

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1238 OF 2015

Tata Capital Financial Services Limited	...Petitioner
<i>Versus</i>	
M/s. Kalika Motors And Ors.	...Respondents

Mr.Shavez Mukri with Ms.Shilpa Upadhyay i/b. India Law, for the
Petitioner.

CORAM : G.S.Kulkarni, J.

DATE : 28th August, 2017

P.C. :

1. Heard the learned Counsel for the petitioner.
Respondents though served, are not appearing.

2. Learned Counsel for the petitioner states that the respondents are served. Affidavit of service dated 4 May 2016 is placed on record. The only relevant prayer as being prayed by the petitioner is prayer clause (d) which is against Punjab National Bank who is not a party to the arbitration proceeding and a third party as far as this proceeding is concerned.

3. Subsequent to the publication of the E-Auction Notice, the petitioners became aware of the E-Auction notice in respect of the

properties mortgaged by respondent nos.1 to 3 to respondent no.5. The E-Auction notice dated 8 January 2015 is published in newspaper Dainik Bhaskar at Jabalpur. The contention of the petitioner is that the total claim of the petitioners at the time of filing of the petition is about Rs.46 lakhs and any amount which would remain in excess with respondent No.5 after the E-auction is completed, be brought by respondent no.5 to this Court so as to protect the interest of the petitioners in the pending arbitration proceedings.

4. Admittedly, this petition is pending since 2015. Learned Counsel for the petitioners on taking instructions would submit that the arbitration proceedings are in progress, and the respondents are not appearing in the arbitration proceedings. It is thus clear that there is no contest to the claim of the petitioners before the Arbitral Tribunal.

5. Considering the facts and circumstances of the case and the only prayer which is pressed is against respondent no.5 who has no privity with the petitioner in the transaction in question, which is only between the petitioners and respondent nos.1 to 3, and that E-auction which was undertaken in January,2015 stands concluded,

the issue in regard to the same cannot be gone into in these proceedings at this stage. In any case, it is too late in time for the petitioners to urge for this relief. The petitioners would be entitled to the execution of any award passed by the Arbitral Tribunal in a procedure known to law. All contentions of the petitioners in that regard are always open entitling them to secure the decretal amount in the execution proceeding, if any, to be adopted by the petitioner.

6. With these observations, the petition is disposed of. No costs.

[G.S.Kulkarni, J.]