

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

APPEAL (L) No. 361 OF 2016
IN
ARBITRATION PETITION No. 559 OF 2016
WITH
NOTICE OF MOTION (L) No. 2864 OF 2016
IN
APPEAL (L) No. 361 OF 2016
IN
ARBITRATION PETITION No. 559 OF 2016

M/s. Senator Motors Pvt. Ltd.

...Appellants.

Vs.

Tata Capital Financial Services Ltd.

...Respondents.

AND

APPEAL (L) No. 362 OF 2016
IN
ARBITRATION PETITION No.558 OF 2016
WITH
NOTICE OF MOTION (L) No. 2868 OF 2016
IN
APPEAL (L) No. 362 OF 2016
IN
ARBITRATION PETITION No.558 OF 2016

M/s. AVK Automall Pvt. Ltd.

...Appellants.

Vs.

Tata Capital Financial Services Ltd.

...Respondents.

Mr. Sanjiv Sawant a/w. Balwendra Singh i/b. Diwakar Singh
for Appellants

Mr. Naushad Engineer a/w. Mr. Deepen Dixit i/b. MDP &
Partners for Respondents

Mr. M.S. Deshpande, Court Receiver present

**CORAM : V. M. KANADE AND
MRS.SWAPNA JOSHI,JJ.**

DATE : 14th OCTOBER, 2016

P.C. :

1 Both these Appeals can be disposed of by this common order since both the applications/petitions under section 9 were disposed of by the common order passed by the learned single Judge of this court.

2 Heard the learned counsel appearing on behalf of the Appellants and learned counsel appearing on behalf of the Respondents in both the matters.

3 The Appellants are aggrieved by the common order dated 19th September, 2016 passed by the learned single Judge in Arbitration Petition Nos. 558 of 2016 and 559 of 2016. By the said common order which was passed in applications/petitions under section 9 of the Arbitration and Conciliation Act, 1996, the learned single Judge was pleased to direct the Court Receiver to take possession of the two mortgaged

showrooms and one unit at the basement of the building and sale it in auction even before the commencement of the arbitration. Learned counsel appearing on behalf of the appellants submitted that the appellants were given conditional offer by which they were willing to sale the said shops and one unit at the basement, provided the Respondents herein accept the sale proceeds towards full and final settlement of their claim. The Respondents, however, did not accept this condition. The matter was again adjourned and further time was sought to bring prospective buyers. However, despite time being taken, the Appellants could not get prospective buyer for buying the said shops and one unit at the basement. Learned single Judge, therefore, by the impugned order directed the Court Receiver to auction the said shops. While doing so, the learned single Judge has observed that if the sale consideration is inadequate, the Court may not confirm the sale.

4 The learned counsel appearing on behalf of the Respondents submitted that though on the first date i.e. on 26th August, 2016 the conditional offer was given by the Appellants, in the subsequent orders, which were passed, no such a condition appears to have been put-forth by the Appellants herein. It is, therefore, submitted that it is not open for the Appellants to say that the conditional offer was given by them to the Respondents.

5 In our view, from the perusal of the various orders which have been passed by the learned single Judge, it is obvious that some offers were made for the purpose of finding a solution to the problem. However, since the consent terms were not filed, we are of the view that on the application/petition under section 9 of the said Act, the order of disposal of the property by auction could not have been passed. The said property, namely, two showrooms and one unit at basement has already been mortgaged and is in possession of the Court Receiver. The said property is, therefore, fully secured and protected. The Arbitration Proceedings have commenced and in the event, the Respondents succeed therein, they can very well seek direction of the court, as directed by the learned single Judge.

6 In view of the above, both the Appeals i.e. Appeal (L) No. 361 of 2016 and Appeal (L) No. 362 of 2016 are disposed of. In view of disposal of the Appeals, the Notice of Motions taken out therein i.e. Notice of Motion Nos. 2864 of 2016 and 2868 of 2016 do not survive and the same also stand disposed of accordingly.

7 All contentions of both the parties are kept open.

8 The Court Receiver shall continue to be in possession of the property. In the event, the Appellants wish

to be in the possession of the property, it shall be subject to payment of royalty and security as fixed by the Court Receiver.

(MRS.SWAPNA JOSHI,J.)

(V. M. KANADE,J.)

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