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

ARBITRATION PETITION NO.1191 OF 2018

Tata Capital Financial Services Ltd. ..Petitioner
Vs.
Mohit Sethi & Ors. ..Respondents

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

CORAM : G.S. KULKARNI, J.

DATE : 6th DECEMBER, 2018

P.C.:

Heard learned Counsel for the petitioner. Despite service, respondents have not entered appearance.

2. Learned Counsel for the petitioner states that the respondents are served and placed on record an affidavit of service to that effect. The details of the service are given in the affidavit of service.

3. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, "the Act"). The petitioner is a non-banking finance company. A loan for an amount of Rs.70,20,000/- was granted to the respondents for purchase of a residential property under a loan agreement dated 30 August 2016. The case of the petitioner is

that there was a default on the part of the respondents in making payment of installments. The petitioner accordingly issued a notice dated 10 March 2018 terminating the loan agreement and recalling the loan. This notice was not replied. The case of the petitioner is that as on 16 October 2018, an amount of Rs.66,48,847/- with interest was due and payable by the respondents to the petitioner.

4. The agreement in question provides for an arbitration clause being clause 12.18. Learned Counsel for the petitioner states that the petitioner shall be invoking the arbitral process by appointing an arbitrator to adjudicate the disputes and differences between the parties.

5. The present petition is filed seeking reliefs which are in the nature of interim measures pending the arbitration proceedings. There are several reliefs which are prayed for. As the respondents are not appearing in this petition, the averments as made in the petition have remain uncontroverted. Considering the averments as made in the petition and the nature of agreement between the parties, it would be appropriate that at this stage an interim protection is granted to the petitioner in terms of prayer clause (b) which reads thus:-

> "(b) The Respondents, by themselves, their servants and/or agents be restrained from dealing, selling, alienating, disposing and/or creating third party rights in respect of the mortgaged property located at and being #1202, St.No: Brahmpuri, Ludhiana, Punjab- 141 003 (more particularly

> described in the list annexed and marked as Exhibit D hereto) in any manner whatsoever and an order of permanent injunction be passed in that regard in favor of the Petitioner herein."

6. Ordered accordingly.

7. It is further directed that the petitioner shall invoke arbitration which be done within a period of 3 weeks from today. Needless to observe that if the respondents so desire, they would be at liberty to move an application under Section 17 of the Act for such appropriate orders including praying for vacating of this order.

8. The petitioner is also at liberty to move necessary application before the learned Arbitrator under Section 17 of the Act for any further reliefs. All contentions of the parties in regard to any such reliefs and merits of the matter are expressly kept open.

9. The arbitration petition is disposed of in the above terms. No costs.

[G.S. KULKARNI, J.]