THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1511 OF 2015

L & T Finance Limited ... Petitioner

V/s.

Anand Khade & Anr. ... Respondents

Mr. Girish Thakur for the Petitioner.

Mr. Vivek Salunkhe for the Respondents.

CORAM: S.J.KATHAWALLA, J.

DATED: 28TH JULY, 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 is on record.

2. By an Order dated 23rd June, 2016 the Respondent No.1 was directed to remain present before this court on 30th June, 2016 failing which the court shall proceed to passed the necessary orders. The Petition is today taken up for final hearing. However, Advocate for Respondents informed the court that he is unable to communicate with Respondent No.1.

3. By a Loan cum Hypothecation Agreement dated 8.02.2013, the Petitioner provided a loan of Rs.10,32,000/- to the First Respondent for Purchase of Vehicle/Equipment viz.

BH1 HYDRORAM ROCK BREAKER HK2205 (2013) bearing Serial No.HK220S:D100105 (“said Vehicle/Equipment”) more particularly described in Exhibit “F” to the Petition and on the terms described in the Loan-Cum-Hypothecation Agreement dated 8.02.2013. Under the said Agreement, the said Vehicle/Equipment was hypothecated with the Petitioner by the Respondent No.1, as security for repayment of the Loan amount.

4. The loan amount of Rs.10,32,000/- was repayable by the Respondents to the Petitioner with interest @7.02% p.a. in 36 monthly installments commencing from 10.03.2013 and ending on 10.02.2016. Therefore, the aggregate amount payable by the Respondents to the Petitioner under the Loan-cum-Hypothecation Agreement was Rs.12,49,200/-.

5. The Respondent No. 2 has guaranteed the due repayment of the loan. Clause 12 of the Agreement provides for the events of default; Clause 13 for the consequences of default; Clause 14 provides for the rights of the Petitioner on default including repossession of the assets. Clause 17 provides for the 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.6,62,937/- (Rupees Six Lac Sixty Two Thousand Nine Hundred & Thirty Seven Only) as on 24.04.2015. The Petitioner therefore invoked the arbitration Clause in the Agreement dated 8.02.2013.

6. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as the Receiver of the hypothecated Vehicle/Equipment, more particularly described in Exhibit "F" to the Petition. The Respondents have not filed his Affidavit in Reply and are also not present before the court. In the 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 by the Petitioner in the Petition should not be accepted. Section 9 empowers the Court to pass interim measures of protection. Since 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 hypothecated Vehicle/Equipment. The appointment of the receiver is necessary in order to ensure that the hypothecated Vehicle/Equipment is not wasted or alienated, thereby defeating the rights of the Petitioner. Hence the following order:

(i) Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver, High Court, Bombay is appointed as Receiver in respect of the Vehicle/Equipment, more particularly described in Exhibit "F" to Petition, with direction to take forcible physical possession of the said Vehicle/Equipment from Respondent No. 1.

(ii) The Court Receiver shall after taking forcible physical possession of the Vehicle/Equipment from the Respondent No. 1, with police assistance, if required, hand over the physical possession to the Petitioners who are permitted to sell the Vehicle/Equipment mentioned in Exhibit "F" to the Petition by way of private treaty to any third party and adjust the sale proceeds towards loan account of the Respondent No.1.

(iii) 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 Vehicle/Equipment described in Exhibit "F" to the Petition.

7. The Arbitration Petition is accordingly disposed off.

(S.J.KATHAWALLA, J.)