

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****ORDINARY ORIGINAL CIVIL JURISDICTION****ARBITRATION PETITION NO. 974 OF 2015**

Tata Capital Housing Finance Limited

..Petitioner

vs.

Mr. Anugrah Saxena &amp; Anr.

..Respondents

*Areez Gazdar i/b Veritas Legal Advocates & Solicitors for Petitioner.**None for the Respondents though served. Affidavit of service filed.***CORAM: S.J KATHAWALLA, J.****DATED: 18th March, 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 dated 3<sup>rd</sup> December, 2015 is on record. The Petition is today taken up for final hearing. However, none appear for the Respondents.

2. By a Loan Agreement dated 24<sup>th</sup> May, 2011 the Petitioner provided to the Respondents for the purpose of loan, a Term Loan of Rs. 30,00,000/- (Rupees Thirty Lac only) for purchasing an immovable property being Unit No. A506, 5th floor, Jaipuria Apartments, Plot No. 14, Sec-1, GH06, Crossing Republic, Ghaziabad-201 010. Upon disbursement of the loan amount, the said property was purchased by the Respondents and mortgaged in favour of the Petitioner (the mortgaged property).

The Loan amount of Rs. 30,00,000/- (Rupees Thirty Lacs Only) was repayable by the Respondents to the Petitioner with interest @ 10.25% (variable) per annum repayable within 20 years (240 months) in monthly instalments of Rs. 29,449/- per month, commencing from 9<sup>th</sup> August, 2011 and ending on 9<sup>th</sup> August, 2032 as provided in the Repayment Schedule, being Exhibit “F” to the Petition.

3. Article 7 of the Loan Agreement provides for the events of default and remedies of the Petitioner and Article 12.11 provides for arbitration. There has been a default on the part of the Respondents and the Respondents have failed to pay to the Petitioner the sum of Rs. 30,00,000/- (Rupees Thirty Lac Only), and as on 4th June, 2015, a sum of Rs. 33,44,518/- (Rupees Thirty Three Lakh Fourty Four Thousand Five Hundred Eighteen Only), is due and payable by the Respondents. The Petitioner therefore invoked the Arbitration clause in the Agreement.

4. In the present Petition, the Petitioner has sought injunction, disclosure and appointment of the Court Receiver, High Court Bombay as the Receiver of the mortgaged property, more particularly described in Exhibit “B” to the Petition. The Respondents are not present before the Court today. 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 said mortgaged property. The appointment of the Receiver is

necessary in order to ensure that the said mortgaged property 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 is appointed as Receiver in respect of the said mortgaged property, more particularly described in Exhibit “B” to the Petition, with direction to take forcible physical possession of the said mortgaged property with police assistance, if required, and without any prior notice to the Respondents;

(ii) The Court Receiver shall within a period of two weeks after taking possession, give an option to the Respondents, in writing to act as an agent of the Receiver in respect of the said mortgaged property. The Respondents shall be given two weeks’ time by the Court Receiver from the date of receipt of the Court Receiver’s communication/letter to exercise such an option. In the event of the respondent/s being desirous of acting as agents of the Receiver, they shall be appointed as agents of the Receiver, subject to deposit of security and payment of royalty. The Receiver shall determine the quantum of security and having royalty regard to the terms and conditions in the Loan Agreement (Exhibit “D” to the Petition);

(iii) In the event that the Respondents do not communicate their willingness to the Receiver to act as agents within a period of two weeks from the date of receipt of the communication from the Court Receiver, it would be open to the Petitioner to apply to the Court for further orders;

(iv) There shall also be an interim injunction restraining the Respondents from disposing of, alienating, encumbering, and parting with possession or creating any third party rights in respect of the mortgaged property described in Exhibit “B” to the Petition.

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

6. All concerned to act on an ordinary copy of this order, duly authenticated by the learned Associate of this Court.

7. The Arbitration Petition is accordingly disposed off.

**(S.J.KATHAWALLA, J.)**