

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

Amk

COMMERCIAL APPEAL (L) NO. 2 OF 2020
IN
COMMERCIAL ARBITRATION PETITION NO. 1541 OF 2019
WITH
INTERIM APPLICATION NO. 1 OF 2020

Talwalkars Healthclubs Ltd.

.. Appellant

Vs.

Tata Capital Financial Services Ltd.

.. Respondent

Mr. Ashish Kamat a/w. Mr. Kunal Mehta, Mr. Sharique Nachan, Ms. Armin Pardiwala, Mr. Aditya Khandelwal and Mr. Megh Soni i/b Crawford Bayley & Co. for the Appellant.

Dr. Birendra Saraf a/w. Mr. Rohan Savant, Mr. Sachin Chandarana, Mr. Vijayendra Purohit, Mr. Chandrajit Das i/b M/s. Manilal Kher Ambalal & Co. for the Respondent.

Mr. D. N. Kher, Court Receiver present.

**CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

DATE : 8th JANUARY, 2020.

P. C. :

1. The Appellant shares a relationship with the Respondent as that of as lessee of equipment owned by the Respondent. The equipment is wide and varied; to be used in a gymnasium. The Appellant concededly is in default of the lease rental payable from the month of July, 2019 onwards.

2. It is settled law that if a lessee of a movable property is in default of payment of the lease rental, the owner is entitled to resume possession of the movable property if the lease agreement between the

parties so stipulates.

3. The lease agreement between the parties contemplates a resolution of dispute before an Arbitrator and this necessitated the Respondent to approach the learned Single Judge of this Court for a measure under Section 9 of the Arbitration and Conciliation Act, 1996. Needless to state the measure was to appoint a Receiver to take possession of the leased equipment in respect whereof there was a continuous default in payment of monthly lease rental commencing from July, 2019.

4. Noting that the Appellant has installed the equipment at 103 locations across the country and that approximately 40 gyms are closed, the impugned order has been passed directing the Receiver appointed to access the gym where the Appellant has not been prevented from the owner of the premises to access the same and seize the equipment.

5. We find no infirmity in the impugned order.

6. The argument of the Appellant that the Appellant is currently awaiting a restructure of the debt under the RBI circular is of no help to the Appellant for the reason the restructure cannot embrace the leased equipment and the right of the Respondent as owner thereof to take possession.

7. The Appeal is dismissed in limine.

8. Interim Application No. 1 of 2020 does not survive and is disposed of.

Arjun M.
Kadam

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]