IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 292 OF 2016

Tata Capital Housing Finance Limited … Petitioner

Versus

Irfan Ahmed Shariff & Anr. … Respondents

Ms. Nazneen Kotwal a/w Ms. Radhika Dixit i/b MDP & Partners for the Petitioner.
None for the Respondents.

CORAM : S.J.KATHAWALLA, J.
DATE: 21st 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 21st March, 2016 proving service as aforesaid is taken on record. The Petition is taken up for final hearing. However, none appear for 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 February, 2013, the Respondent No. 1 being the Applicant and the Respondent No. 2 being the Co-applicant had approached the Petitioner with a request for a home loan. A loan of Rs. 2,00,00,000/- ("the said loan") was sanctioned in favour of the Petitioner to the Respondents vide its Sanction letter dated 29th March, 2013 on terms and conditions mentioned therein. The said Sanction Letter has been signed by the Respondents in acceptance thereof. A loan agreement dated 30th March,2013 ("the said agreement") was thereafter executed by and between the Petitioner and Respondents whereunder the Respondents inter alia agreed and undertook that in case of delay in payment of the loan installments or interest or any other monies on the respective due dates as stipulated therein, the Respondents shall pay overdue interest at the rate of 1.5% per month over and above the prevailing interest rate on the aforesaid overdue amount for the defaulted period till payment/realization and other expenses, costs, fees, charges, etc. as per Article 2.2 of the said agreement. 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 30th March, 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 on the property being "Flat No. 1128 Rama Priya, 35th Cross, 4th T Block, Jayanagar, Bangalore-560041" 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 for Rs. 2,00,00,000/- repayable along with interest @ 10.75% p.a. in 120 monthly installments of Rs. 2,72,677/- commencing from 30th March 2013 and ending on 9th March 2023 each at the relevant time, the amount of the monthly instalments varying with the interest, (the interest rate being variable during the entire tenure of the loan till full repayment). As on 21st September, 2015, the Respondents failed and neglected to pay the monthly installments on time and hence are in default in respect thereof to the tune of 2 monthly installments, aggregating to a sum of Rs. 5,41,256/- (Rupees Five Lakhs Forty One Thousand Two Hundred and Fifty Six Only) in respect of the said monthly installments being due and payable by the Respondents.

6. The Respondents failed and neglected to repay the outstanding monthly installments. The said 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. The Petitioner therefore instructed its erstwhile Advocates to issue a legal notice for recall of the entire loan and for invocation of arbitration. Accordingly, on 18th September, 2014, a Notice was sent to the Respondents by the Petitioner's erstwhile Advocates calling upon them to repay to the Petitioner a sum of Rs. 2,01,42,080/- (Rupees

Two Crores One Lakh Forty Two Thousand and Eighty Only) along with interest thereon on the aforesaid amount till payment/ realization within a period of 10 (ten) 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 and exercise all or any of the rights available to the Petitioner. The Petitioner states that on the failure on the part of the Respondents to respond to the Petitioner's requests and reminders, and repay the amounts due and payable to the Petitioner within 10 (ten) days from the date of the said Notice, it is 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 on one part and the Petitioner on the other part and in that event, the Notice to be treated as Notice under Clause 12.10 (a) of the said agreement invoking arbitration.

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 22nd September, 2015 is Rs. 1,83,81,283/- (Rupees One Crore Eighty Three Lakhs Eighty One Thousand Two Hundred and Eighty Three Only) 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) Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver is appointed as Receiver in respect of the mortgaged property, more particularly described in Exhibit "D" to the Petition, with direction to take 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 agreement (Exhibit "B" 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 "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)