

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.1318 OF 2015**

CholaMandalam Investment & Finance

Company Ltd

...Petitioner

Versus

Sunil KalyanParkar&Anr.

...Respondents

Adv.Sandesh Godse i/by M/s. Vivek Patil & Associates for the Petitioner.

None for Respondents.

CORAM: S.J.KATHAWALLA, J.

DATE: 18th March, 2016

P.C.

1. This Petition is filed by the Petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 seeking reliefs as prayed against the Respondents. The Arbitration Petition is served on the Respondents and an affidavit proving service is on record. The Petition is today taken up for final hearing. None appear for the Respondents.

2. By an Agreement for Loan against Property dated 29.11.2010 the Petitioner had provided loan of Rs. 90,00,000/- to the Respondents against the security of property situated at Flat No. 502 admeasuring 835 square feet (built up area), C wing on the 5thFloor in the complex known as Krishna Enclave belonging to Krishna Galaxy (SRA) Co-operative Housing Society Limited constructed on land bearing CTS No. 190 to 426, 795 to 799 situated at Village KoleKalyan, Taluka Bandra, District- Mumbai, Dutta Mandir Road, Near

Vakola Bridge, Santacruz (East), Mumbai – 400 055, more particularly described in Exhibit-F to the Petition (“the said Property”). By a Deed of Equitable Mortgage the said property was mortgaged with the Petitioner by the Respondents.

3. The Loan amount of Rs.90,00,000/- was repayable by the Respondents to the petitioner with interest @ 12.25% per annum in 132 equated monthly installments commencing from 05.01.2011 and ending on 06.01.2022. Therefore, the aggregate amount payable by the Respondents to the petitioner under the loan agreement was Rs. 1,64,25,684/-.

4. Clause 10 of the agreement provides for the events of default; and Clause 26 provides for Arbitration. There has been a default on the part of the Respondents. The Respondents were liable to pay to the Petitioner a sum of Rs. 77,16,306.69/- as on 10.06.2015. The Petitioner therefore invoked the arbitration clause in the agreement dated 29.11.2010.

5. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as Receiver of the said mortgaged property more particularly described in Exhibit-F to the Petition. In absence of any defence or contest by the Respondents, the averments contained in Petition have remained uncontroverted. I see no reason why the statement/submissions made by the Petitioner in the Petition should not be accepted. Section 9 empowers the Court to pass an interim measure of protection. Since Respondents have defaulted in repayment of the outstanding dues, it is necessary to safeguard the interest of the Petitioner by appointing the Court Receiver as a Receiver of the said property. The appointment of the Receiver is necessary in order to ensure that the said property is not transferred 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 property i.e. Flat No. 502 admeasuring 835 square feet (built up area), C wing on the 5th Floor in the complex known as Krishna Enclave belonging to Krishna Galaxy (SRA) Co-operative Housing Society Limited constructed on land bearing CTS No. 190 to 426, 795 to 799 situated at Village Kolkalyan, Taluka Bandra, District-Mumbai, Dutta Mandir Road, Near Vakola Bridge, Santacruz (East), Mumbai - 400 055, more particularly described in Exhibit - F to the Petition with direction to take possession of the same 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 symbolic possession, give an option to the respondent in writing to act as agents of the Receiver in respect of the said property described in Exhibit - F to the Petition. 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 option. In the event of the Respondents being desirous of acting as agents of the Receiver, they shall be appointed as agents of the Receiver, subject to security and royalty. The Receiver shall determine the quantum of security and royalty having regard to the terms and conditions contained in the Agreement for Loan. (Exhibit A 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 including attachment and sale of said property described in Exhibit - F to the Petition through Public treaty;

(iv) There shall be an interim injunction restraining the Respondents from alienating, encumbering, parting with possession or creating any third party rights in respect of the said property namely Flat No. 502 admeasuring 835 square feet (built up area), C wing on the 5th Floor in the complex known as Krishna Enclave belonging to Krishna Galaxy (SRA) Co-operative Housing Society Limited constructed on land bearing CTS No. 190 to 426, 795 to 799 situated at Village Kolkalyan, Taluka Bandra, District- Mumbai, Dutta Mandir Road, Near Vakola Bridge, Santacruz (East), Mumbai - 400 055, more particularly described in Exhibit - F to the Petition.

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

7. The Arbitration Petition is accordingly disposed of.

(S.J.KATHAWALLA, J.)