

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.371 OF 2024

Tata Capital Limited

...Petitioner

Versus

Dharmendra Singh Meena & Anr.

...Respondents

Appearance not received.

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : MARCH 13, 2025

PC :

1. This is a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (*“the Act”*) seeking interlocutory protective reliefs in connection with disputes and differences relating to a Loan cum Hypothecation cum Guarantee Agreement dated December 25, 2022 (*“Agreement”*). Clause 13 of the Agreement contains the arbitration clause, which, in the interest of brevity, is not extracted herein.

2. The Respondents committed a default in servicing the loan on. It is seen from the record that defaults occurred under the Agreement and a loan recall-cum-demand notice was issued on September 12, 2023. Learned Counsel for the Petitioner submits that the amount due under the Agreement, as claimed by the Petitioner from the Respondents is to the tune of Rs.19,27,509/-. Service affidavit dated August 20, 2024 and February 18, 2025 is taken on record, which demonstrate that service

has been completed on the Respondents. The Respondents have not entered appearance.

3. Learned Counsel for the Petitioner submits that there is an evident default, and despite issuance of a loan recall cum demand notice there is no response from the Respondents. He submits that the hypothecated machine run the risk of getting lost or dissipated, rendering the arbitration infructuous. Consequently, he seeks urgent interlocutory relief.

4. Since despite notice, the Respondents have not appeared and have not replied to the notice issued by the Petitioner, Learned Counsel seeks relief sought in prayer clauses (a). A case has been made out for grant of such relief, which would apply pending the consideration of further interim relief by the Arbitral Tribunal that would be constituted in the matter:

a) The Court Receiver High Court Bombay be appointed as Receiver and take peaceful physical possession under Order XL, Rule 1 of CPC 1908 in respect of the hypothecated asset being HYL TND A128 CONSTRUCTION EQUIPMENT INDIA PRIVATE LIMITED OF HYUNDAI R210 SMART MACHINE BEARING SERIAL NO: N633D00607 whether in the possession of the Respondents and/or any 3rd party and this Hon'ble Court be pleased to direct the Respondents and/or any 3rd Party (who may be in possession of the hypothecated Asset) to hand over the physical, peaceful and vacant possession of the HYUNDAI CONSTRUCTION EQUIPMENT INDIA PRIVATE LIMITED OF HYUNDAI R210 SMART MACHINE BEARING SERIAL. NO: N633D00607 forthwith accordingly to the Court Receiver. If the Court Receiver is not allowed the physical, peaceful and vacant possession of the hypothecated asset being HYUNDAI CONSTRUCTION EQUIPMENT INDIA PRIVATE LIMITED OF HYUNDAI R2 10 SMART MACHINE BEARING SERIAL NO: N633D00607 by the Respondents, the Court Receiver be allowed to take forcible possession of the said hypothecated Asset in the custody of the Respondents and/or any 3rd Party along with appropriate Police protection of the Local Police Station. The Court Receiver High Court, Bombay be further directed to hand over the aforesaid Asset

hereto to the Petitioner with liberty to the Petitioner to dispose off the same by private treaty with further liberty to adjust the sale proceeds towards the outstanding dues due to the Petitioner from the Respondents.”

5. It is made clear that should the Respondents be desirable of varying, altering or vacating the *ad-interim* relief granted hereby, the Respondents may appear on the next date and present their say.
6. The Respondents are at liberty to approach this Court seeking to vary, modify, alter or vacate the aforesaid *ad-interim* reliefs hereby granted by filing a reply on or before the next date. The Petitioner shall invoke arbitration forthwith and file a Section 11 Application should that be necessary, Liberty to file a praecipe, so that it can be tagged along with this Petition on the next date.
7. List on ***April 17, 2025***, for further consideration.
8. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court’s website.

[SOMASEKHAR SUNDARESAN, J.]