

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Arbitration Appeal No.15 of 2014

1. Manager or Competent Officer, TATA Motors Finance Limited,
Registered Office Nanavati Mahalaya, Third Floor, 18 Homi
Mody Street, Mumbai (Maharashtra)
2. Manager or Competent Officer, TATA Motors Finance Limited,
Third Floor, Maruti Heights, Mahoba Bazar, G.E. Road, Raipur
(C.G.)

(Non-applicants)
---- Appellants

Versus

Harjeet Singh Saini, S/o Late Bant Singh, R/o Rani Durgawati
Ward No.45, Mahavir Nagar, Raipur (C.G.), Presently R/o Shri
Guru Amardas Niwas, Dhamtari Road, Devpuri, Raipur (C.G.)

(Applicant)
---- Respondent

For Appellants:	Mr. Rajeev Bharat, Advocate.
For Respondent:	None present though served.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/07/2017

1. In a dispute referred to the Arbitrator by the parties, learned Arbitrator has passed an award on 11-7-2012, against that award, an application under Section 34 (2) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') is pending consideration at the instance of Harjeet Singh Saini before the jurisdictional Court. In the meanwhile, Harjeet Singh Saini, the respondent herein, made a application under Section 9 of the Act of 1996 before the District Judge, Raipur and the District Judge

granting that application directed that till the application under Section 34 (2) of the Act of 1996 is decided finally, the vehicle in question be given in possession of the claimant against which this appeal has been preferred by the Finance Company, the appellants herein.

2. The appellant Company also filed an application I.A.No.4/2016 for permission to sell the subject truck which was granted by this Court on 5-5-2016 and the truck in question is said to have been sold on 31-7-2016 the amount has been appropriated towards the award.
3. Learned counsel for the appellants submits that the direction given by the court hearing the application under Section 9 of the Act of 1996 is unsustainable and bad in law, as the learned Arbitrator has clearly recorded a finding that the appellant Company is entitled to sell the vehicle and get the amount appropriated towards the dues which it had. Grant of interim custody even till the decision in the application under Section 34 (2) of the Act of 1996 would prejudice the interest of the appellants and will rather protect the interest of the claimant.
4. I have heard learned counsel for the appellants and perused the material available on record with utmost circumspection.
5. None present for the respondent though served.
6. It is correct that award has been passed in favour of the appellants and application filed under Section 34 (2) of the Act of

1996 is pending consideration and in the application under Section 9 of the Act of 1996, the District Judge has directed for custody of the vehicle after permission to sale has been granted in favour of the appellants. Even otherwise, the claimant having suffered an award and the appellants having a decree in their favour, in the application under Section 9 of the Act of 1996 it cannot be held that there is prima facie case in favour of the respondent particularly when the vehicle has already been sold on the order of this Court and the amount has been appropriated towards the award amount. Therefore, the impugned order granting application under Section 9 of the Act of 1996 is set aside.

7. The appeal is allowed to the extent indicated herein-above leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge