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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 25th August, 2021*

+ **O.M.P.(I) (COMM.) 82/2020**

PNB HOUSING FINANCE LIMITED Petitioner
Through Mr Himanshu Sapra, Advocate.

versus

PARULBEN PARESHBHAI THAKKAR
& ORS. Respondents
Through Mr Abhay Raj Varma,
Advocate with Ms Priyanka
Ghosh and Ms Vidhi Jain,
Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

[Hearing Held Through Videoconferencing]

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition under Section 9 of the Arbitration & Conciliation Act, 1996, *inter alia*, praying as under:

“a) Pass an order to the respondents to file an affidavit giving full details and particulars of all their respective moveable, immovable, tangible and intangible assets including bank accounts and demat accounts within such time as this Hon'ble Court deems fit and proper.

b) Pass an ad interim exparte order to restrain the Respondents from disposing off, selling, alienating,

transferring or creating any encumbrance, charge or third party interest in any manner, whatsoever; in respect of their assets including mortgaged property bearing no F P NO 32/1/2, REVENUE KHATA 430, OLD SURVEY NO 1101, DEVNANDAN PARISAR 1, ADALAJ ROAD, ADALAJ AHMEDABAD, GUJRAT-382421,

c) Pass a direction to the respondents to furnish monetary security before this Hon'ble Court for repayment of the outstanding loan amount.”

2. The present petition was moved on 19.03.2020 and this court had issued notice on said date.

3. It is the petitioner's case that it is a notified 'financial institution' under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and is engaged in the business of rendering financial assistance/credit facilities to various borrowers. The petitioner claims that it had granted a loan of a sum of ₹5,13,14,800/- (Rupees Five Crores Thirteen Lacs Fourteen Thousand and Eight Hundred Only) by a Loan Agreement dated 25.01.2018 to the respondents against security of an immovable property – property situated at FP No. 32/1/2, Revenue Khata 430, Old Survey No.1101 Devnandan Parisar 1, Adalaj Road, Adalaj Ahmedabad, Gujarat-382421 (hereafter 'the Property').

4. The Property was mortgaged in favour of the petitioner by deposit of title deeds. The petitioner claims that the respondents have defaulted in paying the equated monthly instalments (EMI) of ₹8,78,636 (Rupees Eight Lacs Seventy-Eight Thousand Six Hundred Thirty Six only) and therefore, an event of default has occurred. The

petitioner claims that consequent to the default it sent a legal notice dated 26.02.2020 whereby, it foreclosed the loan facility. The petitioner claims that as on 14.02.2020, the respondents were liable to pay a sum of ₹4,54,80,312/- (Rupees Four Crores Fifty-Four Lacs Eighty Thousand Three Hundred and Twelve only) to the petitioner.

5. Considering the averments made by the petitioner, this Court had, by an order dated 19.03.2020, restrained the respondent from disposing off, selling, alienating, transferring or creating any encumbrance or third party interest in any manner whatsoever in respect of the Property. Further, the respondents were also directed to file an affidavit setting out the details and particulars of their respective assets within a period of two weeks of the respondents being served.

6. After securing the ex-parte ad interim order on 19.03.2020, the petitioner took no steps to either serve the respondent or to appoint an arbitrator. The petition was next taken up on 07.07.2021 and this Court had noticed that the petitioner had not taken the necessary steps to effect service of notice on the respondents.

7. Mr Varma, the learned counsel appearing for the respondents states that the respondents were served last week. He submits that the present petition is liable to be dismissed for several reasons. First, that the petitioner had not taken any step to refer the disputes to arbitration after securing the ex-parte ad interim order. He states that it is obvious that the primary purpose of the petitioner was to secure an ad-interim order to pressurise the respondents. Second, he submits that, in fact,

no dispute survives between the parties. The present petition is premised on the basis that the petitioner had recalled the loan granted to the respondents on account of their alleged default in payment of an EMI. He states that after the said notice, the petitioner had also issued two other notices – which have been concealed from this Court – calling upon the respondents to make good the default and pay the outstanding EMIs. He states that the respondents pursuant to the notices, paid the outstanding EMIs and the respondents are continuing to regularly pay the EMIs till date. He states that this is perhaps the reason why the petitioner has not taken any steps for constitution of the Arbitral Tribunal but has not been candid with this Court in this regard.

8. At this stage, this court does not consider it necessary to further evaluate the contentions as to whether there was any default on the part of the respondents or whether the petitioner has foreclosed the loan granted to the respondents. It is admitted that the petitioner holds the title deeds to the Property and there is no allegation that in the past eighteen months the respondents have acted in any manner to deprive the petitioner of its security. It is material to note that the petitioner had approached this court for urgent interim measures but has not taken any steps to communicate the ex-parte ad interim order to the respondents for almost one-and-a-half year. It is, thus, clear that there is no urgency in the matter because without service of the order dated 19.03.2020 on the respondents, the same would not be operative.

9. There is merit in Mr Varma's contention that since the

petitioner has shown no intention to refer the disputes to arbitration, the present petition – which is in aid of the arbitral proceedings – is liable to be dismissed.

10. The petition is, accordingly, dismissed.

AUGUST 25, 2021
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VIBHU BAKHRU, J

