

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL LOD.NO.920 OF 2015

Mrs. Hena Banerjee

.. Appellant

-Versus-

Tata Capital Financial Services
Ltd. & Ors.

..Respondents

Ms. Deepti B. Mistry for appellant

Mr.Jitendra Shukla for respondent Nos. 2, 3 and 5

Mr.Nikhil Mehta i/b. KMC Legal Venture for respondent No.1.

CORAM : ANOOP V. MOHTA &
G.S.KULKARNI, JJ

DATE : 26th February 2016.

P.C.

1] This appeal is under section 37 of the Arbitration and Conciliation Act, 1996 filed by third person who was not party to the arbitration proceedings filed by petitioner- respondent herein under section 9 of the Arbitration Act. The loan amount is about 2.50 Crores. The amount is still not paid to respondent No.1. The borrower has not filed this petition. There is no challenge to the orders passed on 6th March 2014 and 16th July 2014 passed in Arbitration Petition No.605 of 2014, whereby the learned Single Judge, after considering the averments made by the parties, including the apprehension so raised and to protect

the property, as well as the amount, passed the order in terms of prayer clauses (a) and (b) of the petition, whereby Receiver has been appointed to take even forcible possession, if necessary.

2] By an order dated 16th July 2014, after noting the Receiver's report filed, this Court further appointed one Ms. Hena Banerjee (appellant herein) as agent of court receiver on usual terms and conditions and on payment of royalty and furnishing security. It is specifically mentioned that if the appellant refuses to accept the agency within the stipulated period. Thereafter, the Receiver was directed to take forcible possession of the suit premises and submit a report.

3] Learned Counsel for the respondents submitted that between the parties, as there was arbitration clause, Arbitration Tribunal has only passed an award in favour of respondent. The application for execution/enforcement of the said Award was filed in the Calcutta Court, which is pending. Therefore, taking an over all view of the matter and as admittedly no amount is secured till date and as there is no appeal filed by the original borrower, we are not inclined to entertain the appeal as no case is made out by the present appellant. However, the proceedings which are pending at Calcutta court, including execution proceedings filed by respondent No.1, need to be dealt with in accordance with law. A

statement is made by the appellant that the appellant has got interim protection in Calcutta court. Therefore, taking an over all view of the matter, there is no reason to keep this appeal pending. Accordingly, this appeal is dismissed. Interim protection shall stand vacated. No costs.

(G.S.KULKARNI, J)

(ANOOP V. MOHTA, J)