

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION (L) NO.1731 OF 2014

L & T Finance Ltd.

..Petitioner

V/s.

Maharana Pratap Educational Centre
(Regd. Society) & Ors.

..Respondents

Shakuntala Joshi a/w Anand Poojari, Nikita Pawar, Jalpa Pithadia i/b S.I. Joshi & Co.
for Petitioner.

None for the Respondents though served. Affidavit of service filed

CORAM : S.J. KATHAWALLA, J.

DATED : 17th March, 2016

P.C.

1. The above Petition is filed by the Petitioner under section 9 of the Arbitration and Conciliation Act, 1996 seeking reliefs as prayed against the Respondents. The Petition is served on the Respondents and an Affidavit proving service dated 01.12.2014 is on record. The Petition is today taken up for final hearing. However, none appear for the Respondents.

2. By Loan Agreement dated 11th January, 2011 the Petitioner provided to the Respondent No.1 for the Purpose of Loan the Term Loan of Rs.10,00,00,000/- (Rupees Ten Crores Only) to acquire Adriel High School in

Sector 24, Rohini, Delhi and land of around 0.25 acres with 12,000 sq. ft. of constructed area at Pritampura. As more particularly described in Schedule to the Loan Agreement under the “Purpose of Loan” and Respondent No.1 also created exclusive charge by way of equitable mortgage on various lands and properties as described in Schedule under the “Details of Property Mortgage” Exclusive charge by way of equitable mortgage Land at Survey No.308 ad measuring 0.306 hectares, Survey No.315 ad measuring 0.572 hectares and Survey No.381 ad measuring 0.220 hectares situated at Baikunthpur, Ishwarigang, Kalyanpur, Bithool Road, Kanpur together with all building, constructions and appurtenances thereon and thereunder in favour of the Lender. Exclusive charge by way of equitable mortgage on land at Arazi No.2392, Area 0.295 hectares, Arazi No.239 6, Area 0.195 hectares, Arazi No.2394, Area 0.570 hectares, Arazi No.2395, Area 0.104 hectares, Arazi No.2391, Area 0.274 hectares located at Mohan Lal Ganj, Lucknow together with all building, constructions and appurtenances thereon and thereunder in favour of the Lender. These descriptions appears in Schedule to the loan agreement executed with the Petitioner being Exhibit “A” to the Petition. Apart from these securites Respondent No.1 executed Deed of Hypothecation in favour of Petitioner hypothecating fix deposit receipt of Union Bank of India for sum of Rs. 50 lacs as more particularly described in Schedule II to the Exhibit “C” to the Petition.

3. The Respondent Nos.2 and 3 guaranteed the due performance of loan agreement by the Respondent No.1 and executed Deed of Guarantee for the

performance of the said contract in favour of Petitioner being Exhibit “D” to the Petition and the Respondent No.2 executed a Deed of Undertaking for payment of any dues due to the Petitioner in event of default by the Respondent No.1 being Exhibit “E” to the Petition.

4. The Loan amount of Rs.10,00,00,000/- (Rupees Ten Crores Only) was repayable by the Respondents to the Petitioner with interest @ 13.00 % per annum repayable within 5 years (60 months) commencing from 05.02.2011 and ending on 05.01.2016 as provided in the Repayment Schedule.

5. Clause 8 of the Loan Agreement provides for the events of default; Clause 9 provides for Consequences in Events of Default and Clause 11 provides for arbitration. There has been a default on the part of the Respondents and the Respondents failed to pay to the Petitioner a sum of Rs.10,00,00,000/- (Rupees Ten Crores Only) as on 14th July, 2014 sum of Rs.6,55,09,687/- is due and payable by the Respondents. The Petitioner therefore invoked the arbitration clause in the Agreement.

6. In the present Petition, the Petitioner has sought injunction, disclosure and appointment of the Court Receiver, High Court Bombay as the Receiver of the mortgaged property, more particularly described in Exhibit “H” to the Petition. The Respondents are not present before the Court today. I see no reason why the statements/submissions made by the Petitioner in the Petition should not be accepted. Section 9 empowers the Court to pass interim measures of

protection. Since 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 the Court Receiver as Receiver of the said mortgaged property. The appointment of the Receiver is necessary in order to ensure that the said mortgaged property is not wasted or alienated, thereby defeating the rights of the Petitioner. Hence, the following order:

- (i) Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver is appointed as Receiver in respect of the said mortgaged property, more particularly described in Exhibit “H” to the Petition, with direction to take forcible physical possession of the said mortgaged property with police assistance, if required, and without any prior notice to the Respondents;
- (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. The Receiver shall determine the quantum of security and having royalty regard to the terms and conditions contained in the Loan Agreement (Exhibit “A” to the Petition);

(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, it would be open to the Petitioner to apply to the Court for further orders;

(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 "H" to the Petition.

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

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

9. The Arbitration Petition is accordingly disposed off.

(S.J. KATHAWALLA, J.)