 17th June, 2016 at 3.00 p.m. failing which the Court shall proceed to pass necessary orders to ensure their presence before the Court.”

6. When the matter came up for hearing on 17th June 2016, Mr. Ashit Doshi, being the Respondent No. 3 in the captioned matter and Mr. Dhirajlal Doshi being the father of the Respondent No. 3 and also being the mortgagor as well as the personal guarantor, who were present in Court, gave an undertaking that if they failed to pay the instalment of Rs.2,30,00,000/-, which was payable under the Consent Terms dated 16th February, 2015 on or before 30th June, 2016, the Petitioner may proceed to sell the properties belonging to Mr. Dhirajlal Doshi referred to in paragraph no. 7 of the Consent Terms. They further undertook to remove the Licensee - Kantibhai Badala from the mortgaged property. The said Licensee Mr. Kantibhai Badala was not present despite intimation of the directions of this Court, issued as aforesaid.

7. Today when the captioned matter is called out, neither the Respondents nor their Advocate is present in Court. Mr. Dhirajlal Doshi is also not before this Court. The Respondents as well as Mr. Dhirajlal Doshi failed to make any payments to the Petitioner in accordance with the aforesaid undertaking given by them on 17th June 2016.

8. The Respondents as well as Mr. Dhirajlal Doshi have thus failed to adhere to the Order dated 17th June 2016 passed by this Court. In the circumstances, the Court Receiver, High Court, Bombay is directed to take possession of the said mortgaged property. Further, till such time the Court Receiver takes possession of the said mortgaged property, following reliefs need to be granted to protect the rights of the Petitioner:

- (i) The Court Receiver, High Court, Bombay to forthwith take forcible physical possession of the mortgaged property being Unit No. 16 admeasuring 1152 sq. ft. (Built-up area) Ground Floor in the building known as Ashok Industrial Estate bearing Survey No. 86 (Pt), 87 (Pt), 151-A (Pt-1), 153 (Pt-1) situated at Agra Road, Mulund, Mumbai with the help of police assistance, if necessary, and after preparing an inventory of the same file his report before this Court and seek further directions qua the said mortgaged property. The Senior Inspector of the local Police Station shall render all assistance to the Petitioner, their Advocates and the representative of the Court Receiver to ensure compliance of this order.
- (ii) Till the Court Receiver, High Court Bombay takes possession of the said mortgaged property, there shall be an injunction restraining the Respondents and the said Mr. Dhirajlal Doshi being the mortgagor from selling, alienating, encumbering, parting with possession and/or creating third party rights in respect of the said mortgaged property.
- (iii) A copy of this Order shall be forthwith forwarded by the office of the Court Receiver through Courier service as well as by Speed Post A.D. to the last known addresses of the Respondents, Mr. Dhirajlal Doshi as well as Mr. Kantibhai Badala being the proprietor of Le'Laminates who is in

occupation of the said mortgaged property, and to preserve the acknowledgments received. The Petitioner shall through its representative also forthwith serve a copy of this Order on the Respondents as well as the said Mr. Dhirajlal Doshi and Kantibhai Badala by hand delivery.

9. The Petitioner shall pay Rs. 3000/- towards costs of the Receiver's Report.

10. All parties, including the Court Receiver to act on a copy of this Order duly authenticated by the Learned Associate of this Court.

11. Liberty is granted to the Parties as well as the office of the Court Receiver, High Court, Bombay to apply to the Court for necessary orders, if required.

{S.J. KATHAWALLA, J.}