IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.819 OF 2016

Tata Capital Financial Services Ltd. ... Petitioner

Versus

Kishore Dattatray Yenpure & Anr. ... Respondents

Mr. Nilesh Gala i/b. Law Square for the Petitioner.

None for Respondents.

CORAM : S.J. KATHAWALLA, J.

DATED : 23rd June, 2016

P.C.:

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 and an Affidavit proving service has been placed on record. However, none appear for the Respondents. The Petition is today taken up for final hearing.

2. It is submitted on behalf of the Petitioner that by virtue of a Sanction Letter dated 21.01.2010, the Petitioner had sanctioned a loan of Rs.9,75,000/- (Rupees Nine Lakhs Seventy Five Thousand Only) in favour of the Respondents for purchase of the property being Flat No.2/ISD, Bhagyashree Apartments, Jeevandhara Nagar, Dhankawadi, Pune-411043 more particularly described in “Exhibit D” to the Petition (“said mortgaged property”). The said Loan amount was repayable by the Respondents to

the Petitioner with interest @ 13% p.a (variable) in 180 monthly instalments of Rs.12,337/- each.

3. A Loan Agreement dated 23.2.2010 (“said Agreement”), was executed between the Petitioner as the Lender and the Respondents as the Borrowers. The Respondents have also created a mortgage of the property described in “Exhibit D” to the Petition in favour of the Petitioner by depositing the title deeds and executing a Memorandum Recording creation of Mortgage by Deposit of Title Deeds dated 23.2.2010 in favour of the Petitioner.

4. It is submitted on behalf of the Petitioner that the Respondents defaulted in the timely repayment of the said loan and thus the Petitioner through its Advocates’ Notice dated 3rd Jan, 2015 recalled the entire loan as per the terms of the said Agreement. Also, it is submitted that vide the said Notice, the Petitioner invoked the arbitration clause in the said Agreement.

5. It is also submitted that as on 20th April, 2016 a sum of Rs.12,35,927/- (Rupees Twelve Lakh Thirty Five Thousand Nine Hundred and Twenty Seven Only) is outstanding and payable by the Respondents to the Petitioner alongwith interest thereon @ 15.75% (variable) per annum and additional interest @ 2% per month on the overdue amount for the defaulted period till payment/ realisation as well as other expenses, costs, fees, charges, etc as per the Particulars of Claim annexed and marked “Exhibit F” to the Petition.

6. In the present Petition, the Petitioner is interalia seeking an

injunction against the Respondents from creating any third party rights in respect of the mortgaged property and directions to the Respondents to disclose on oath the details of their personal moveable and immoveable un-encumbered and encumbered assets/ properties and appointment of the Court Receiver, High Court Bombay as the Receiver of the mortgaged property.

7. Clause 11.2 of the said Agreement provides for the events of default; Clause 11.3 provides for notice on happening of events of defaults and Clause 12.18 provides for Arbitration. The events of default having taken place in terms of the said Agreement, the Petitioner became entitled to recall the loan and thus by Notice dated 3rd Jan, 2015 recalled the said loan and also invoked the Arbitration clause in the said Agreement. There is no reply to the Notice dated 3rd Jan, 2015.

8. The Respondents have not filed their Affidavit in Reply and are also not present before the Court. In absence of any defense or contest by the Respondents, the averments contained in the Petition have remained uncontroverted. I see no reason why the statements/submissions made on behalf of the Petitioner in the Petition should not be accepted. Section 9 empowers the court to pass interim measures of protection.

9. As the Respondents have defaulted in repayment of the outstanding dues, it is just and necessary to safeguard the interests of the Petitioner. The claim of the Petitioner is over Rs.12.35 Lakhs and unless adequately protected, the Petitioner may suffer irreparable harm and

injury. Balance of convenience also warrants the grant of reliefs. Hence, the following order is passed.

i. The Court Receiver, High Court, Bombay is appointed as Receiver in respect of the said mortgaged property described in “Exhibit D” to the Petition, with direction to take symbolic possession of the said mortgaged property and appoint the Respondents as their agents in respect of the said mortgaged property on usual terms, conditions and payment of royalty as may be fixed by the Court Receiver and on furnishing security having regard to the terms and conditions of the Loan Agreement (Exhibit B to the Petition).

ii. In the event of the Respondents failing to accept or refusing to accept the agency within two weeks from the date of such offer by the Court Receiver, the Court Receiver shall take forcible possession of the said mortgaged property with the help of the police assistance if required and without any further notice to the Respondents. Thereafter, it would be open to the Petitioner to apply to the court for further orders including sale of the said mortgaged property by private treaty.

iii. The Respondents shall disclose on oath the details of their personal moveable and immoveable un-encumbered and encumbered assets/ properties.

iv. Until the Court Receiver, High Court, Bombay takes possession of the said mortgaged property, the Respondents, their agent/s, and/or any person/s claiming through or under them are restrained by an order of injunction from in any manner selling, transferring, disposing of, and/or alienating, encumbering or parting with possession of, or creating any right in respect of the said mortgaged property described in “Exhibit D”.

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

11. The Arbitration Petition is accordingly, disposed off.

(S.J. KATHAWALLA, J.)