

Warrants Qua Res. 1) Idfc First Bank Ltd vs Smt. Neetu Yadav & Anr on 8 February, 2023

Author: Yashwant Varma

Bench: Yashwant Varma

\$~36

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI
O.M.P.(I) (COMM.) 29/2023, I.A. 2263/2023 (Production
Warrants Qua Res. 1)

IDFC FIRST BANK LTD.

Through:

..... Petitioner
Mr. Gurpreet Singh, Mr. Bakul
Jain, Advs. with Mr. Farid
Ahmed, AR.

versus

SMT. NEETU YADAV & ANR.

Through:

..... Respondent
Appearance not given.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA
ORDER

% 08.02.2023

1. The instant petition under Section 9 of the Arbitration and Conciliation Act, 1996 [the Act] seeks the issuance of interim directions including an ex parte injunction restraining the respondents from creating any third-party rights over the mortgaged property described as House No. 465, Sector 22, Urban Estate, Gurugram, Haryana. The Arbitration Agreement stands comprised in documents which were executed in connection with a lending facility extended by the petitioner to the deceased husband of the first respondent and more specifically in Clause 12.8 thereof which reads thus: -

"12.8 Governing Law, Jurisdiction and Arbitration:

The Parties agree that this Agreement shall be governed by the laws of India. The Borrower hereby expressly agrees that all disputes arising out of and/or relating to this Agreement including any transaction document which is:

a) below the pecuniary jurisdiction limit of the Debt Recovery Tribunals established under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993), then such dispute shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 as may be amended, or its re-enactment, by a sole arbitrator, appointed by the Bank. The arbitration proceeding

shall be conducted in the English language. The award passed by the arbitrator shall be final and binding on the Parties. The costs of such arbitration shall be borne by the losing Party or otherwise as determined in the arbitration award. The arbitration proceedings shall be held either in Delhi/ Mumbai/ Chennai/ Kolkata and/or such other place as may be notified at the sole discretion of the Bank.

b) above the pecuniary jurisdiction limit of the Debt Recovery Tribunals established under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993), then such dispute shall be referred at the sole discretion of the Bank to:

The exclusive jurisdiction of the courts/tribunals of the city in which the Branch/Bank Outlet of the Bank is situated. Provided that to the extent allowed by law, the Bank shall be entitled to take proceedings relating to a dispute in any court/tribunal of any place with Jurisdiction.

Or/And To arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 as may be amended, or its reenactment, by a sole arbitrator, appointed by the Bank. The arbitration proceeding shall be conducted in the English language. The award passed by the arbitrator shall be final and binding on the Parties. The costs of such arbitration shall be borne by the losing Party or otherwise as determined in the arbitration award. The arbitration proceedings shall be held at Delhi/ Mumbai/ Chennai/ Kolkata and/or such other place as may be notified at the sole discretion of the Bank.

The Arbitration proceedings may also be held through Video conference. To attend any hearing ordered by the tribunal, the following shall apply:

i. any such hearing shall be held via video conference ii. the parties agree that no objection shall be taken to the decision, order or award of the tribunal following any such hearing on the basis that the hearing was held by video conference".

2. The petitioner is constrained to approach this Court in light of large-scale construction being carried on over the mortgaged property and the apprehension of third-party rights and interests being created thereon. As was noticed hereinabove, the Loan Agreement is dated 21 July 2022 and in terms thereof a sum of Rs.2.70 crores were loaned to the deceased husband of respondent No. 1. The petitioner asserts that it came to know in December 2022 that the husband of respondent No. 1 had expired and that she had been taken into custody and presently stands incarcerated at Gurugram, Haryana. The petitioner has also placed on the record recent photographs of the mortgaged property which appear to evidence large scale construction activity being undertaken. It was in the aforesaid backdrop that a loan recall notice dated 15 December 2022 came to be issued.

3. Although respondent No. 1 had been placed on notice, none appeared on her behalf. The learned counsel who appeared in these proceedings stated he was representing the interest of the minor son of respondent No.1. It was further submitted that the various floors which are under construction

are proposed to be leased or rented out since the said property is the only source of income left for the family.

4. Notwithstanding the above, and since the creation of the equitable mortgage is not disputed, this Court is of the considered opinion that urgent interim directions are clearly warranted. This more so since learned counsel failed to assure the Court that even if any third-party rights were created, any revenues or monies that may be derived therefrom would be placed with the petitioner. Consequently, let the respondent file a reply on this petition within a period of three weeks from today.

5. In the interim and till the next date of listing, the respondents shall stand restrained from creating any third party rights or interest over the mortgaged property including the execution of any lease or rental agreements in respect of any part thereof.

6. List again on 13.03.2023.

YASHWANT VARMA, J.

FEBRUARY 08, 2023 SU