IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 443 OF 2017

Tata Capital Financial Services Ltd. ... Petitioner

Versus

Alimahammed Ismail Mahammed Shaikh ... Respondent

Mr. Nikhil Mehta instructed by KMC Legal Venture for the Petitioner.
None for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 15th DECEMBER, 2017

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 Respondent. The Petition is served on the Respondent and an Affidavit proving service has been tendered. The Petition is today taken up for final hearing. However, none appear for the Respondent.

2. By a Loan cum Hypothecation Agreement ("said Agreement") dated 29/07/2015, the Petitioner provided a loan of Rs. 12,40,000/- (Rupees Twelve Lacs Forty Thousand Only) to the Respondent for purchase of asset being VEHICLE being AUDI A4 2.0 TDI bearing Chassis No. WAUZHA8K5BY700111 and Registration No: GJ 05 CP 9500 ("said Asset") more particularly described in paragraph 2 of the Petition and on the terms described in the Loan-cum-Hypothecation Agreement dated 29/07/2015. Under the said Agreement, the said Asset was hypothecated with the Petitioner by the Respondent, as security for repayment of the Loan amount.

3. The Loan amount of Rs.12,40,000/- (Rupees Twelve Lacs Forty Thousand Only) was repayable by the Respondent to the Petitioner with interest @ 17.31% per annum in 36 monthly installments of Rs 44,400/- each.

4. Clause 17 of the Loan-cum-Hypothecation Agreement provides for the events of default; Clause 18 for the consequences of default; Clause 18.1 provides for Repossession of Asset. Clause 23 provides for Arbitration.

5. The Respondent failed to pay to the Petitioner a sum of Rs. 10,88,694/- (Rupees Ten Lacs Eighty Eight Thousand Six Hundred and Ninety Four Only) as on 04.05.2017. In view of this default the Petitioner became entitled to recall and have recalled the entire Loan as agreed in clause 18 of the Loan cum-Hypothecation Agreement. No reply is received from the Respondent to the Loan Recall Notice dated 16.01.2017. The Petitioner has yet not invoked the arbitration proceedings and is desirous of doing so and in the meantime has approached this Hon'ble Court for interim relief.

6. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as the Receiver of the hypothecated Asset, more particularly described in paragraph 2 of the Petition. The Respondent has not filed his Affidavit in Reply and is also not present before the Court. In absence of any defence or contest by the Respondent, 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. As the Respondent has 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 Hypothecated Asset. The appointment of the Receiver is necessary in order to ensure that the said Asset is not wasted or alienated, thereby defeating the rights of the Petitioner. Further interim injunction in terms of prayer clause (c) also needs to be granted to protect the rights of the Petitioner. The claim of the Petitioner is over Rs.10 lakhs and unless adequately protected, the Petitioner may suffer irreparable harm and injury. Balance of convenience also warrants the grant of relief. Section 9 empowers the Court to pass an interim measure of protection.

7. Hence, the following order is passed:

(a) Pending the hearing and final disposal of the arbitration proceedings the Court Receiver is appointed as Receiver in respect of the Hypothecated Asset, more particularly described in paragraph 2 to the Petition viz: being VEHICLE being AUDI A4 2.0 TDI bearing Chassis No. WAUZHA8K5BY700111 and Registration No: GJ 05 CP 9500, with direction to take forcible physical possession of the said Asset with police assistance, if required, and without any prior notice to the Respondent;

(b) The Court Receiver shall within a period of two weeks after taking possession, give an option to the Respondent, in writing to act as an agent of the Receiver in respect of the said Asset. The Respondent shall be given two weeks time by the Court Receiver from the date of receipt of the Court Receivers communication/letter to exercise such option. In the event of the Respondent being desirous of acting as agents of the Receiver, he shall be appointed as agent of the Receiver, subject to deposit of security and payment of royalty. The Receiver shall determine the quantum of security and royalty having regard to the terms and conditions contained in theLoan-cum-Hypothecation Agreement (Exhibit A to the Petition);

(c) In the event that the Respondent does not communicate his willingness to the Receiver to act as agent 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 Asset by private treaty;

(d) There shall also be an interim injunction restraining the Respondent from disposing of, alienating, encumbering, parting with possession or creating any third party rights in respect of the said Asset described in paragraph 2 of the Petition.

(e) A copy of this order shall be forthwith served on the Respondent by hand delivery and also by Speed Post A.D.

(f) The Arbitration Petition is accordingly disposed off.

(S.J.KATHAWALLA, J.)