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

COMMERCIAL ARBITRATION PETITION NO.854 OF 2018

Reliance Commercial Finance Limited	..Petitioner
Vs.	
Shree Raj Mahal Jewellers Private Limited & Ors.	..Respondents

Mr.Kishore Shriyan for Petitioner.
Mr.Raghavan Sarathy with Mr.Tejas Luniya, i/b. Thodur Law Associates
for Respondents.
Mr.D.R. Shetty, Court Receiver.

CORAM : G.S. KULKARNI, J.

DATE : 21st JANUARY, 2019

P.C.:

In this petition under Section 9 of the Arbitration and Conciliation Act, 1996, this Court had passed an order on 6 July 2018 in the following terms:-

“8. 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.1.33 Crores (Approximately) and unless adequately protected, the Petitioner may suffer irreparable harm and injury. Balance of convenience also warrants the grant of reliefs. Hence, the following order is passed.

- i. The Court Receiver, High Court, Bombay is appointed as Receiver in respect of the said mortgaged property i.e. property bearing No.2202 Plot / Khasra No.548, Block J, Gali Nos. 63 and 64 Plot No. 29, Naiwala Karol Baugh, Third Floor, New Delhi - 110005, 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, the Court Receiver shall take forcible possession of the said mortgaged property with the help of the police assistance if required and without any further notice to the Respondents. Thereafter, it would be open to the Petitioner to apply to the court for further orders including sale of the said mortgaged property by private treaty.

iii. Further, if it is found that the said mortgaged property is in occupation of any third party, i.e. other than the Respondents, then the Court Receiver shall take symbolic possession of the said mortgaged property and make a report to this Court.

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

v. 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 rights in respect of property bearing No.2202 Plot / Khasra No.548, Block J, Gali Nos. 63 and 64 Plot No. 29, Naiwala Karol Bagh, Third Floor, New Delhi – 110005.”

2. In pursuance of the above order, the Court Receiver has taken symbolic possession of the property as described in paragraph 8(i) of the above order on 30 August 2018. The Court Receiver informs that the respondents were called upon to execute an agency agreement however, the respondents had not come forward and therefore the further course of action was to take further steps as directed by this Court in paragraph 8(ii) of the above order, that is to take forcible possession of the

mortgaged property. It was also open for the petitioner to apply to the Court for further orders including sale of the mortgaged property by private treaty. Though there is delay on the part of the respondent to enter into an agency agreement with the Court Receiver, learned Counsel for the petitioner states that his client is ready and willing to enter into an agency agreement. Accordingly, it is directed that the respondents shall enter into an agency agreement with the Court Receiver within a period of two weeks from today.

3. Needless to observe that if the respondents fail to enter into an agency agreement, it will be open to the Court Receiver and learned Counsel for the petitioner to proceed further in terms of the order dated 6 July 2018 passed by this Court.

4. Considering the provisions of Section 9(2) of the ACA, it is imperative that as interim protection is granted by this Court by the above order dated 6 July 2018, steps were required to be taken by the petitioner for appointment of an arbitral tribunal.

5. Learned Counsel for the parties have now agreed for appointment of Mr.R.S. Bhandurge, Advocate, as an arbitrator to adjudicate the disputes and differences between the parties. The learned arbitrator

before fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this petition with a copy to be forwarded to both the parties.

6. At the first instance, the parties are directed to approach learned arbitrator at a mutually convenient time on 25 January 2019.

7. A perusal of the order dated 6 July 2018 would indicate that the interest of the petitioner is substantially protected. Considering the provisions of Sub-sections (2) and (3) of Section 9 of the ACA, in my opinion, in the above circumstances, this petition need not be kept pending and that it would be appropriate to dispose of this petition in terms of the order dated 6 July 2018 which shall continue to remain in operation till the disposal of the arbitration proceedings. It would be open for the parties to seek such further reliefs before the arbitral tribunal by making an application under Section 17 of the ACA.

8. Liberty to the parties to seek discharge of the Court Receiver as and when necessary.

9. Needless to observe that the Court Receiver shall take all necessary steps as required in this order and as per order dated 6 July 2018 passed by this Court.

10. The petition is disposed of in terms of the above observations however, keeping open all contentions of the parties on the merits of the matter. No costs.

[G.S. KULKARNI, J.]