

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 253 OF 2024

Mahindra And Mahindra Financial Services Ltd ...Petitioner

Versus

Trilok Chand And Company Through Its Proprietor ...Respondents

Trilok Chand Goyal & Ors

Mr Zerick Dastur, *with Khusil Shah & Jennifer Sanjana, i/b Zerick Dastur, for the Petitioner.*

CORAM: ARIF S. DOCTOR, J

DATED: 7th October 2024

PC:-

SHEPHALI
SANJAY
MORMARE

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SHEPHALI SANJAY
MORMARE
Date: 2024.10.09
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1. The present Petition is filed under Section 9 of the Arbitration and Conciliation Act 1996 and arises out of a Master Facility Agreement dated 29th June 2022 read with Sanction Letter dated 23rd June 2022.

2. Mr. Dastur Learned Counsel appearing on behalf of the Petitioner has invited my attention to the Master Facility Agreement and pointed out therefrom that Petitioner has advanced to the Respondents a sum of Rs.131.49.335/-for a tenure of 120 months. Learned Counsel for the Petitioner has invited my attention to the said Agreement and

amongst other clauses to the obligations of the borrower which include that the borrower undertakes to keep the assets free of charge and/or encumbrances during such time that the assets are charged in favour of the lender and not be effect or create any lean, alienation, sale or transfer, mortgage or charge or deal with or dispose of the said assets. He then invites my attention to clause 13.16 of the said Agreement, which reads thus.

"13.16 Notwithstanding the repayment of the availed Facilities, the Borrower hereby expressly gives the Lender the authority to sell/transfer or otherwise dispose of any and all Security created in favour of the lender under the Security Documents or deposited with it under its possession or control and appropriate the same towards satisfaction of amounts due to the Lender on account of another agreement or transaction entered into by the Borrower and/or the indebtedness of the Borrower. The provisions of this Agreement and any Security Document executed pursuant to this Agreement shall apply mutatis mutandis to the manner of disposal of Security and appropriation under this clause."

3. Mr Dastur thus points out that the Agreement in question has the useful events of default clause as also contains an arbitration clause. He then submits that in view of the defaults committed by he Respondents in making due repayment of the said loan, the Petitioners were constrained vide a notice dated 20th March 2024 recalling the entire loan. He points out that the Respondents had vide their Advocate's letter dated 18th April 2024 did not dispute the indebtedness/defaults on the part of the Respondents in making repayment of the said amounts due and payable under the said loan. However, sought time on the ground that the business of the Respondents was facing difficulty and had sought until revival of their business to make due payment of the said

loan. He submits that since this proposal of the Respondents was not acceptable to the Petitioners, the Petitioners have filed the present Arbitration Petition in which they have sought interim relief, more particularly set out in the Petition.

4. He then invited my attention to the default clause contained in the said Master Facility Agreement and pointed out therefrom that in the event Respondents commit any default in making payment of the loan amount, the Petitioner would inter alia have the rights to demand the entire outstanding amount which was unpaid on that date.

5. He placed reliance upon the Affidavit of Service to prove that a copy of the Petition has been served upon the Respondents. Despite this, none appeared for the Respondents. He today submits that given the conduct of the Respondents, there is grave apprehension in the mind of the Petitioners that the securities given for the said loan could be dealt with and thus he seeks reliefs in terms of prayer clauses (a) and (d), which read as follows.

*“(a) That pending the hearing and final disposal of the arbitral proceedings, and until the execution of the arbitral award, the Hon’ble Court be pleased to pass an order of injunction, inter alia, restraining the Respondents by themselves, their servants, assignes, employees, agents, representatives, officers or any other personal/s claiming through or under them or under any instrument, whatsoever, from in any manner selling, alienating, transferring, parting with the possession of, encumbering, dealing with, disposing off or creating any third party rights or interest of whatsoever nature and in any manner whatsoever in respect of their Mortgaged Property i.e., **"Equitable Mortgage of Freehold commercial shop comprised property/measuring area 92 Sq.***

*Yd., bearing shop no. 2382, (Property [D No. RW14U00603AA)
Katla Bazaar, Rewari Distt., Rewari 123106, Haryana"*

(d) That pending the hearing and final disposal of the arbitral proceedings, and until the execution of the arbitral award, the Hon'ble Court be pleased to, this Hon'ble Court be pleased to order and direct the Respondents to disclose on affidavit all their respective movable and immovable assets including bank accounts which are owned by them or in which they have any rights or interests."

6. After having heard Learned Counsel and the averments made in the Petition, which are today not controverted and/or disputed as also the letter addressed to the Respondents wherein the Respondents have not disputed their indebtedness but have admitted the fact that their business is suffering and the fact that today none has appeared to oppose the Petition though served, I am *prima facie* satisfied that a case for the grant of limited interim relief has been made out. The Petitioner has shown that there are defaults committed under the said Master Facility Agreement. He has also *prima facie* satisfied me that an equitable mortgage was to be created by the Respondents of the above relied plot. Given this and given the fact that there are defaults, the Petitioner is fully justified in seeking the aforesaid prayers, there will be an order in terms of prayer (a) and (d) already reproduced above.

7. A copy of this order to be served upon the Respondents.

8. List the matter for further orders on 21st October 2024.

(ARIF S. DOCTOR, J)