

* HIGH COURT OF DELHI : NEW DELHI

FAO. No.356/2009 & CM No. 16599/2009

% Judgment reserved on: 19th November, 2009

Judgment delivered on: 01st December, 2009

Sh. Jai Singh,
S/o Sh. Balbir Singh,
R/o Vill. & P. O. Bilawal,
Tehsil-Ch.Dadri, District Bhiwani,
Haryana.

....Appellant

Through: Mr. Yash Anand, Adv.

Versus

Indusind Bank Ltd.
Previously known as
M/s Ashok Leyland Finance Ltd.
Regd. Office At Sudarshan Building,
86, Chamier road, Chennai-600 018

....Respondent.

Through: Nemo

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

In this appeal, appellant has made two-fold prayer that is;

for setting aside order dated 27th March, 2009 as well as order dated 19th September, 2009, passed by Additional District Judge, Delhi.

2. Respondent filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (for short as 'Act') and prayed by way of interim measure, for appointment of Receiver to take possession of the vehicle. It is stated that appellant approached the respondent for grant of loan facility for financing the vehicle in question. Appellant agreed to pay the monthly installments in the form of EMIs (Equated Monthly Installments) and also agreed to strictly comply with the repayment schedule. In pursuant thereto, a loan agreement was executed between the parties and an amount of Rs.15,06,528/- only (Rupees Fifteen Lakhs Six Thousand Five Hundred Twenty Eight only) was sanctioned and disbursed by the respondent's company on 17th April, 2008. After availing the loan facility, the appellant could not adhere to terms and conditions of the loan agreement and failed to pay the monthly loan charges as per schedule. In spite of several reminders, appellant failed to deposit the defaulted EMIs. Appellant also failed to make the vehicle in question available to the officer of the company in terms of the loan agreement.

3. On 27th March, 2009, trial court passed an ex parte order where by a receiver was appointed to repossess the vehicle in question.

4. It is contended by learned counsel for appellant that order dated 27th March, 2009 was wrongly passed, as Delhi Court has no jurisdiction to entertain

the application under Section 9 of the Act. Appellant is resident of Haryana and vehicle in question was also registered in Haryana.

5. Another contention is that the order dated 27th March, 2009 was passed without affording the opportunity of being heard to the appellant and the same is against the principle of natural justice. Appellant came to know of passing of the order dated 27th March, 2009 in the month of September, 2009 only when respondent had taken the forceful possession of vehicle in question and thus application for modification of this order was filed.

6. Present appeal against order dated 27th March, 2009, is hopelessly time barred. This appeal has been filed on 10th November, 2009, much beyond period of limitation. No application for condonation of delay has been filed in this case. Thus, appeal against order dated 27th March, 2009 is being dismissed as time barred.

7. Now, coming to order dated 19th September, 2009, vide this order application filed by the appellant seeking release of vehicle and for modification of order dated 27th March, 2009 was dismissed. Trial court in order dated 19th September, 2009, observed;

“Admittedly, the applicant/respondent is under a liability to make payment of the heavy amount to the petitioner company. The applicant is neither ready to make payment of the defaulted EMIs nor he is ready to give collateral surety/bank guarantee so that during the arbitration proceedings, the amount involved in the arbitration may be secured. Otherwise also, Id. Counsel for applicant/respondent has disputed the claim of the petitioner company because he has asserted that he has made payment of all the defaulted EMIs except the two. These disputed facts cannot be looked into while

entertaining the petition U/s 9 of the Arbitration and Conciliation Act and is to be decided by the Arbitrator who has already been appointed”.

8. As per loan agreement, it is clearly mentioned that in case of any dispute, it shall be settled in accordance with the provision of Act. The Arbitrator has already been appointed in the present case. The appointment of receiver has been made as an interim measure on the basis of prima facie case, established against the appellant and it is not for the Court to make any further inquiry with regard to the claim and the counter claim.

9. This Court in *Narain Sahai Aggarwal Vs. Santosh Rani* AIR 1998 Delhi 144, observed;

“Section 9 of the Arbitration and Conciliation Act, 1996, only deals with the interim measure by the Court. Obviously it is not within the scope of the said Section to inquire into the claim and the counter claim made by both the parties in regard to the custody of the articles beyond what has been admitted by the respondent”.

10. Under these circumstances, there is no ambiguity and infirmity in the impugned order passed by the trial court and there is no merit in this appeal and the same is dismissed.

+CM No.16599/2009

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Dismissed, being infructuous.

1st December, 2009
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V.B.Gupta, J.