IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 1454 OF 2015

Tata Capital Housing Finance Limited ... Petitioner

Versus

Zee Enterprises & Ors ... Respondents

Mr. Mayur Khandeparkar, along with Ms. Nazneen Kotwal i/b MDP & Partners for the Petitioner.
None for the Respondents.

CORAM : S.J.KATHAWALLA, J.

DATE: 1st APRIL, 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.

2. The Petition is served upon the Respondents at the address mentioned in the cause title of the captioned Petition and an Affidavit dated 4th September, 2015 proving service as aforesaid is taken on record. However, none appear on behalf of the Respondents.

3. The Respondents have obtained a loan from the Petitioner Tata Capital Housing Finance Limited. According to the Petitioner, in the month of March, 2013, the Respondent No. 1 (Applicant) and the Respondent Nos. 2 and 3 (Co-applicants) approached the Petitioner with a request for a home loan. A loan of Rs. 93,00,000/- ("the said loan") was sanctioned by the Petitioner to the Respondents vide its Sanction letter dated 21st August, 2013 on terms and conditions mentioned therein. The said Sanction Letter has been signed by the Respondents in acceptance thereof. A loan agreement dated 31st August, 2013 (“the said agreement”) was thereafter executed by and between the Petitioner and Respondents whereunder the Respondents inter alia agreed to repay instalments on the respective due dates as stipulated therein. Article 2 of the said agreement pertains to payment of loan, interest and other charges. Article 7.1 pertains to events of default. Article 7.2 pertains to consequences in the event of default and Article 12. 10 pertains to arbitration.

4. In consideration of the loan granted by the Petitioner, the Respondents executed Memorandum dated 10th September, 2013 recording past transactions of creation of Mortgage by deposit of original Title Deeds as more particularly recorded and enumerated in the Annexure 1 thereto, thereby creating equitable mortgage in favour of the Petitioner in respect of the property being “Flat No. B-303, Door No. 81, Sarawati pura 25 ft main road, Bangalore 560 002” as more particularly set out in paragraph 4 (d) of the Petition.

5. According to the Petitioner, the Respondents have availed and utilized the home loan disbursed by the Petitioner under Loan Account No. “9196899” for Rs. 93,00,000/- repayable along with interest @ 11% p.a. in 168 monthly installments of Rs. 1,08,722/- commencing from 9th October, 2013 and ending on 9th September 2026, as more particularly set out in the said Agreement. As on 23rd June 2015, the Respondents failed and neglected to pay the monthly installments on time and there are default in respect of 17 monthly installments, aggregating to a sum of Rs. 18,48,896/- payable to the Petitioner.

6. The Respondents failed and neglected to repay the outstanding monthly installments. The aforesaid failure on the part of the Respondents to pay the outstanding monthly installments constitutes an event of default in terms of Clause 7.1 (a) of the said agreement. Despite repeated requests and reminders, the Respondents have failed to cure the defaults and make payments of the amounts due and payable under the agreement. Accordingly, on 12th November 2014, a Notice for recall was sent to the Respondents by the Petitioner's Advocates calling upon them to repay to the Petitioner a sum of Rs. 1,01,79,401/- as on 3rd November 2014 within a period of 7 days from the date of the said Notice, failing which, the said Notice be treated as Notice invoking arbitration against the Respondents and for enforcement of securities created in favour of the Petitioner. The Respondents failed to respond to the said notice thereby making it evident that the Respondents do not have any intention to pay the amounts due and payable to the Petitioner and thus the disputes, differences, claims etc., have arisen between the Respondents and the Petitioner.

7. The Petitioner has therefore sought appointment of the Court Receiver, High Court, Bombay, as a Receiver in respect of the mortgaged property described in the Schedule at Exhibit "D" to the Petition. The Respondents have not filed their affidavits in reply and are also not present before the Court. In 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 of the Act empowers the Court to pass an interim measure of protection. As 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 Court Receiver as Receiver in respect of the mortgaged property described in the Schedule at Exhibit "D" to the Petition. The appointment of Court Receiver is necessary in order to ensure that the said mortgaged property is not wasted or alienated, thereby defeating the rights of the Petitioner. Further interim injunction also needs to be granted to protect the rights of the Petitioner. The claim of the Petitioner as on 23rd June, 2015 is Rs. 1,11,00,620/- and unless adequately protected, the Petitioner may suffer irreparable harm and injury. The balance of convenience also warrants the grant of relief. Hence the following order is passed:

(i) The Court Receiver, High Court, Bombay, is appointed as Receiver in respect of the mortgaged property, more particularly described in Exhibit "D" to the Petition, with direction to take symbolic possession of the said mortgaged property with police assistance, if required.

(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;

(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, the Court Receiver shall take physical possession of the said mortgaged property and file compliance report to this Court;

(iv) 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 mortgaged property described in Exhibit "D" to the Petition.

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

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

8. The Arbitration Petition is accordingly disposed of.

{S.J. KATHAWALLA, J.}