

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

**COMMERCIAL NOTICE OF MOTION NO.668 OF 2017
IN
COMMERCIAL SUIT NO.731 OF 2017**

De Lage Landen Financial Service India Pvt. Ltd.Applicant/Plaintiff

Vs.

Pair Cables and Ors.

....Defendants

Mr. Charles D'souza a/w. Mr. Nikhil Rajani I/b. V. Deshpande and Company
for applicant/plaintiff.

Mr. Harsh Misra I/b. M.V. Kini and Company for defendants.

CORAM : K.R.SHRIRAM, J.

DATE : 5th MARCH 2019

P.C.:

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1 The suit has been filed seeking a decree in the sum of Rs.5,25,53,593/- with interest and to allow plaintiff to take possession of the equipment/hypothecated asset as described in the plaint and for appointment of Receiver, etc.

2 Admittedly, in the written statement filed on behalf of defendants and in the affidavit in reply to the notice of motion, it is stated that defendants have taken a loan of Rs.5,67,50,000/-. Infact defendants state that, though plaintiff do not agree, there is still an outstanding of over Rs.2,06,00,000/-. The loan had been sanctioned vide a Loan and Hypothecation Agreement dated 5th June 2015. The loan was given for purchase of a vermeer navigator horizontal directional drilling machine

alongwith all component parts, additions and accessories thereof. The loan was repayable in 48 installments as set out in page 81 of the plaint, a letter dated 12th June 2015 from plaintiff to defendant no.1. It is plaintiff's case that defendants defaulted in repayment and by a letter dated 10th May 2016, plaintiff recall the entire loan amount as per the Loan and Hypothecation Agreement dated 5th June 2015. By an email dated 13th February 2017 defendants have also admitted that they are in default.

3 In the circumstances, in my view, this is a fit case to grant prayer clause – (d) of the notice of motion which reads as under :

(d) in the alternative to prayer clause (c) above, pending the hearing and final disposal of the present suit this Hon'ble Court be pleased to appoint a Court Receiver or some other fit and proper person as a receiver of the said equipment/hypothecated asset as described in the plaint with all powers under Order XL Rule 1 of the Code of Civil Procedure, 1908, with a direction to visit the place where the said equipment/hypothecated asset is lying/situated, and to take forcible physical possession of the same from the defendants and/or the person in possession of the same with the help of the police, if necessary, and with the power to sell the same by public auction or private treaty and recover and realize the same and to pay over the net sale proceeds and/or the net realisation thereof to the plaintiff towards the satisfaction of the present claim.

4 Notice of motion accordingly stands disposed.

5 All to act on authenticated copy of this order.

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1 On or before 22nd March 2019 parties shall give inspection of documents relied upon by each other. If inspection is not given, such party

will not be permitted to rely on any document. This will not, however, prevent a party from confronting a witness of another party with any document. On or before 2nd April 2019 statement of admission and denial with reasons for denial to be exchanged. If the statement of admission and denial is not given, parties shall be deemed to have admitted the existence of all the documents of the other side.

2 Suit be listed for issues on 10th April 2019 on which date parties shall come with agreed draft issues and a separate list of issues on which they are unable to agree. On the next date, if parties do not come with draft issues, they are put to notice that parties will be put to terms.

(K.R. SHRIRAM, J.)