

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION NO. 332 OF 2024

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Tata Capital Housing Finance Limited

...Petitioner

Versus

Shantanu Debabrata Datta & Ors

...Respondents

Mr. Rohaan Cama, a/w. Ms. Nelly Mehta i/b. NMA Legal for the
Petitioner.
None for the Respondents.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 15, 2025

PC :

1. This is a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (***“the Act”***) seeking various interlocutory reliefs to secure the subject property over which disputes and differences exist between the parties, primarily, the non-payment of dues for loan given under the Loan Agreement. The parties to this Petition had executed a tripartite agreement dated April 28, 2017, whereby, the Petitioner advanced a loan of Rs.97,00,000/- to Respondent Nos.1 and 2 who are the borrowers, and whose obligation to repay is evidently guaranteed by Respondent No.3 – Builder who is developing the building in which the borrowers acquired an apartment.

2. The disbursement of funds under the Loan Agreement was directly to Respondent No.3-BUILDER and he, pursuant to the

subvention arrangement, had agreed to stand guarantee not only in terms of the tripartite agreement but also by a contemporaneous deed of guarantee executed by him in favour of the Petitioner.

3. It is seen from a perusal of the record that there has been a default on the part of the borrowers, which has led to enforcement proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*“the SARFAECI Act”*) being initiated by the Petitioner. It is evident that there is an arbitration agreement in the tripartite agreement and in the Loan Agreement of the same date, and that the Deed of Guarantee is a document ancillary to tripartite agreement. Consequently, it is evident that there is indeed an arbitration agreement, and there are disputes and differences amenable to arbitration. Consequently, invoking the jurisdiction under Section 9 of the Act, Learned Counsel appearing on behalf of the Petitioner, requests that a Court Receiver be appointed to take charge of the said flat and to have the authority to sell the same by public auction or private bid and appropriate the sale proceeds in favour of the Petitioner. Learned Counsel for the Petitioner, on instructions, states that arbitration shall indeed be invoked no later than two weeks from today.

4. In these circumstances, considering that the Respondents are not before me, although served by the Petitioner, as an *ad-interim* measure, the relief sought in prayer clause 41(f) is moulded as follows and is hereby granted :-

“Pending the hearing and disposal of Arbitration proceedings, the Court Receiver of this Court, be appointed as Receiver of the said Flat described in Exhibit ‘J’ of the Petition and which is mortgaged

to the Petitioner, and all the assets/properties of the Respondents be disclosed by the Respondents on oath. The Court Receiver may take forcible physical possession of the Flat from the respective Respondents and/or the person in possession of the same with the help of police, if necessary.”

5. It would also be appropriate to grant *ad-interim* relief in terms of prayer clause (e) which reads thus :-

“(e) that pending hearing and disposal of Arbitration proceedings, the Respondents by themselves, their employees, servants and/or agents or otherwise howsoever, be restrained by an order and injunction, from in any manner dealing with, selling, transferring, disposing off, or alienating or encumbering or pledging or mortgaging or hypothecating or charging or parting 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 assets/properties belonging to the Respondents.”

6. Stand over for further consideration to **February 7, 2025** on which date the Petitioner shall address the Court about the status of invocation of arbitration proceedings. Advocates for the Petitioner shall serve a copy of this order on the Respondents, highlighting that the matter shall be considered on the next date. The Respondents may address the Court seeking any variation that they desire.

7. 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.]