IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.842 OF 2018

Tata Capital Financial Services Ltd. ... Petitioner
versus
Pooja Anil Ganatra & Anr ... Respondents

Mr. Nikhil Mehta i/b. KMC Legal Venture for the Petitioner.
None for Respondents.

CORAM: S.J. KATHAWALLA, J.

DATE: 27th SEPTEMBER, 2018

P.C.:

1. The Petition is filed by the Petitioner under section 9 of the Arbitration and Conciliation Act, 1996 seeking reliefs as prayed against the Respondents. The Petition is served on the Respondents and an Affidavit proving service has been placed record. However, none appear for the Respondents. The Petition is today taken up for final hearing.

2. 2. It is submitted on behalf of the Petitioner that by Sanction Letter dated 21.04.2016, the Petitioner had granted a loan of Rs.67,43,236/- (Rupees Sixty Seven Lacs Forty Three Thousand Two Hundred and Thirty Six Only) in favour of the Respondents against mortgage of property being Plot No:102, Jai Badrinath Gruha Nirman Shakari, Sanstha, Maryadit, Shri Sidheswar Nagar,Khasra No:22/2 - K & G, City Survey No:67, Sheet No: 374/24, P.H. No: 34(A) Mouza-Dighori, Tah& District Nagpur-440034 (“said mortgaged property”). The said Loan amount was repayable

by the Respondents to the Petitioner with interest @ 13.65% p.a (variable) in 144 monthly installments of Rs.92,689/- each.

3. 3. A Loan Agreement dated 21.04.2016 ("said Agreement"), was executed between the Petitioner as the Lender and the Respondents as the Borrowers of the Loan. The Respondents have also created a mortgage of the property described in "Exhibit D" in favour of the Petitioner by depositing the title deeds and executing a Memorandum Recording creation of Mortgage by Deposit of Title Deeds dated 27.04.2016 in favour of the Petitioner.

4. It is submitted on behalf of the Petitioner that the Respondents defaulted in the timely repayment of the said loan and thus the Petitioner through its Advocates' Notice dated 15.02.2018 recalled the entire loan as per the terms of the said Agreement.

5. It is also submitted that as on 08.06.2018 a sum of Rs.68,93,110/- (Rupees Sixty Eight Lacs Ninety Three Thousand One Hundred and Ten Only) is outstanding and payable by the Respondents to the Petitioner along with interest thereon @ 13.65% (variable) per annum and additional interest @ 2% per month on the overdue amount for the defaulted period till payment/ realisation as well as other expenses, costs, fees, charges, etc as per the Particulars of Claim annexed and marked "Exhibit F" to the Petition.

6. In the present Petition, the Petitioner is interalia seeking an injunction

against the Respondents from creating any third party rights in respect of the mortgaged property and directions to the Respondents to disclose on oath the details of their personal movable and immovable un-encumbered and encumbered assets/ properties and appointment of the Court Receiver, High Court Bombay as the Receiver of the mortgaged property.

7. The Respondents have not filed their Affidavit in Reply and are also not present before the Court. In absence of any defense or contest by the Respondents, the averments contained in the Petition have remained uncontroverted. I see no reasons why the submissions made on behalf of the Petitioner should not be accepted.

8. Clause 11.2 of the said Agreement provides for the events of default; Clause 11.3 provides for notice on happening of events of defaults and Clause 12.18 provides for Arbitration. The events of default having taken place in terms of the said Agreement, the Petitioner became entitled to recall the loan and thus by Notice dated 15.02.2018 recalled the said loan. There is no reply to the Loan Recall Notice dated 15.02.2018.

9. As the Respondents have defaulted in repayment of the outstanding dues, it is just and necessary to safeguard the interests of the Petitioner. The claim of the Petitioner is over Rs.68 lakhs and unless adequately protected, the Petitioner may suffer irreparable harm and injury. Balance of convenience also warrants the grant of reliefs.

10. Hence, the following order is passed :

"(i) Pending the final hearing and disposal of the arbitration proceedings the Court Receiver, High Court, Bombay is appointed as Receiver in respect of the said mortgaged property described in "Exhibit D" to the Petition, with direction to take symbolic possession of the said mortgaged property and appoint the Respondents as their agents in respect of the said mortgaged property on usual terms,conditions and payment of royalty as may be fixed by the Court Receiver and on furnishing security having regard to the terms and conditions of the Loan Agreement(Exhibit B to the Petition).

(ii) In the event of the Respondents failing to accept or refusing to accept the agency within two weeks from the date of such offer by the Court Receiver, then it would be open to the Petitioner to apply to the court for further orders.

(iii) The Respondents shall disclose on oath the details of their personal movable and immovable un-encumbered and encumbered assets/ properties.

(iv) Until the Court Receiver, High Court, Bombay takes possession of the said mortgaged property, the Respondents, their agent/s, and/or any person/s claiming through or under them are restrained by an order of injunction from in any manner selling, transferring, disposing of, and/or alienating, encumbering or parting with possession of, or creating any right in respect of the said mortgaged property described in "Exhibit D".

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

(vi) The Arbitration Petition is disposed off accordingly.

(S.J.KATHAWALLA, J.)