IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
REVIEW PETITION (L) NO.18 OF 2016
IN
ARBITRATION PETITION NO.654 OF 2016

Bharat Mithalal Nagori ... Petitioner
and
Tata Capital Financial Service Ltd. and Ors. ... Respondents

Mr. Pankaj J. Das, for Petitioner/Respondent No.4.
Mr. Nilesh Gala i/by M/s. Law Square, for Respondents.
Representative of Court Receiver, present.

CORAM: S.J. KATHAWALLA, J.
DATE: 22nd AUGUST, 2016

P.C.:

1. Mentioned. Not on board. Taken on board.

2. Tata Capital Finance Service Ltd. (Lender) had sanctioned a loan of Rs.6,75,00,000/- for purchase of immovable property in favour of Shri Bharat Mithalal Nagori (borrower). The said Loan amount was repayable by the borrower to the Lender with interest @ 11.85% p.a (variable) in 120 monthly instalments of Rs.9,68,625/- each. A Loan Agreement dated 12.6.2013 was executed between the Lender and the borrower. The borrower has also created a mortgage of the property i.e. House No.2421, Ground Floor and Basement Showroom, East Street Galleria, Gen Thimaya Road, Contonment, Pune-411001, more particularly 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 13.6.2013 in favour of the Lender. The borrower defaulted in the timely repayment of the said loan and thus the Lender through its Advocates' Notice dated 22.1.2016 recalled the entire loan as per the terms of the said Agreement. By the said Notice, the Lender invoked the arbitration clause in the said Agreement. The Lender thereafter filed the above Arbitration Petition under Section 9 of the Arbitration and Conciliation Act, 1996 seeking protective relief/s. In the Petition, the Lender inter alia submitted that as on 24.02.2016 a sum of Rs.6,42,49,411/- (Rupees Six Crores Forty Two Lakhs Forty Nine Thousand Four Hundred and Eleven Only) is outstanding and payable by the borrower to the Lender alongwith interest thereon @ 11.85% (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 Arbitration Petition.

3. The Petition was taken up for hearing on 28th July, 2016 when none appeared for the Respondents, despite Vakalatnama being filed by the Advocate for the Respondents. In view thereof, the Court Receiver, High Court, Bombay, was directed to take symbolic possession of the mortgaged property. The Respondents were also directed to disclose on oath the details of their personal moveable and immoveable un-encumbered and encumbered assets/ properties.

4. Since the Court Receiver has now fixed his visit on 23-08-2016 to take

symbolic possession of the mortgaged property, the learned Advocate for the Borrower has filed a Review Petition seeking recall of the order dated 28th July, 2016 and has today moved for urgent ad-interim relief restraining the Court Receiver to take symbolic possession of the mortgaged property. The Advocate for the Borrower admits that he was made aware of the order dated 28th July, 2016 on the very same day. However, he is unable to explain as to why an Application is made today for recall of the order i.e. after three weeks. He is also unable to explain as to why disclosure directed to be made in the order, is not made till date. He submits that the parties were trying to settle the matter. However, the Advocate for the Lender states that there were no settlement talks as alleged. The liability to pay the dues of the Lender is not denied / disputed. The Court Receiver is in any event, directed to only to take symbolic possession of the mortgaged property. In view thereof, no case for Review of the order is made out, and the Review Petition is dismissed. The Court Receiver shall therefore take symbolic possession of the mortgaged property on 23rd August, 2016 and submit his Report to this Court on 25th August, 2016 when the borrower will inform the Court whether he is desirous of being appointed as agent of the Court Receiver in respect of the mortgaged property. The borrower shall also file his disclosure affidavit on or before 25th August, 2016. Stand over to 25th August, 2016.

(S.J.KATHAWALLA, J.)