

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COURT RECEIVER'S REPORT NO. 292 OF 2016
IN
CHAMBER SUMMONS (L) NO. 692 OF 2016
IN
ARBITRATION PETITION NO. 621 OF 2014

Tata Capital Housing Finance Limited

... Petitioner

Versus

Mr. Anjaneyulu Manikonda & Ors.

... Respondents

Mr. Mayur Khandeparkar a/w Ms. Radhika Dixit i/b MDP & Partners for the Petitioner.

None appeared for the Respondents.

CORAM: S.J. KATHAWALLA, J.

DATE: 9th August, 2016

P.C.

1. By an ad-interim order dated 31st May, 2013 passed by this Court, the Court Receiver, High Court, Bombay was appointed as a Receiver in respect of mortgaged property as more particularly described at EXHIBIT "E" to the Arbitration Petition with a direction to appoint the 1st Respondent or occupants of the said property as agent on usual terms and conditions including payment of royalty and on furnishing security.

2. However, the Court Receiver could not implement the order as neither the Respondents nor its representatives were present at the time when the Court Receiver fixed an appointment to take possession of the mortgaged property. Thereafter, this Court by order dated 6th January, 2015, after recording the fact that the Respondents have not appeared, passed an order confirming the order of appointment of Court Receiver with a further direction to take physical possession of the mortgaged property, with police assistance, if required and without any prior notice to the Respondents. Pursuant thereto, the Court Receiver took forcible possession of the mortgaged property on 23rd February, 2015 with police assistance and filed its Report dated 2nd March, 2015. The Court Receiver, High Court, Bombay thereafter by its letters dated 30th March 2015, inter alia called upon the Respondent in terms of Clause (ii) of the order dated 6th January 2015, if they were desirous of acting as agents of the Receiver in respect of the mortgaged property. However, the said letters returned with a remark "Not Claimed".

3. Thereafter, the Petitioner issued a notice dated 12th January, 2016 upon the Respondents under section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act, 2002") after which, the Petitioner took out a Chamber Summons for seeking discharge of the Court Receiver, which was allowed vide Order dated 16th April, 2016 thereby, directing that the Court Receiver, High Court, Bombay be discharged without passing accounts.

4. The Petitioner states that 60 days have elapsed from the date of the notice under Section 13(2) of SARFAESI Act, 2002 and accordingly, the Petitioner has taken symbolic possession of the mortgaged property on 19th April 2016 under Section 13(4) of SARFAESI Act, 2002 and possession notices have been pasted on the walls of the mortgaged property. The Petitioner states that the Respondents are absconding since the filing of the captioned Arbitration Petition and have not appeared before this Court despite notices and newspaper publications, which records about various orders passed by this Court in the Arbitration Petition.

5. The Petitioner therefore seeks a direction that the Court Receiver be directed to hand over physical possession of the mortgaged property to the authorized officer of the Petitioner having regard to the aforesaid measure under Section 13(4) of the SARFAESI Act, 2002, having been taken by the Petitioner.

6. Having regard to the aforesaid facts, I am satisfied that the physical possession of the mortgaged property is required to be handed over to the authorized officer of the Petitioner in view of the fact that the Petitioner has already taken measure under Section 13(4) of the SARFAESI Act, 2002. Accordingly, I pass the following Order:

(i) The Court Receiver, High Court, Bombay is hereby directed to forthwith hand over possession of the mortgaged property to the authorized officer of the Petitioner.

- (ii) The Court Receiver's Report is disposed off in the aforesaid terms.

{S.J. KATHAWALLA, J.}