

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 165 OF 2016

L & T Finance Limited

.... Petitioner

Versus

Mr. Bhavesh J.Kothar (Ahir) & Anr.

.... Respondents

Mr. Sandesh Godse a/w Ms.Sharayu Pednekar i/by M/s.Vivek Patil & Associates.,
for Petitioner.

None for 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. The Arbitration Petition is served on the Respondents and an Affidavit proving service is on record. The Petition is today taken up for final hearing. None appear for the Respondents.

2. By an Agreement dated 27th December 2013, the Petitioner had provided a loan of Rs. 20,50,000/ to the Respondent No.1 for purchase of Construction Equipment being BHL 435 BACKHOE LOADER Serial No. 1XJ435XXND0100637 bearing Chassis No. 1XJ435XXND0100637A bearing Engine No. CDEM206473 more particularly described in Exhibit – F to the Petition (“Construction

Equipment”). By the Loan-cum-Hypothecation Agreement dated 27th December 2013 the said Construction Equipment was hypothecated with the Petitioner by the Respondent No. 1.

3. The Loan amount of Rs. 20, 50,000/- was repayable by the Respondents to the Petitioner with interest @ 7.48% per annum in monthly installments commencing from 01.02.2014 and ending on 01.12.2017. Therefore, the aggregate amount payable by the Respondents to the Petitioner under the loan agreement was Rs. 26,50,800/-.

4. Clause 12 of the agreement provides for the events of default and Clause 17 provides for arbitration. There has been a default on the part of the Respondents. In view thereof, both the Respondents became liable to pay to the Petitioner a sum of Rs. 15,13,653/- as on 12.10.2015. The Petitioner therefore invoked the arbitration clause in the Agreement dated 27th December 2013.

5. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as Receiver of the said Construction Equipment more particularly described in Exhibit – F to the Petition. In absence of any defense or contest by the Respondents, the averments contained in Petition have remained uncontroverted. I see no reason why the statement/ submissions made by the Petitioner in the Petition should not be accepted. Section 9 empowers the Court to pass an interim measure of protection. Since the Respondents have defaulted in repayment of the outstanding dues, it is necessary to safeguard the interest of the Petitioner by appointing the Court Receiver as Receiver of the said Construction

Equipment. The appointment of the Receiver is necessary in order to ensure that the said Construction Equipment 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 said Construction Equipment being BHL 435 BACKHOE LOADER Serial No. 1XJ435XXND0100637 bearing Chassis No. 1XJ435XXND0100637A bearing Engine No. CDEM206473 more particularly described in Exhibit - F to the Petition, with direction to take possession of the same 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 agents of the Receiver in respect of the said Construction Equipment described in Exhibit-F to the Petition. 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 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 security and royalty. The Receiver shall determine the quantum of security and royalty having regard to the terms and conditions contained in the Loan -cum- Hypothecation Agreement (Exhibit A to the Petition);

(iii) In the event that the Respondents fail to communicate their willingness to the Receiver to act as agents of the Court Receiver 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 including sale of the said Construction Equipment more particularly described in Exhibit-F to the Petition by private treaty;

(iv) There shall be an interim injunction the Respondents from alienating, encumbering, parting with possession or creating any third party rights in respect of the said Construction Equipment being BHL 435 BACKHOE LOADER Serial No. 1XJ435XXND0100637 bearing Chassis No. 1XJ435XXND0100637A bearing Engine No. CDEM206473 more particularly described in Exhibit F to the Petition.

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

7. The Arbitration Petition is accordingly, disposed off.

(S.J.KATHAWALLA, J.)