



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL JURISDICTION**

COMM. ARBITRATION PETITION NO. 651 OF 2018
WITH
NOTICE OF MOTION NO. 1159 OF 2018
IN
COMMERCIAL ARBITRATION PETITION NO. 651 OF 2018
WITH
NOTICE OF MOTION (L) NO. 1916 OF 2018
IN
COMMERCIAL ARBITRATION PETITION NO. 651 OF 2018
WITH
CHAMBER SUMMONS (L) NO. 1072 OF 2018
IN
COMMERCIAL ARBITRATION PETITION NO. 651 OF 2018

Capital First Ltd.
vs
D.K.Saini & Ors.

...Petitioner.
...Respondents

.....
Mr Yashesh Kamdar a/w Mr Avdhoot Prabhu I/b Naik Naik & Co. for
the Petitioner.
Mr M.S.Topkar a/w Ms Pavitra Manesh for Respondent Nos.3 and 4.
.....

**CORAM : B.P.COLABAWALLA, J.
DECEMBER 13, 2018.**

P.C. :

Admit. Respondent Nos.3,4 and who are the only
contesting Respondents, waive service. By consent of parties taken
up for hearing and final disposal.

2 By my order today passed in Notice of Motion No. 1951 of 2018, I have granted leave to the Petitioner to file the above Petition challenging the order passed by the learned Arbitrator.

3 This petition challenges the order passed by the learned Arbitrator dated 16th February, 2018. By this order the Arbitrator by invoking the provisions of Section 151 of the Code of Civil Procedure, 1908 (for short “CPC”) had restrained Mr Sanjay Anabhawane as well as Capital First Ltd. (the Petitioner herein) not to interfere with the physical possession of the claimants in Flat No.2701, 27th Floor, G-Wing, Obeoi Spledour, Grande J.V. Link Road, Jogeshwari (East), Mumbai 400 060 (hereinafter referred to as “suit property”) till the next date of hearing.

4 Learned advocate appearing on behalf of the Petitioner submitted that the Petitioner is a non-banking financial company and had granted financial assistance to Respondent Nos.3 and 4 in December 2014 in the nature of loan against the suit property. The loan sanctioned was for two separate amounts of Rs.2.21 Crores and Rs.1.30 Crores respectively. To secure the repayment of these amounts, Respondent Nos.3 and 4 deposited the original title deeds in

respect of the suit property with the Petitioners as and by way of an equitable mortgage. The learned counsel submitted that after initial payments of E.M.I., Respondent Nos.3 and 4 started defaulting in repayment of the loan, and therefore, the loan accounts were classified as NPA on 31st August, 2016. Thereafter, the Petitioner issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") recalling the entire loan. After this the authorized officer of the Petitioner issued a possession notice dated 18th February, 2017 in accordance with Section 13(4) read with Rule 8 of the Security Interest (Enforcement) Rules, 2002 and took symbolic possession of the suit property. This was done on 18th February, 2017. Since physical possession was not handed over, under Section 14 of the SARFAESI Act, the Petitioner thereafter approached the Court of the Chief Metropolitan Magistrate, Esplanade, Mumbai seeking appropriate orders to take physical possession of the suit property. This was allowed by the Chief Metropolitan Magistrate vide his order dated 29th November, 2017 and Advocate Shri Sanjay Anabhawane was appointed as a Court Commissioner with a direction to take physical possession of the suit property. It also appears that Respondent Nos.3 and 4 have thereafter approached Debt Recovery Tribunal,

Mumbai (for short “DRT”) under Section 17 of the SARFAESI Act challenging the actions taken by the Petitioner herein. Though proceedings before the DRT are pending, Respondent Nos.3 and 4 have not been able to secure any interim reliefs restraining the Petitioner from taking physical possession of the suit property.

5 In this factual matrix, the learned advocate appearing on behalf of the Petitioner submitted that the Arbitrator could not have restrained the Petitioner, (and who was never a party to the arbitration proceedings), from taking physical possession of the suit property. This is more so because this was done under the provisions of the SARFAESI Act and which is a statutory remedy available to the Petitioner. He, therefore, submitted that the impugned order insofar as it restrained Mr Sanjay Anabhawane and the Petitioner from taking physical possession of the suit property be set aside.

6 Learned advocate appearing on behalf of Respondent Nos.3 and 4 submitted that this Court has no jurisdiction to entertain this Arbitration Petition because the arbitration agreement was entered into in Delhi and also provides that the arbitration shall be held in Delhi. He, therefore, submitted that this Petition cannot be entertained by this Court. The next submission made by the learned

advocate appearing for Respondent Nos.3 and 4 was that in any event, the Petitioners have already taken physical possession of the suit property, and therefore, nothing really survives in this Arbitration Petition. On both these counts he submitted that the Arbitration Petition ought to be dismissed.

7 Having heard both sides at length and perusing the papers and proceedings in this Petition, I do not find any substance in either of the contentions. As far as the arbitration agreement is concerned, it is not in dispute that the Petitioner herein is not a party to that agreement. Therefore, whatever is stated in that agreement is not binding on the Petitioner including subjecting itself to the jurisdiction of the Delhi Court. Admittedly the action that has been taken by the Petitioner is with reference to a property that was mortgaged with them and which is situated in Mumbai. Further more, Respondent Nos.3 and 4 have challenged the very same action before the DRT Mumbai. This being the case I find that the objection raised to the jurisdiction of this Court is wholly misconceived and is accordingly overruled.

8 As far as the second contention is concerned, namely, that nothing survives in this Petition as physical possession of the suit

property has already been taken by the Petitioner, I find this submission also to be wholly frivolous. The order impugned in the Petition restrains the Petitioner from invoking the statutory remedies under the provisions of the SARFAESI Act. In the facts of the present case the Arbitrator had absolutely no jurisdiction to pass such an order. In fact, the Arbitrator has proceeded to pass the impugned order by invoking Section 151 of the CPC which deals with the inherent powers of the Court. This the Arbitrator could not have done. The Supreme Court in the case of **Md Army Welfare Housing Organisation Vs Sumangal Services (P) Ltd. [(2004) 9 Supreme Court Cases, 619]** has categorically held that unlike the Civil Court, the Arbitrator does not have any inherent power. It is an Arbitral Tribunal of limited jurisdiction and its jurisdiction is circumscribed by the terms of the Arbitration and Conciliation Act, 1996 and within the four corners of the arbitration agreement. This being the case and considering that the Arbitrator could not have, in any event, restrained the Petitioners from enforcing their statutory remedies and especially considering that the Petitioner was not even party to the arbitration, the impugned order cannot be sustained. It is, accordingly, set aside and the petition is made absolute in terms of prayer clause (b). There shall be no order as to costs.

9 In view of disposal of the Arbitration Petition, nothing survives in Notice of Motion No. 1159 of 2018; Notice of Motion (L) No. 1916 of 2018 & Chamber Summons (L) No. 1072 of 2018 and are disposed of as infructuous. No order as to costs.

(B.P.COLABAWALLA, J.)