



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

**COMMERCIAL ARBITRATION PETITION NO. 104 OF 2025**

Aditya Birla Housing Finance Ltd.

.....PETITIONER

**: VERSUS :**

Axis Bank Limited & Ors.

....RESPONDENTS

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**Ms. Megha Gupta** with Ms. Lavanita Chityala and Ms. Pranjali Khemnari i/b. Hedgehog & Fox LLP, for the Petitioner.

**Mr. Cyrus Ardeshir, Senior Advocate** with Mr. Rushil Mathur, Mr. Aadil Parsurampur, Mr. Yash Pitroda, Ms. Amrita Natrajan and Mr. Smit Solanki i/b. Mr. Mayur Shetty c/o. Kocchar & Co., for Respondent No.1.

**Mr. Sarfaraz Shaikh** i/b. Mr. Rishi Kapoor and Mr. Ankur G. for Respondent Nos.2 to 5.

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**CORAM : SANDEEP V. MARNE, J.**

**JUDGMENT RESD. ON : 6 JANUARY 2026.**

**JUDGMENT PRON. ON : 19 JANUARY 2026.**

**JUDGMENT :**

1) This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) seeking interim measures before commencement of arbitral proceedings. Petitioner seeks a direction against Respondent No.1-Axis Bank to handover title deeds of the subject property to it during pendency of hearing and final disposal of arbitral proceedings between the parties.

2) Petitioner is a private limited company engaged in the business of housing finance. Respondent No.1 is a banking company doing business under the Banking Regulation Act, 1949. Respondent Nos. 2 to 5

are the borrowers, who had availed credit facilities in the form of cash credit (CC) and overdraft (OD) facility from Respondent No.1. The borrowers approached the Petitioner on 17 July 2023 for sanction of credit facilities of 4,70,05,000/- against security. The loan was applied for the purpose of taking over the CC and OD facilities sanctioned by Respondent No.1. to the borrowers. In furtherance of their application, the borrowers submitted copies of foreclosure letters and statement of accounts issued by Respondent No.1 relating to CC and OD facilities. Petitioner sanctioned loan of Rs.4,70,00,000/- in favour of the borrowers on 31 August 2023. According to the Petitioner, the loan was sanctioned against mortgage of the property bearing Plot No. 25, Survey No.20, Dwarka Service Centre Marble Market, South West Delhi, Delhi owned by Mr. Surendra Kumar Agarwal (**subject property**). It appears that the subject property was also mortgaged with Respondent No.1 for CC and OD facilities and accordingly, title deeds of the property were in possession of Respondent No.1-Bank.

**3)** On 4 September 2023, Petitioner and borrowers entered into loan agreement, which contained arbitration clause. On 12 September 2023, the borrowers also executed irrevocable Power of Attorney in favour of Petitioner which, *inter alia* authorized the Petitioner to collect the title documents of subject property from Respondent No.1. At the request of the borrowers, Petitioner transferred amount of Rs.17,05,144/- in CC account of Axis Bank of Respondent No.1 and Rs.96,25,003/- in OD account of Respondent No.5. On 13 September 2023, Respondent No.5 issued request for debit freeze in respect of the OD facilities. According to the Petitioner, despite disbursement of the aforesaid amounts, Respondent No.1 failed to release the title deeds. Petitioner therefore requested Respondent No.1 by letter dated 10 January 2024 to hand over the title deeds of the subject property. On 8 February 2024, the borrowers' accounts were classified into Non-Performing Assets (**NPA**) as per the RBI guidelines. On 19 June 2024,

Petitioner issued notice to Respondent No.1 for handing over title deeds of the subject property. On 15 July 2024, Respondent No.1 replied to the Petitioner *inter alia* contending that sum of Rs.88,90,126/- was pending in relation to OD facility in the accounts of the borrowers. Petitioner sent letter dated 27 August 2024 to Respondent No.1 contending that all the outstanding dues in CC and OD facility were duly paid by the Petitioner.

4) In the above background, disputes and differences have arisen between the parties. Petitioner intends to invoke arbitration clause against the borrowers. However, for preservation of subject matter of arbitration, the Petitioner has filed the present petition seeking relief essentially against Respondent No.1 in the following terms:

- a. That pending the hearing and final disposal of arbitration proceedings and execution of any award that may be passed therein, this Hon'ble Court may be pleased to direct Respondent No. 1 to handover the Title Deeds of the Subject Property to the Petitioner;
- b. For costs of this Petition; and
- c. For such other further reliefs and orders as the facts and circumstances of the case may require, and this Hon'ble Court may deem appropriate.

5) On 28 March 2025, this Court issued notice to Respondent No.1 while restraining it from creating third party rights in respect of the subject property. Since Respondent No.1 failed to appear before this Court despite service of notice, this Court passed further ad-interim order dated 10 July 2025, directing Respondent No.1 to deposit the title deeds with the Registry of this Court. Request of Respondent No.1 to vary the ad-interim order dated 10 July 2025 was rejected by the Court by its order dated 20 August 2025. This Court extended the time for deposit of title deeds till 26 August 2025. Order dated 20 August 2025 also directed senior official of Axis Bank to file affidavit to demonstrate as to how the

debit freeze was not implemented despite the same being specifically confirmed in writing by Axis Bank. Respondent No.1 has filed Commercial Arbitration Appeal (L.) No. 26621/2025 challenging the order dated 20 August 2025 which had directed (i) Axis Bank to deposit the title deeds of the subject property and (ii) filing of Affidavit by Axis Bank official as to why debit freeze was not implemented. The Appeal Court has passed interim order dated 3 September 2025 staying only the direction for filing of the Affidavit and the direction for deposit of title deeds is not stayed. In compliance with the orders passed by this Court on 20 August 2025, it appears that the title deeds relating to the subject property have been deposited by Respondent No.1 in this Court.

6) Ms. Gupta, the learned counsel appearing for the Petitioner would submit that the Petitioner has already invoked arbitration against the borrowers by sending them notice under Section 21 of the Arbitration Act. That the credit facilities are sanctioned to the borrower under express representation that charge of the Petitioner would be created in respect of the subject property after release of charge of Respondent No.1. That the outstanding amounts are directly transferred by the Petitioner to Respondent No.1 to satisfy the outstanding amounts in the loan accounts of the borrower with Respondent No.1 Bank. That thus Respondent No.1 had clear idea of this being a case of loan transfer. She invites my attention to the debit freeze letter dated 13 September 2023 on which remark is made by Respondent No.1-Bank that debit freeze would be marked on 14 September 2023 i.e. after closure of the loan accounts. That thus Respondent No.1 was fully conversant with the fact that the transaction involved closure of loan account with Respondent No.1 for the purpose of taking over the loan by the Petitioner. She would further invite my attention to Petitioner's letter dated 10 January 2024 requesting for transfer of title deeds to the Petitioner. She would submit that no response was given by Respondent No.1 to letter dated 10 January 2024. That despite being fully aware of the case being of

transfer of loan, Respondent No.1 unauthorisedly accepted request from the borrowers on 26 February 2024 for lifting the debit freeze. That the officials of Respondent No.1 were hand-in-gloves with the borrowers, who fraudulently permitted the borrowers to use OD facility despite being fully aware that the borrowers had availed loan from the Petitioner against the very same property *inter alia* for the purpose of repayment of loan sanctioned by Respondent No.1.

7) Ms. Gupta would rely upon the provisions of Section 11 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**) in support of her contention that there is a statutory provision for arbitration between two banks/financial institutions even in respect of non-payment of any amount to one of the financial institutions. That intention of the lawmakers is to ensure that the two banks/financial institutions resolve their disputes relating to claims over the security through private arbitration. She would therefore submit that the Petitioner is entitled to seek resolution of disputes through arbitration even against Respondent No.1. She places on record invocation letter dated 4 December 2025 in support of her contention that arbitration is invoked even against Respondent No.1.

8) Ms. Gupta would further submit that title deeds have already been deposited by Respondent No.1 in this Court and it is in the interest of justice that this arrangement is continued till parties resolve their disputes through arbitration. She accordingly prays for making the Arbitration Petition absolute in terms of prayers made therein.

9) Mr. Ardeshir, the learned Senior Advocate appearing for Respondent No.1-Bank would oppose the petition submitting that there is no privity of contract between Respondent No.1 and Petitioner, and that therefore there is no obligation on Respondent No.1 to handover title

deeds of subject property to the Petitioner. That the case does not involve assignment of loan and taking over the loan. That Respondent No.1 is not concerned with the arrangement made by the borrowers with the Petitioner. That there was outstanding balance in the OD Account even after payment of amount by the Petitioner. That letter dated 13 September 2023 submitted by the borrowers was only for debit freeze and not for closure of the OD account. Furthermore, the debit freeze was to operate till further communication. He would submit that the Petitioner failed to take any action for a substantial period of time from September 2023 to January 2024 and approached Respondent No.1 only after the account of the borrowers was classified as "NPA".

10) Mr. Ardeshir would further submit that the Petitioner was statutorily or contractually bound to close the loan Account of the borrowers. That borrowers had merely requested for debit freeze and since the Account was still operational, Respondent No.1 had no option but to permit operation of Account once debit freeze was lifted by the borrowers. He would submit that Respondent No.1 has acted with due diligence and in a *bona fide* manner. That Respondent No.1 was under no obligation to ensure that the credit facilities sanctioned by Petitioner are duly secured by the charge over the property. On the other hand, Petitioner has acted negligently by permitting the borrowers to merely put a debit freeze in OD Account without ensuring that the account was closed completely. That Respondent No.1 did everything that a prudent bank would do.

11) Mr. Ardeshir would further submit that Section 11 of SARFAESI Act has no application in the present case as the Act applies only to secured creditors. That admittedly, Petitioner is not a secured creditor as borrowers have admittedly not created mortgage of subject property in its favour. That therefore provisions of Section 11 of the SARFAESI Act cannot be invoked. That Section 11 mandates resolution

of disputes relating to priority of claims over a security. That in the present case, since no security is created in favour of the Petitioner, there can be no arbitration between Petitioner and Respondent No.1. That Petitioner is seeking to elevate its status as that of a secured creditor in absence of any valid security being created in its favour. That an unsecured creditor cannot compel a secured creditor to return the title deeds of the subject property. In support of its contention that a secured creditor has first charge over the property, especially over unsecured creditors, Mr. Ardeshir would rely upon judgment of the Apex Court in **ICICI Bank Ltd. vs. SIDCO Leathers Ltd. and Ors.**<sup>1</sup> and of Division Bench of Bombay High Court in **Asset Reconstruction Company (India ) Ltd. vs. Union of India**<sup>2</sup>. He also relies upon judgment of Delhi High Court in **Gatx India Pvt. Ltd Versus. Arshiya Rail Infrastructure Limited and Anr.**<sup>3</sup> in support of its contention that no order can be made against third party who is not a party to the arbitration agreement. Mr. Ardeshir would accordingly pray for dismissal of the arbitration petition.

**12)** I have also heard Mr. Sarfaraz Shaikh, the learned counsel appearing for Respondent Nos. 2 to 5 (borrowers).

**13)** The borrowers in the present case had initially availed credit facilities in the form of CC limit and OD from Axis Bank. To secure the said credit facilities, they created mortgage over subject property in favour of Axis Bank. During currency of the said credit facilities, the borrowers approached the Petitioner by filing application dated 17 July 2023 for sanctioning of loan for business purposes of Rs.4,70,05,000/-. It appears that the outstanding amounts in the loan accounts with Axis Bank at that time were comparatively low of about 17 lakhs in CC limit and 96 lakhs in OD facility. After clearing the outstanding loan amounts with Axis Bank, the borrowers were to secure balance credit facilities to

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1 (2006) 10 SCC 452

2 2024 SCC Online Bom 845

3 2014 SCC OnLine Del 4181

the extent of about 3.5 crores from Petitioner. With this plan, the borrowers intended to close the loan accounts with Axis Bank for the purpose of availing credit facilities with larger limits by creation of charge of the Petitioner over the subject property to cover the loan sanctioned by it.

**14)** The borrowers approached Axis Bank and secured foreclosure letters dated 28 August 2023 indicating that the total sum payable in respect of the cash credit account was Rs. 17,05,144/-. The borrowers also submitted statement of accounts in respect of both the accounts with Axis Bank. Petitioner sanctioned loan of Rs.4,70,00,000/- to the borrowers. Out of the said sanctioned loan of Rs.4,70,00,000/- the borrowers requested the Petitioner to transfer amount of Rs.17,05,144/- in CC Account and Rs.96,25,003/- in OD facility account with Axis Bank. The balance amount of Rs.3,54,46,805/- was requested to be disbursed in the name of Respondent No.2-Company. Petitioner acted on the said request of the borrowers and directly transferred amount of Rs.17,05,144/- in CC Account and Rs.96,25,003/- in OD Account. However it appears that there was some gap in the foreclosure letters (28 August 2023) and the disbursements (13 September 2023) in borrower's loan accounts with Axis Bank. This gap apparently left some outstanding amount of only Rs. 2,36,963.29/- in the OD account. The borrowers have taken disadvantage of this insignificant differential amount in the OD facility account, which was frozen on receipt of disbursement from Petitioner, and is apparently revived by the Axis Bank at the borrowers' request. Revival and operation of the OD account is the reason why Axis Bank contends that its charge over the mortgaged asset continues. Thus what is done by the borrowers is to misuse the insignificant outstanding amount of Rs. 2 odd lakhs to ensure that the charge over the mortgaged property is not transferred from Axis Bank to Petitioner. The position that obtains as of today is that Axis Bank has permitted the borrowers to draw more amounts from the OD account which was supposed to be



closed on account of foreclosure proposal resulting in debit balance of Rs. 77 odd lacs therein as in July 2025. Now the Axis Bank refuses to release the charge over the mortgaged property leaving the significant amount of loans sanctioned and disturbed by the Petitioner unsecured. While there can be little doubt that the borrowers have acted malafidely in doing so, the issue for consideration is whether the Axis Bank is party to this act of the borrowers. I proceed to examine the issue.

15) It appears that Axis Bank had a fair idea of the nature of transaction where the borrowers intended to shift the loan facilities from Axis Bank to the Petitioner. This is clear from the foreclosure letters followed by direct disbursal of amounts by the Petitioner in the Axis Bank. If any doubt remained, letter dated 13 September 2023 requesting for debit freeze in respect of the OD account makes the position further clear. The said letter dated 13 September 2023 reads thus:

To  
Bank Manager,  
Axis Bank  
Vikaspuri, Delhi

Subject- Request for Debit Freeze A/C No. - 920030068593519

Dear Sir/Mam,

I, Sunita Aggarwal, am holding an OD limit A/C with your bank with A/C No. - 920030068593519. I want you to put Debit Freeze the said account till further communication. I authorize Mr. Jagbeer Singh Aadhar No. ~~XXXXXXXXXX~~ to deposit cheque & letter on my behalf.

Thanking you,  
Your Sincerely,  
Sunita Aggarwal

16) On the debit freeze letter dated 13 September 2023, the official of Axis Bank made an endorsement that '*debit freezing will be marked subject to system validation on 14/9/2023*'.

17) Thus, on 13 September 2023, Axis Bank received payments in both the loan accounts of the borrowers alongwith specific letters from the Petitioner (which bears acknowledgment of Axis Bank), as well as request for debit freeze from the borrowers. Apparently, same official of Axis Bank has acknowledged all the three letters and the said official clearly had knowledge of payments being made by the Petitioner for closure of loan accounts. The debit freeze letter was secured possibly to ensure that the OD Account is not operated beyond 13 September 2023.

18) It is the case of Axis Bank that what was submitted by borrowers was merely 'debit freeze' letter and not account closure letter. In my view *prima facie*, this submission is without any substance since Axis Bank was clearly aware of the nature of transaction and the purpose for which debit freeze was requested by letter dated 13 September 2023. It was not an ordinary debit freeze request for suspension of the account. Debit freeze request was obtained to ensure that the OD facility is not operated till all formalities for closure of the accounts were complete.

19) Since Axis Bank failed to return the title documents, Petitioner wrote to Axis Bank on 10 January 2024, specifically informing Axis Bank that the Petitioner had taken over the two loans of the borrowers with Axis Bank and that the two payments of Rs.17,05,144/- and 96,25,003/- was disbursed towards closure of CC and OD Accounts. Axis Bank was clearly informed by the Petitioner that the borrowers were deliberately not submitting their title documents and had also started defaulting payments of EMIs. The Axis Bank was requested not to return the title documents to the borrowers in absence of officer authorised by the Petitioner.

20) The letter dated 10 January 2024 made it further clear to Axis Bank that the transaction was a loan transaction and that Axis Bank was not supposed to continue the loan account on the strength of

title deeds since the loans were taken over by the Petitioner. Axis Bank failed to respond to the letter dated 10 January 2024. Axis Bank thus had clear idea that the loan account was intended to be transferred. It ought to have communicated that some balance had remained outstanding in the OD account due to the time gap in foreclosure letters and remittance by the Petitioner to Axis Bank. Axis Bank however chose to maintain silence, which conduct is not of a prudent banker.

**21)** As observed above, on account of the time gap between foreclosure letters (28 August 2023) and the date of payment (13 September 2023), there was still a debit balance of Rs.2,36,963.29/- in the OD Account. This enabled Axis Bank and the borrowers to treat the OD loan account as operational, on which a mere freeze was placed. The borrowers, who had started defaulting repayment of loan to Petitioner, malafidely approached Axis Bank with request for lifting of freeze on OD Account. Despite being fully aware that the case involved transfer of Loan Accounts to the Petitioner, officials of the Axis Bank *prima facie* acted hand-in-gloves with the borrowers and participated in their nefarious activity and entertained their request to lift the debit freeze submitted vide letter dated 26 February 2024 and permitted the borrowers to borrow from the OD Account. This enabled the borrowers, who were defaulting repayment of loan to Petitioner, to procure further credit facilities from OD account which they got re-operationalized. As per the reply filed by Respondent No.1, the amount of Rs.77,00,066.18/- was payable for foreclosure of OD Account as on 24 July 2025. This means that despite being fully aware of the fact that the loan in the OD Account was transferred from Axis Bank to the Petitioner, Axis Bank permitted the borrowers to operate the OD Account and released further payments to the borrowers. This is done *prima facie* by misusing the position that the OD Account was not fully closed and security on the subject property still continued in favour of Axis Bank.

22) The above actions of Axis Bank are described by Mr. Ardeshir as 'prudent' act which every banker would perform. I am unable to agree. This is not a prudent or *bona fide* act of Axis Bank. The Axis Bank was made aware of the position that the borrowers had started defaulting repayment of loan of the Petitioner, which they had got transferred from Axis Bank to the Petitioner. Axis Bank took disadvantage of the position that the loan was not fully foreclosed and the title deeds remained with it, and continued doing business of disbursing further loans to the borrowers who were defaulting the loans of the Petitioner. This conduct on the part of Axis Bank is far from *bona fide*. Axis Bank has thus done business at the risk of the Petitioner. In my view, therefore a *prima facie* case is made out for taking away the title deeds of the subject property from Axis Bank.

23) Since I have found a *prima facie* case in favour of the Petitioner, it is not really necessary to go into the issue as to whether the Petitioner is a secured creditor and whether Section 11 of the SARFAESI Act is attracted in the present case or not. Whether there can be arbitration between the Petitioner and Respondent-Axis Bank is something which need not be decided in the present petition. It is well-settled position of law that interim measures can be directed even against a third party for the purpose of preserving the subject matter of arbitration. The subject matter of arbitration is the right over the property mortgaged with the Axis Bank towards credit facilities disbursed by the Petitioner to the borrowers. The credit facilities advanced by the Petitioners were also supposed to be secured by mortgage of the very same subject property. In that view of the matter, a perfect case is made out for directing interim measures against Axis Bank irrespective of the position as to whether there can be arbitration between the Petitioners and Axis Bank. In that view of the matter, I am not delving deeper into the issue of applicability of Section 11 of SARFAESI Act. For the very same reason, it is not necessary to discuss

the ratio of the judgment of the apex Court in **Bank of India vs. Sri Nangli Rice Mills Private Limited and Ors.**<sup>4</sup> Similarly it is also not necessary to go into the issue of priority of charge of secured creditor over unsecured creditor and therefore I am not discussing the ratio of judgment in **ICICI** (supra) and of Division Bench of this Court in **Asset Reconstruction Co. Ltd.** (supra).

**24)** Mr. Ardeshir has also relied upon judgment of Single Judge of Delhi High Court in **Gatx India Pvt. Ltd.** (supra) in support of his contention that no interim measures under Section 9 of the Act can be directed against Axis Bank. He relies on following observations of the Delhi High Court in para-71 of the judgment:

71. Undoubtedly, section 9 provides that the court shall have the same powers for making interim orders under section 9 as a civil court has for the purpose of, and in relation to, any proceedings before it, and the powers of a civil court in this regard are very wide. The civil courts - as and when required, and deemed appropriate in the facts and circumstances of a particular case have been making interim orders in respect of third parties, such as : interim injunction restraining third party-banks from honouring bank guarantees; attaching defendant's monies/property in hands of third party-trustee, debtor, agent etc; restraining third party-subsequent transferee/person claiming rights in suit property from disposing of the same, and the like. As a corollary, the power of the court to issue interim orders under section 9 cannot be confined only to the parties to arbitration agreement. However, a significant parameter - inherent in section 9, for exercise of this power against a non-signatory to arbitration agreement, is that the purpose of section 9 is to aid arbitration between the parties thereto, and the interim orders thereunder have to be with regard to subject matter of arbitration/in connection with the arbitral proceedings. In this context, it is relevant to draw a distinction between orders granting interim relief against a party to the arbitration agreement - which incidentally affects a third party, on one hand, and orders granting relief directed against a third party, on the other. While the former is ordinarily acceptable as being within the scope of section 9, the power with respect to the latter should be exercised sparingly. For instance, an order appointing a third party as a receiver or guardian of a minor/person of unsound mind is not an order against the third party, or detrimental to its rights as such. Rather, it is a relief granted to the petitioner in support of the arbitral proceedings, and affects the party to the arbitration agreement.

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4 (2025) 9 SCC 225

Similarly, when a subsequent transferee, or a person claiming title under a party to arbitration is ordered to maintain status quo, or not to dispose of property - which is subject matter of arbitration, it is again ancillary to arbitral proceedings in as much, as, it is for protection of the subject matter of arbitration that the order is passed. An injunction, or order of attachment with respect to the properties belonging to/monies owed to a party to arbitration, but in hands of a third party for/on behalf of the said party, is effectively a relief against the said party, which incidentally affects the third party. Pertinently, it is expressly provided in the C.P.C. that attachment before judgment shall not affect the prior existing rights of third parties in the property of the defendant sought to be attached. Injunction against a third party - bank from honouring a bank guarantee is consequential to interim relief of restraining a party from encashing the same against the petitioner. To sum up, the court may issue interim orders against the third parties to arbitration only in exceptional circumstances - which are such that denial thereof might frustrate the petitioner's rights in arbitration; defeat the very object of arbitration between the parties thereto; render the arbitration proceedings infructuous; lead to gross injustice; and/or, leave the petitioner remediless, depending on facts of each case.

25) The Delhi High Court in *Gatx India Pvt. Ltd.* has drawn a distinction between exercise of power under Section 9 for granting interim relief against a party to arbitration agreement which incidentally affects a third party, and orders granting relief directed against a third party. It is held that while the former is ordinarily acceptable, the power in respect of the latter should be exercised sparingly. Thus, there is no allergy to exercise of power under Section 9 of the Arbitration Act by granting relief even directly against a third party, though the same should be resorted to only under exceptional circumstances. In the present case, it is not necessary to travel to such extreme end. Petitioner has invoked arbitration both against borrowers as well as Axis Bank by notice dated 4 December 2025 issued under Section 21 of the Arbitration Act. Even if the issue of permissibility to invoke arbitration against Axis Bank is momentarily ignored, the case would still fit into the former category. There is no dispute that there is arbitration agreement at least *qua* the borrowers. In the arbitral proceedings to be conducted between Petitioner and the borrowers, Petitioner is bound to seek relief *qua* the subject property, and this is how the arbitral proceedings are bound to affect the Axis Bank. If the interim measures are not granted against

Axis Bank, it would frustrate the Petitioner's claim against the borrowers by selling the subject property. Petitioner would suffer irreparable loss if interim measures are not granted. Therefore, making interim measures against the third party-Axis Bank is clearly warranted in the facts of the present case.

**26)** There is no dispute to the position that the Loan Agreement contains arbitration clause at clause no.10. As of now, I have steered clear of the issue of arbitrability between the Petitioner and Axis Bank in the light of provisions of Section 11 of SARFAESI Act and the said issue can be considered in appropriate proceedings. Therefore, as of now, Axis Bank is being treated as a third party to the arbitration proceedings. However, there is clear interlink between the credit facilities disbursed by the Petitioner and by Axis Bank to the same borrowers. If there was no link between the two loan transactions even to the same borrowers, what is submitted by Axis Bank could have been correct and this Court would have been loathe in passing any interim order against Axis Bank in relation to possible arbitration between the Petitioner and the borrowers. However, once this Court is satisfied that Axis Bank had full knowledge of its loan facilities being taken over by the Petitioner and still misused pendency of title deeds with it for doing further business by disbursing additional amounts to the borrowers, can this Court still refuse interim order in favour of the Petitioner on a specious ground that Axis Bank may not be a party to the arbitration proceedings? The answer, to my mind, appears to be emphatically in the negative. Once this Court is convinced that the first Respondent - Axis Bank has taken disadvantage of a paltry sum remaining unpaid under the OD Account for the purpose of recommencement of the otherwise closed OD Account, Axis Bank must be made to face the music at least by directing interim measures against them. To dissociate itself with the loan transaction between the Petitioner and the borrowers, it was necessary for Axis Bank to come clean on facts, in which it has thoroughly failed. Axis Bank has *prima facie* not acted

prudently and bonafidely and therefore this Court feels no hesitation in making *prima facie* observations that officials of the Axis Bank have aided and encouraged the borrowers in ensuring that the credit facilities disbursed by the Petitioners remained unsecured. The borrowers have *prima facie* played a trick in ensuring that some amount remained outstanding in the OD Account representing Petitioners that the Account was closed (in the form of debit freeze) and thereafter requested Axis Bank to lift the debit freeze for securing disbursement of additional amounts. This is done by failing to repay the EMIs in respect of loans secured from Petitioners. Unfortunately, Axis Bank is found to have been *prima facie* responsible for encouraging these activities of the borrowers. In that view of the matter, if custody of the title deeds in respect of the subject property are continued with Axis Bank, two eventualities may happen. Firstly, Axis Bank may sell the subject property to recover the sums which are disbursed by it despite full knowledge of transaction of taking over of loan by the Petitioners. Secondly and which is more worrisome, the borrowers may repay the outstanding amount of Rs.77,00,066.18/- to Axis Bank and get back the title deeds and create third party rights in the subject property. In my view, it is necessary to prevent either of the two possibilities till arbitration proceedings by Petitioner against the borrowers get adjudicated.

27) Taking away title deeds from Axis Bank would also ensure that Axis Bank would stop disbursing any further amounts to the borrowers on account of temporary inability to deal with the secured interests. This would protect the interest of Axis Bank as well as the possibility of its officials further colluding with the borrowers and disbursing additional credit facilities on the strength of deposit of title deeds can be ruled out. If title deeds are taken away from Axis Bank, it would not suffer any irreparable loss. Even in the worst case scenario of sale of the subject property by Petitioner, Axis Bank can always stake its claim to the sale proceeds on the strength of mortgage created in its



favour. It is also seen that the outstanding amount of Axis Bank is significantly lower than the liability of borrowers towards Petitioner. The balance of convenience is also in favour of Petitioner and against the Respondent. It is another matter that the said outstanding amount of Axis Bank is *prima facie* on account of possible collusion by its officials with the borrowers.

**28)** By way of interim order passed by this Court, Axis Bank has already deposited the title deeds of the subject property with the Registry of this Court. In my view, this arrangement can be continued during pendency of arbitral proceedings between the Petitioners and the borrowers. The issue as to whether Axis Bank can be party to such arbitral proceedings is left open to be determined in appropriate proceedings. Preservation of subject matter of arbitration proceedings being the objective behind Section 9 of the Arbitration Act, it is necessary that Axis Bank is prevented from either selling the property or returning the title deeds to the borrowers. This is ensured by deposit of title deeds in respect of the subject property with the Registry of this Court. I am inclined to extend this arrangement till disposal of the arbitral proceedings.

**29)** In my view therefore, perfect case is made out by the Petitioner for grant of interim measures against Axis Bank under Section 9 of the Arbitration Act. The petition accordingly succeeds, and I proceed to pass the following order:

- (i) During pendency and conclusion of arbitral proceedings between Petitioners and borrowers, the title deeds pertaining to the subject property shall continue to remain deposited with the Registry of this Court.

- (ii) Depending on the outcome of the arbitral proceedings, parties would be at liberty to seek directions for release of the title deeds.
- (iii) The issue of arbitrability of dispute between Petitioner and Axis Bank is left open to be decided in appropriate proceedings.

**30)** With the above directions, the Arbitration Petition is **allowed** and **disposed of**.

**[SANDEEP V. MARNE, J.]**