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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: September 29, 2016

+ **FAO 340/2016 & C.M.No.26446/2016**

KOTAK MAHINDRA BANK LIMITED Appellant

Through: Mr. Sanjeev Singh, Ms. Neerja
Sharma and Mr. Tanuj Agarwal,
Advocates

versus

AKBAR KHAN Respondent

Through: Mr. Asad Iqbal, Advocate

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

JUDGMENT
(ORAL)

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In proceedings under Section 9 of *the Arbitration and Conciliation Act, 1996*, trial court vide impugned order of 25th April, 2016 has allowed the petition under Section 9 of *the Arbitration and Conciliation Act, 1996* with direction to appellant herein to return the amount received from the respondent/petitioner according to the insurance value of all the three vehicles upon their repossession, after adjusting the amount due at the relevant period within a period of two months. In the impugned order, it is noted that copy of the Award passed by the Arbitrator has been already placed on record.

At the hearing of this appeal, the precise submission of learned counsel for appellant is that the directions issued in the impugned order run contrary to the Award passed, which is erroneous on the face of it, in view of Division Bench decision of this Court titled *Nussli Switzerland Ltd. v. Organizing Committee Commonwealth Games 2010*, reported in 2014 SCC OnLine Del 4834. Learned counsel for appellant has apprised this Court that the Award passed against appellant has been satisfied and appellant has not received any notice of objections under Section 34 of *the Arbitration and Conciliation Act, 1996*.

On the other hand, it is submitted by learned counsel for respondent that the directions have been issued in view of the conduct of appellant as noted in the impugned order, which is as under: -

“.....However, despite repeated directions, the bank has failed to return two vehicles which were repossessed by the bank without any authority and orders of this court and the bank officials in shadow of the orders of this court has acted malafidely against the applicant Akbar Khan and also repossessed other vehicles without any orders from any court.”

It is submitted by respondent's counsel that the alternate prayer made by respondent-petitioner in petition under Section 9 of *the Arbitration and Conciliation Act, 1996* has been rightly allowed by trial court. Lastly, it is submitted that the alternate prayer of mandatory injunction with consequential relief, is justified in view of the conduct of appellant as pointed out above.

Upon considering the submissions advanced by both the sides and

on perusal of impugned order, material on record and the decision cited, I find that once an Award has been passed, then no direction to the contrary while deciding petition under Section 9 of *the Arbitration and Conciliation Act, 1996* can be justified. Such a view is being taken in view of the dictum of a Division Bench in *Nussli Switzerland Ltd. (supra)*, which is as under: -

“In view of the opinion expressed by us with reference to Section 9 of the Arbitration and Conciliation Act, 1996, the application filed by the respondent seeking an interim measure post award was not maintainable and thus we do not decide the second issue concerning the prima-facie merits of the claim.”

Otherwise also, Section 9 of *the Arbitration and Conciliation Act, 1996* deals with interim measures only till the Award is enforced. This Section 9 does not empower the court to pass any mandatory injunction like the one, which has been passed in the impugned order. It remains uncontroverted that the Award passed has been satisfied. In such a situation, recourse to Section 9 of the aforesaid Act was totally unwarranted. So far as the conduct of appellant, as noted in the impugned order, is concerned, it shall be open to respondent to proceed against appellant in accordance with law. But, it certainly does not justify passing of mandatory injunction against appellant in proceedings under Section 9 of *the Arbitration and Conciliation Act, 1996*. During the course of hearing, respondent's counsel was unable to confirm filing of any objections under Section 34 of *the Arbitration and Conciliation Act, 1996*.

In the aforesaid view of the matter, impugned order is hereby set aside and this appeal and the application are accordingly disposed of.

(SUNIL GAUR)
JUDGE

SEPTEMBER 29, 2016

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