

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.116 OF 2016

Tata Capital Financial Services Ltd. ... Petitioner

Versus

Khushi Embroidery Yarn & Anr. ... Respondents

Mr. Nilesh Gala i/b. Law Square for the Petitioner.

None for Respondents.

CORAM : S.J. KATHAWALLA, J.

DATED : 17th June, 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 has been placed on record. However, none appear for the Respondents. The Petition is today taken up for final hearing.

2. It is submitted on behalf of the Petitioner that by virtue of a Loan Agreement dated 22.10.2013 bearing account no. 3692157 ("said Agreement") executed between the Petitioner as the Lender, the Respondent No.1 as the Borrower and Respondent No.2 as the Co-Borrower, the Petitioner sanctioned a loan of Rs.10,00,000/- (Rupees Ten Lakhs Only) to the Respondents for expansion of their business.

3. It is submitted that as per the said Agreement, the aforesaid

Loan amount was repayable by the Respondents to the Petitioner with interest @ 20% p.a.

4. It is further submitted that the Respondents have defaulted in repayment of the said loan and thus the Petitioner through its Advocates issued a Notice dated 17.11.2015, recalled the entire loan as per the terms of the said Agreement. Also, it is submitted that vide the Notice dated 17.11.2015, the Petitioner invoked the arbitration clause in the said Agreement.

5. It is also submitted that as on 19.10.2015 a sum of Rs.4,17,167/- (Rupees Four Lakhs Seventeen Thousand One Hundred Sixty Seven Only) is outstanding and payable by the Respondents to the Petitioner with further interest @ of 36% p.a. till payment and/or realization as per the Particulars of Claim annexed and marked as "Exhibit C" to the Petition.

6. In the present Petition, the Petitioner is inter alia seeking an injunction against the Respondents from creating any third party rights in respect of the properties described in Exhibit D to the Petition, directions to the Respondents to disclose on oath the details of their personal moveable and immoveable un-encumbered and encumbered assets/properties and to furnish solvent security to this Hon'ble Court.

7. Clause 5 of the Loan Agreement provides for the events of default; Clause 6 for the rights and remedies available to the Petitioner. Clause 11 provides for Arbitration. The events of default having taken place in terms of the said Agreement, the Petitioner became entitled to recall and thus by Notice dated 17.11.2015, recalled the entire loan and

also invoked the Arbitration clause in the said Agreement. There is no reply to the Notice dated 17.11.2015.

8. The Respondents have not filed their Affidavit 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 reasons why the statements/submissions made on behalf of the Petitioner in the Petition should not be accepted. Section 9 empowers the court to pass interim measures of protection.

9. As the Respondents have defaulted in the repayment of the outstanding dues, it is just and necessary to safeguard the interest of the Petitioner. The claim of the Petitioner is over Rs.4.17 Lakhs and unless adequately protected, the Petitioner may suffer irreparable harm and injury. Balance of convenience also warrants grant of reliefs. Hence, I pass the following order;

- i. The Respondents, their agent/s, and/or any person/s claiming through or under them are restrained by an order of injunction from in any manner selling, transferring, disposing of, and/or alienating, encumbering or parting with possession or creating any third party rights in respect of the properties described in "Exhibit D".
- ii. The Respondents to file an Affidavit of Disclosure of Assets before this Hon'ble Court within a period of four weeks from the date of communication of this order and the Respondents by themselves, their servants and agents are restrained by an order of injunction

from selling, transferring, creating any charge or interest or dealing with their said assets mentioned in their said Affidavit of disclosure.

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

11. The Arbitration Petition is disposed off accordingly.

(S.J. KATHAWALLA, J.)