IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 250 OF 2016

IN

SUIT NO. 907 OF 2014

M/s. Mangal Credit and Fincorp Limited ... Applicant / Plaintiff

Versus

M/s. Shanti Sagar Realty India Pvt. Ltd. ... Defendant

ALONG WITH

NOTICE OF MOTION NO. 251 OF 2016

IN

SUIT NO. 907 OF 2014

M/s. Mangal Credit and Fincorp Limited ... Applicant / Plaintiff

Versus

M/s. Shanti Sagar Realty India Pvt. Ltd. ... Defendant

Mr. Vishal Kanade a/w. Mr. P.D. Jain i/b. P.D. Jain and Company for the Applicant.
Mr. G.C. Singh i/b. Ms. Sweeta I. Singh for the Defendant.

CORAM : S.J. KATHAWALLA, J.
DATED : 10th FEBRUARY, 2016

P.C. :

1. The Plaintiff has advanced a loan of Rs. 3 Crores to the Defendant for development of the property described in Exhibit-A to the Plaint (the Suit property). The Deed of Mortgage executed between the Plaintiff and the Defendant inter alia provides that in the event of the failure of the Defendant mortgagor to repay the entire dues to the Plaintiff within the stipulated period i.e. on or before 16th August, 2013, the Plaintiff mortgagee shall be entitled to enter into possession of the

mortgaged premises and have rights to sell, transfer or assign the mortgage premises. The deed of mortgage further provides that the mortgagee (Plaintiff herein) shall be deemed to be in possession of the mortgaged premises in case of any default on the part of the mortgagor (the Defendant herein) with a right to use and occupy the same. The deed of mortgage also contains a covenant that the mortgagor shall not amalgamate, sub-divide, change the user, surrender the mortgaged premises or assign or sell the TDR / FSI of the premises in any manner whatsoever so as to affect the nature, area, layout, etc. of the said mortgaged premises or the marketability thereof.

2. Since the Defendant failed to repay the entire dues of the Plaintiff, on or before 16th August, 2013, the Plaintiff filed the above Suit on 18th September, 2014 seeking enforcement of the deed of mortgage inter alia by foreclosing the equity of redemption. Notice of Motion (L) No. 2164 of 2014 which is now numbered as Notice of Motion No. 250 of 2016 was also taken out seeking ad-interim and interim reliefs i.e. for appointment of the Court Receiver in respect of the mortgaged premises with all powers under Order 40 Rule 1 of the Code of Civil Procedure, 1908 and for an injunction restraining the Defendant from alienating, encumbering, parting with possession or creating third party rights in respect of the mortgaged premises.

3. On 25th September, 2015 the Plaintiff applied for urgent ad-interim reliefs, when the Counsel appearing for the Defendant made a statement that the Defendant shall not create any third party rights in respect of the mortgaged property or any portion thereof which statement was extended by orders dated 9th October, 2014, 30th

October, 2014, 16th December, 2014 and 12th January, 2015.

4. On 19th January, 2015, the said Notice of Motion came up for interim reliefs before S.C. Gupte, J. After hearing the parties, the learned Judge passed an order dated 19th January, 2015 inter alia setting out some of the aforesaid facts and held that "*there is practically no defence of the Plaintiff's mortgage suit*." In paragraph 3 of this order it is further recorded that "*After this Court indicated its mind, learned Counsel for the Defendant sought time to present a concrete proposal for settlement of the dispute between the parties. He seeks a longer date on the ground that his client is not available in Mumbai till 6th February, 2015.*" The Notice of Motion was therefore directed to be placed on 10th February, 2015.

5. After obtaining several adjournments, the parties tendered in Court, Minutes of Order dated 3rd March, 2015, wherein it was recorded as under :

> *"1. The Defendant admits the claim as made by the Plaintiff in the Suit and agrees and undertakes to this Hon'ble Court to repay an amount of Rs.3,89,07,860/- (Rupees Three Crores Eighty Nine Lakhs Seven Thousand Eight Hundred & Sixty only) towards full and final settlement of the claim under the Mortgage Deed dated 17th August, 2012, as per the payment schedule given herein below :*

Installments	*Date*	*Amount (Rupees)*
1.	*On or before 20th March, 2015*	*50,00,000/-*
2.	*On or before 10th April, 2015*	*50,00,000/-*
3.	*On or before 25th April, 2015*	*50,00,000/-*
4.	*On or before 30th April, 2015*	*50,00,000/-*
5	*On or before 10th May, 2015*	*50,00,000/-*
6	*On or before 15th May, 2015*	*50,00,000/-*
7	*On or before 20th May, 2015*	*44,53,930/-*

8	*On or before 31st May, 2015*	*44,53,930/-*
	Total	*3,89,07,860/-*

2. In view of the undertaking given by the Defendant in para 1 above, this Hon'ble Court is willing to grant sufficient time, as demanded by the Defendant i.e. till 31.5.2015 to enable the Defendant to comply with such undertaking.

3. In case of default in payment of any amount as per the Schedule mentioned above and further failure to rectify such default within further grace period of three days, the Plaintiff shall be at liberty to approach this Hon'ble Court and seek an order in the above Notice of Motion in terms of the order dated 19.1.2015 passed by this Hon'ble Court in the above Notice of Motion and to adopt such other appropriate proceedings as the Plaintiff shall be entitled to.

4. The Plaintiff submits that if the Defendant repays the above amount as per the undertaking given hereinabove, the Plaintiff shall withdraw the above Notice of Motion and the Suit on the next date.

5. Place the above Notice of Motion for reporting compliance and / or for passing further orders on 8.6.2015."

6. An order in terms of the Minutes of Order was passed on 3rd March, 2015. However, the Notice of Motion No. 250 of 2016 was not disposed of and was directed to be placed on board on 8th June, 2015 for reporting compliance. The Defendant failed and neglected to pay any amount as agreed under the Minutes of Order to the Defendant. The Plaintiff thereafter also took out another Notice of Motion being No. 251 of 2016 for the reliefs claimed therein and moved this Court (Coram : Mrs. Roshan Dalvi, J.) for urgent ad-interim orders. By an ad-interim order dated 19th October, 2015, the Defendant was restrained from selling, alienating,

encumbering, creating any third party rights or parting with possession of any portion of the Suit property pending the Notice of Motion.

7. The above Notices of Motion were placed before this Court on 15th December, 2015 for final hearing, when Mr. Prakash Pawar, Director of the Defendant Company was present. The Defendant had no submission to offer but they sought time to pay the amount due to the Plaintiff. Since the Advocate for the Defendant informed the Court that in view of the orders dated 16th December, 2014 and 19th October, 2015, the Defendant is not in a position to get a Joint Venture Partner or to raise monies by creating rights in respect of the Suit property, on 15th December, 2015 this Court passed the following order :

> *"1. It is clarified that if the Defendant Company by itself or through a Joint Venture Partner deposits / pays the dues of the Applicant / Plaintiff aggregating to Rs.4.50 Crores approximately as on 4th January, 2016, the orders dated 16th December, 2014 and 19th October, 2015 will be set aside.*
> *2. By consent, the matter to be treated as 'Part Heard'.*
> *3. Liberty to apply.*
> *4. Stand over to 4th January, 2016, FOB."*

8. On 4th January, 2016, the Director of the Defendant Mr. Prakash Pawar informed the Court that the Defendant is looking out for a Joint Venture Partner and therefore some more time be given to them to make payment to the Plaintiff. In view thereof, on 4th January, 2016 this Court passed the following order :

> *"1. On instructions from Mr. Prakash Pawar, the Director of the Defendant, the Advocate for the Defendant seeks time upto 25th January, 2016. In view thereof, stand over to 25th January, 2016, FOB.*

2. Needless to add that the orders dated 16th December, 2014 and 19th October, 2015 shall continue until further orders."

9. On 1st February, 2016 the Notices of Motion were adjourned to 8th February, 2016. On 8th February, 2016 Mr. G.C. Singh, Advocate appearing for the Defendant informed the Court that the Defendant is ready with a sum of Rs.50 Lacs. This Court informed Mr. Singh that the Defendant had agreed to pay an amount of Rs. 4.50 Crores to the Plaintiff on or before 4th January, 2016. The learned Advocate for the Plaintiff submitted that if the Defendant is not willing to pay their entire dues even at this stage, they would prefer to have the Court Receiver appointed in respect of the mortgaged property with all powers under Order 40 Rule 1 of the Code including the power to sell the mortgaged property and pay the dues of the Plaintiff from the sale consideration received. However, this Court at the request of the Advocate for the Defendant granted time up to 10th February, 2016 to take instructions from the Defendant.

10. The Notices of Motion were thereafter taken up for hearing on 10th February, 2016, when Advocate Mr. Singh appearing for the Defendant again informed the Court that his client was ready with Rs.50 Lacs and shall pay the entire balance amount of approximately Rs.4 Crores within a period of eight weeks. The Application was opposed by the Advocate for the Plaintiff. However, this Court inquired from the Advocate for the Defendant whether his client, who was present in Court was willing to pay the balance amount in weekly installment of Rs.50 Lacs. The learned Advocate for the Defendant took instructions and agreed to the

suggestion made by the Court and handed over the envelope containing cheques aggregating to Rs. 50 Lacs. However, when the learned Advocate for the Plaintiff removed the cheques from the envelope, he realized that the cheques were posted dated and the Defendant had made an incorrect statement that the Defendant is ready with the payment of Rs.50 Lacs. When this Court inquired from the Advocate for the Defendant as to why the Defendant had on 8th February, 2016 informed the Court that he was ready with the payment of Rs.50 Lacs and also not only reiterated the same today, but in fact also promised a few minutes back to pay the balance amount of approximately Rs. 400 Crores in weekly instalment of Rs. 50 Lacs. However, the learned Advocate had no answer to offer.

11. In the circumstances, admittedly an amount of approximately Rs.4.50 Crores is due and payable by the Defendant to the Plaintiff. The principal amount of Rs.3 Crores with interest thereon was first due and payable on 16th August, 2013. The Defendant failed and neglected to make the said payment. The Suit was filed on 18th September, 2014. Even thereafter, the Defendant did not make any payments. It is only after S.C. Gupte, J. heard Notice of Motion No. 250 of 2016 and recorded that the Defendant has no defence to the mortgage Suit and was proceeding to pass orders as prayed in the Notice of Motion that the Defendant through their Advocate prevented the learned Judge from passing orders against them on the ground that they will give a concrete proposal to clear the outstanding dues of the Plaintiff by February, 2015. The parties thereafter filed Minutes of Order dated 3rd March, 2015 whereunder the Defendant agreed to pay an amount of Rs.3,89,07,860/- in full and final settlement of the Plaintiff's claim as set out in

paragraph 5 above. The Defendant failed to make any payment as agreed and therefore this Court commenced hearing of the above Notices of Motion on 15th December, 2015. Again this Court was requested not to pass any orders against the Defendant and time was obtained upto 4th January, 2016 to look out for a Joint Venture Partner to develop the Suit property. On 4th January, 2016 again time was sought upto 25th January, 2016, which was granted. On 8th February, 2016 an incorrect statement made before this Court that an amount of Rs. 50 Lacs is ready with the Defendant for being paid to the Plaintiff. On 10th February, 2016 i.e. today the same submission was initially reiterated and in fact the Defendant through his Advocate agreed that the balance amount of approximately Rs. 4 Crores shall be paid in weekly installments of Rs.50 Lacs within a period of eight weeks. However, when the cheques of Rs.50 Lacs were handed over to the Advocate for the Plaintiff, they realized that the same are post-dated cheques payable after 2-3 weeks. The conduct of the Defendant is therefore strongly deprecated. I am therefore satisfied that the Defendant has no intention to pay the amounts admittedly due to the Plaintiff and has repeatedly prevented the Court from passing orders by offering settlement proposals which are not genuine. As stated hereinabove, the Defendant has no defence to offer. The Defendant has by the Minutes of Order dated 3rd March, 2015 admitted its liability to pay Rs.3,89,07,860/- to the Plaintiff in full and final settlement of the Plaintiff's claim in writing. In view thereof, if the orders as prayed by the Plaintiff are not passed grave harm, loss, damage, injury and prejudice will be caused to the Plaintiff, whereas no such harm, loss, damage and prejudice shall be caused to the Defendant if the orders as prayed are passed. In view thereof, the following order is passed :

i. The Court Receiver, High Court, Bombay is appointed Receiver in respect of the mortgaged property described in Exhibit-A to the Plaint with all powers under Order 40 Rule 1 of the Code of Civil Procedure, 1908.

ii. The Court Receiver shall after taking possession of the mortgaged property obtain valuation report in respect of the same and submit his report to this Court on 29th February, 2016.

iii. The Defendant is restrained by an order and injunction from in any manner selling, alienating, encumbering, parting with possession and / or creating third party rights and / or carrying out any construction on the mortgaged property or any portion thereof.

iv. The Notices of Motion are accordingly disposed of.

(S.J.KATHAWALLA, J.)