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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**ARBITRATION PETITION NO.363 OF 2024**

Mahindra and Mahindra Financial Services Ltd. .. Petitioner

**Versus**

Vinayak Industries & Ors. .. Respondents

Mr.Nilesh Mandavkar a/w Mr.Shakil Pathan i/b Ms.Anjana Mishra for  
the Petitioner.

**CORAM: FIRDOSH P. POONIWALLA, J.**

**DATE: 13<sup>th</sup> NOVEMBER, 2024**

**P. C.**

1. This Petition has been filed under the provisions of Section 9 of the Arbitration and Conciliation Act, 1996 (“the Act”) . The Respondents, though served, have not remained present.

2. Although the Petition seeks various reliefs, the Petitioner has, at present, restricted itself to the relief in prayer clause (b) which reads as under:

*“(b) that pending the hearing and final disposal of the arbitration proceedings and till the Award which may be passed is enforced in accordance with Section 36 of*

*the Arbitration and Conciliation Act 1996, the Respondents, their agents, servants, and any third persons claiming through them be restrained by an order of injunction of this Hon'ble Court from in any manner dealing with, selling, transferring, disposing of, or alienating or encumbering or mortgaging immovable property with possession of or transferring, or inducting anyone else into or creating any right, title or interest or license in favour of anyone else in respect of the immovable property's as more particularly described in Residential property bearing no. 177, admeasuring 300 sq. mtrs., situated at Sector 31, Urban Estate, Faridabad, Haryana belonging to Mr. Puneet Goswami s/o Mr. Ashok Goswami ."*

3. The Petitioner is a Non Banking Finance Company (NBFC). Respondent Nos.1, 2 and 3 are borrowers from the Petitioner.

4. The Petitioner had given to the Respondent a loan under a Master Facility Agreement dated 28th March 2023. Clause 24.11 of the Master Facility Agreement contains an Arbitration Clause which reads as under

***"24.11 Arbitration***

*All disputes; differences and/or claims arising out of these presents or in any way concerning the same or as to construction, meaning or effect hereof or as to the right and liabilities of the Parties hereunder shall be settled by arbitration to be held in accordance with the provision of the Arbitration and Conciliation Act, 1996 or any statutory amendments/replacements thereof and shall be referred to the sole arbitrator to be nominated by the lender. In the event of death, refusal, neglect, inability or incapability of a person so appointed to act as an arbitrator, the lender may appoint a new arbitrator. The arbitrator shall not be required to give any reasons for the*

*award and the award of the arbitrator shall be final and binding on all Parties concerned. The arbitration proceeding shall be held in Mumbai.”*

5. The Petitioner had sanctioned a loan of Rs.2,92,60,624/- to the Respondents. This is demonstrated by the loan sanction letter dated 27th March 2023. The said amount of loan was disbursed to the Petitioner and it was repayable in a tenure of 180 months. The loan was to be used for Closure of LAP facilities and Fullerton, Closure of ECLGS, PL and Machinery Loan and rest for Working Capital.

6. It is the case of the Petitioner that the Respondents have committed a default in making payment of the said loan. Outstanding statement has been annexed as Exhibit 'H' to the Petition which shows that huge amounts are outstanding to the Petitioner. In these circumstances, the Petitioner, through its Advocates, addressed a Notice dated 10th May 2024 to the Respondents terminating the said Master Facility Agreement, calling upon the Respondents to pay the said loan amount and invoking Arbitration. In reply to the said Notice, the Respondent No.1, through its Advocates, addressed a letter dated 22<sup>nd</sup> May 2024 to the Petitioner. The primary contention of the Respondent No.1 in the said letter seems to be that the Respondent should be given more time to pay the loans. The fact of having taken the loan and of committing defaults is not disputed.

7. The learned counsel for the Petitioner has also drawn my attention to Exhibit 'F' of the Petition which is a Memorandum relating to deposit of title deeds whereby Respondent No.2 created a mortgage in favour of the Petitioner for securing the said loan by mortgaging property bearing House no.177, admeasuring 300 sq. mtrs. situated at 31 Urban Estate, Faridabad, Haryana.

8. It is the submission of the learned counsel for the Petitioner that, pending the final hearing and disposal of the Arbitration Proceedings, this property, which has been mortgaged to the Petitioner, needs to be protected and, therefore, the Petitioner has sought relief in terms of prayer clause (b) which is set out hereinabove.

9. The fact that the Petitioner has advanced a loan to the Respondent is not disputed. Further, the correspondence between the parties shows that there have been defaults by the Respondents in repayment of the said loan and that the Petitioner has therefore terminated the agreement and has invoked arbitration.

10. Considering that large amounts of monies are outstanding from the Respondent, and that the aforesaid property is mortgaged to the Petitioner,

in my view, it would be fit to grant to the Petitioner, ad-interim relief in terms of prayer clause (b).

11. Accordingly, there will be ad-interim relief in terms of prayer clause (b) in favour of the Petitioner.

12. List the Interim Application for further ad-interim reliefs on 11th December 2024.

**[FIRDOSH P. POONIWALLA, J.]**