

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

ARBITRATION PETITION NO. 576 OF 2017

TATA Capital Financial Services Ltd.	.. Petitioner
Vs.	
Paramjit Kaur and Dalip Singh Dhillon	.. Respondents

Mr.Nilesh Gala i/b Law Square for petitioner.
None for respondents.

CORAM : K.R.SHRIRAM, J.
DATE : 29TH NOVEMBER 2017

P.C.

1 Petitioner has moved this application under Section 9 of the Arbitration and Conciliation Act, 1996 to restrain respondents from creating any third party rights with respect to the mortgaged property.

2 It is the case of petitioner that respondents had applied for loan against mortgage of property. Petitioner had sanctioned loan for an amount of Rs.43 lakhs to be repaid along with 12% per annum in 120 monthly installments of Rs.61,693/- each. Respondents have also signed all other documents required. It is stated in the petition that respondent committed a default in repayment of EMI. By a notice dated 22nd October 2016, petitioner called upon respondents to repay the entire loan.

3 Petition has been lodged on 24th July 2017. There is nothing on record to state why between 22nd October 2016 till 24th July 2017, petitioner did not move this application. There is nothing on record to show as to why petitioner could not have commenced arbitration proceedings and moved the learned Arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996. Admittedly, the title documents relating to the property which is mortgaged is, also with petitioner. It should be remembered that Section 9 of the Arbitration and Conciliation Act, 1996 cannot be used by parties as in this case even if there is no urgency in the matter as that would defeat the purpose of having provisions like Section 17 of the Arbitration and Conciliation Act, 1996. No case for grant of relief under Section 9 is made out.

4 Petition dismissed.

At the same time, petitioner may commence arbitration proceedings and apply to the learned Arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996 who shall hear the application and dispose of the same being uninfluenced by the observations made hereinabove.

(K.R. SHRIRAM, J.)