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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 2 OF 2019

IN

ARBITRATION PETITION NO. 321 OF 2016

WITH

INTERIM APPLICATION NO. 1 OF 2019

Phoenix ARC Pvt Ltd ...Applicant

In the matter between

Tata Capital Financial Services Ltd ...Petitioner

Versus

Dixy Herold Dcruz & Anr ...Respondents

Mr Nishant Rana, *with Chinmayee Ghag & Rpa Patel, i/b Zastriya Attorneys & Legal Consultants, for the Applicant.*

Mr VS Panandikar, *Assistant Section Officer from the Office of Court Receiver, is present.*

CORAM: G.S. PATEL, J.

DATED: 5th November 2019

PC:-

Interim Application No. 2 of 2019:

1. The interim application is for amendment to substitute the name of the Applicant, Phoenix ARC Pvt Ltd, as the Petitioner in place of the original Petitioner, Tata Capital Financial Services Ltd

(‘**Tata Capital**’). The interim application states that the Applicant has taken assignment on 28th December 2018 from the original Petitioner.

2. The Interim Application is made absolute in terms of prayer clause (a).

3. Amendment to be carried out within one week from today without need of reverification.

4. All concerned to act on an authenticated copy of this order.

Interim Application No. 1 of 2019:

5. I have, by a separate order in Interim Application No. 2 of 2019, allowed the Applicant to be substituted as the Petitioner. The present interim application seeks a discharge of the Court Receiver previously appointed of an immovable property.

6. A few facts are necessary. Tata Capital, the original Petitioner, granted a loan of Rs. 66 lakhs to the original two Respondents for purchase of an immovable property. This is Flat Nos. C-101 and 102, Building No. 77, Shubham CHSL, Shanti Park, Mira Road (East), Thane 401 107. The loan was payable with specified interest in instalments. The borrowers executed a loan agreement dated 31st July 2014 with Tata Capital. There was also a mortgage by deposit of title deeds. The borrowers defaulted and Tata Capital invoked arbitration under the loan agreement. It also filed Arbitration

Petition No. 321 of 2016 seeking reliefs under Section 9 of the Arbitration and Conciliation Act 1996. On that petition, on 21st April 2016, this Court made an order in favour of Tata Capital and made the petition absolute.

7. The Court Receiver was appointed of the flats with a direction to take symbolic possession. The Respondents were appointed as agents of the Receiver. The order said that should the Respondents refuse to take up the agency of the Court Receiver, then the Receiver should proceed to take physical possession.

8. The Court Receiver is before the Court and confirms that the Court Receiver has in fact taken physical possession on 21st April 2016.

9. In the meantime, the arbitration proceedings between the lender and the borrowers commenced and then culminated in an award dated 12th December 2017 in favour of Tata Capital. The award directed the borrowers to pay Tata Capital an amount of Rs. 73,31,298/- and interest.

10. On 28th December 2018 the present Applicant, Phoenix ARC obtained an assignment from Tata Capital. It is thus a secured creditor within the meaning of Section 5 of the SARFAESI Act. Phoenix ARC has initiated proceedings under that Act.

11. Paragraph 11 of the interim application states that the Respondents have failed and neglected to pay the amounts due to the Applicant. Under Section 13 of the SARFAESI Act, Phoenix ARC has already taken symbolic possession. It proposes now to proceed under that Act to recover its dues.

12. In these circumstances, the prayer for discharge of the Court Receiver and for direction to deliver physical possession of the premises to the Applicant is entirely justified.

13. The interim application is made absolute in terms of prayer clause (a).

14. The Applicant will pay the Court Receiver's costs, charges and expenses. The Court Receiver stands discharged without passing accounts.

15. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J)