

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.1588 OF 2015

Karvy Financial Services Ltd.

...Petitioner

v/s

Vilas Babaji Sawant & Anr.

...Respondents

*Mr. Mayur Khandeparkar a/w Omar Khaiyam Shaikh, i/b Vikas Salvi
& Associates, for the Petitioner.*

None for the Respondents.

CORAM: S.J. KATHAWALLA, J.

Date: 28th July, 2016

P.C:

1. The Petitioner has filed the present Petition u/s 9 of the Arbitration & Conciliation Act, 1996 against the Respondents seeking appointment of Court Receiver, Disclosure of assets, Injunction etc. as more particularly prayed in the the Petition. The Respondents are duly served with the proceedings but have failed to appear in the matter or file their Affidavit in Reply. The Petitioner has filed Affidavit of Service dated 22nd April, 2016.

2. The Learned Counsel for the Petitioner has submitted that pursuant to Loan Agreement both dated 30th April, 2014, the Petitioner,

as lender, had advanced a sum of Rs.50,99,207/- to the Respondents. The said amount carried an interest of 16% p.a. (floating) and that the same was to be repaid to the Petitioner by the Respondents in 120 equated monthly instalments of Rs.85,418/- each. Mr. Khandeparkar, the learned Counsel for the Petitioner submitted that as security towards repayment of this loan amount, the Respondents have mortgaged the following asset by depositing the original title deeds with the Petitioner:

“Plot No.106, Indraprastha Bunglow, Sr. No. 215/1, 218, 219 & 277/1, Hadaspur, Pune – 411 028” (Hereinafter referred to as the said Asset).

3. The Learned Counsel for the Petitioner further submitted that the Respondents had also executed undertaking and Demand Promissory Note in favour of the Petitioner to further secure the loan advanced by the Petitioner to the Respondents. The Learned Counsel submitted that the Respondents have committed persistent defaults in making the payment to the Petitioner and therefore the Petitioner terminated the Loan Agreement vide Notice dated 10th November, 2014 and recalled the entire loan amount of Rs.55,36,470 together with interest @ 3% p.a.

4. The Learned Counsel for the Petitioner submitted that since the Respondents did not come forward to make the payments, therefore the Petitioners were compelled to invoke clause 10.7 (h) of the Loan Agreement and requested Mr. B.A. Shelar to act as the Sole Arbitrator vide letter dated 24th December, 2014. The Learned Sole Arbitrator agreed to act as Arbitrator vide his letter dated 31st December, 2014 and vide letter dated 2nd January, 2015, he issued directions in the matter. Claim Affidavit is filed before the Learned Sole Arbitrator on 12th January, 2015 to which the Respondents have already filed Written Statement and that the matter is now pending before the Ld. Sole Arbitrator.

5. The Learned Counsel for the Petitioner further submitted that on one hand there is huge liability of Rs.55,00,976/- as on 3rd November, 2014 and on the other hand, the Respondents are not permitting the Learned Sole Arbitrator to proceed with the matter on the ground that settlement talks are going on. Till date, the matter is not settled by the Respondents by giving any concrete proposal. He submitted that taking advantage of the pendency of the proceedings before the Learned sole Arbitrator, the Respondents may create third party rights thus frustrating the claim of the Petitioner. Even otherwise, if the

Respondents are keen to settle the matter, they can still settle the same by filing terms before the Learned sole Arbitrator.

6. In the present Petition, the Petitioner has sought appointment of Court Receiver, High Court as the Receiver of the Asset, more particularly described in paragraph 6 of the Petition. The Respondents have neither appeared nor filed their Affidavit in Reply, though served. In the absence of any 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. As the Respondents have defaulted in repaying the outstanding dues, it is just and necessary to safeguard the interest of the Petitioner by appointing the Court Receiver as the receiver of the said Asset. The appointment of the Receiver is necessary in order to ensure that the said Asset is not wasted or alienated, thereby defeating the rights of the Petitioner. Further interim relief in terms of prayer clause (c) and (e) also needs to be granted to protect the rights of the Petitioner. The claim of the Petitioner is over Rs.55 Lakhs as of today and unless adequately protected, the Petitioner will suffer irreparable harm, and injury. Balance of convenience also

warrants the grant of relief. Section 9 empowers the court to pass an interim measure of protection. Hence the following order is passed:

- a) Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver, High Court, Bombay is appointed Receiver in respect of the asset more particularly described in para 6 to the Petition, with direction to take symbolic possession of the said Asset with Police assistance, if required, and without any prior notice to the Respondents;
- b) The Court Receiver shall within two weeks after taking symbolic possession, give an option to the Respondents, in writing to act as agent of the Receiver in respect of said Asset. The Respondents shall be given two weeks time by the Court Receiver from the date of receipt of the Court Receivers communication/letter to exercise such 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 royalty having regard to the terms and conditions contained in the said Agreement (Exhibit C to both the Petition);

- c) 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 to take physical possession of the Asset with Police assistance, if required;
- d) 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 said Asset described in para 6 to the Petition.
- e) The Respondents shall also file their Affidavits disclosing all their assets, within a period of 4 weeks from the date of service of this Order.
- f) The Arbitration Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)