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

CHAMBER SUMMONS NO.557 OF 2017
IN
ARBITRATION PETITION NO.877 OF 2015

Tata Capital Financial Services Ltd. ....Applicant/Petitioner
Vs.
M S R Varaprasad and Ors. ....Respondents

Mr. Nilesh Gala i/b. Law Square for applicant/petitioner.
Ms. Gayatri Rajvanshi, Law Officer of petitioner company present.
Mr. Nishant Sangle for respondents.
Ms. Avasare, 2nd Assistant to Court Receiver present.

CORAM : K.R.SHRIRAM, J.
DATE : 26th JULY, 2017

P.C.:

1 This chamber summons is taken out by petitioner for discharge of the Court Receiver without passing of accounts in respect of the mortgaged property.

2 It is the case of applicant/petitioner that pursuant to an order dated 17th June, 2016 passed by this Court in arbitration petition no.877 of 2015, the Court Receiver of this Court was appointed and the Court Receiver took symbolic possession of the mortgaged property.

3 Petitioner is a non banking finance corporation. Respondent nos.1 to 3 had availed a loan of Rs.1,74,00,000/- and in respect thereof, entered into a Loan Agreement dated 29th December, 2013. Respondent nos.1 to 3 also executed a Memorandum of creation of mortgage by depositing original title deeds. As respondent nos.1 to 3 committed default,

petitioner issued a notice on 3rd January, 2015 calling upon respondent nos.1 to 3 to jointly and/or severally repay the outstanding amount with further interest. As the amount was not paid, petitioner filed the said arbitration petition and the Court was pleased to dispose the said petition by appointing Court Receiver in respect of the mortgaged property.

4 In the said order, it was also recorded that in the event of respondents failing to accept or refusing to accept the agency within two weeks from the date of such offer by the Court Receiver, the Court Receiver shall take forcible possession of the said mortgaged property with the help of police. Respondents were also directed to disclose on oath details of their personal movable and immovable, un-encumbered and encumbered assets/properties.

5 It is stated that respondent nos.1 to 3 agreed to be appointed as agents of the Court Receiver and they were appointed as agents of the Court Receiver. The counsel for petitioner states that respondent nos.1 to 3 have not paid the amount of royalty as fixed in the agency agreement or even ad-hoc amount. Mr. Sangle, counsel for respondents states that the Court Receiver is yet to fix the royalty amount and therefore, no amount has been paid.

6 The applicant has now approached this Court for discharge of the Court Receiver because applicant has now been notified as “Financial

Institution" under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) by the notification dated 5th August, 2016 issued by the Ministry of Finance. It is the case of applicant that they had commenced arbitration proceedings and they already have an Award against respondents. It is stated that the Award was published by the sole Arbitrator on 12th September, 2016 and the Award has not been challenged under Section 34 of the Arbitration and Conciliation Act, 1996.

7 Mr. Gala states that respondents had also participated in the arbitration proceedings. Mr. Sangle states that the earlier Advocate was handling the arbitration proceedings and has participated but the Award was ex-parte. I fail to understand if respondents had participated in the arbitration proceedings, how the Award could be ex-parte.

8 Be that as it may, there is an Award against respondent nos.1 to 3. Petitioner has, now being notified as a financial institution, already initiated proceedings under SARFAESI Act against respondent nos.1 to 3.

9 The counsel for petitioner states that since 2015 not a penny has been paid by respondent nos.1 to 3 to discharge the loan liability. The counsel for petitioner states that petitioner feels the remedy available under the SARFAESI proceedings will be quicker and more effective than continuing with the appointment of Court Receiver and fixing the royalty

amount to be paid by respondent nos.1 to 3 because respondent nos.1 to 3 has not shown any inclination to pay any amount since almost two years. It should also be noted that admittedly copy of the chamber summons has been served upon respondent nos.1 to 3 on 2nd June, 2017.

10 Mr. Sangle, counsel for respondents states that the chamber summons was served only by email and no hard copy was served. In my view, if respondent nos.1 to 3 have received the chamber summons and affidavit in support by email itself is enough and respondent nos.1 to 3 should have filed reply to the chamber summons within a reasonable period. More than six weeks have passed and no reply opposing the chamber summons has been filed.

11 In the circumstances, the chamber summons is allowed and accordingly disposed in terms of prayer clause – (a).

12 The Law Officer and authorised signatory of petitioner, who is present in court, through Mr. Gala, counsel for petitioner, undertakes to pay whatever the charges are required to be paid to the Court Receiver within two weeks of receiving a communication from the Court Receiver. Undertaking accepted.

(K.R. SHRIRAM, J.)