

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.3062 of 2015 (O&M)
Date of decision : 13.03.2018

IndusInd Bank Limited

...Petitioner

Versus

Dinesh Kumar Goyal

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashwani Talwar, Advocate with
Mr. Lalit Kumar, Advocate for the petitioner.

Mr. Satish Chaudhary, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The defendant-Bank is in the revision petition against the order passed by the learned trial Court dated 10.02.2015, dismissing the application filed under Section 8 of the Arbitration and Conciliation Act, 1996.

It is undisputed that the agreement between the parties contained a Clause for resolution of any dispute between the parties through the arbitration. In the present case, the dispute was referred and the arbitration award came to be passed against the plaintiff. It is further not in dispute that during the arbitration proceedings, the application under Section 9 of the Arbitration and Conciliation Act, 1996 was filed by the Bank and as per the orders, the possession of the vehicle was taken over.

The respondent-plaintiff filed a suit for permanent injunction seeking restraint order against the defendant from interfering in the peaceful operation of the commercial vehicle and also from snatching the same forcibly, illegally and unlawfully and also from recovery of the amount.

During the pendency of the aforesaid suit, it is not in dispute that the vehicle was possessed by the petitioner-Bank. The application filed by the Bank under Section 8 of the Arbitration and Conciliation Act, has been dismissed on the ground that the arbitral award has been passed and the engine of the vehicle has been changed.

I have heard the learned for the parties at length and with their able assistance gone through the paper book.

Section 9 of the Arbitration and Conciliation Act, 1996 makes a provision enabling a party to invoke the jurisdiction of the Court for interim measures at three stages:-

1. Before the arbitral proceedings.
2. During the arbitral proceedings
3. At any time after making of the arbitral award but before it is enforced in accordance with Section 36 of the Act.

Section 2(e) and Section 9 of the Arbitration and Conciliation Act, 1996 are extracted as under:-

“2(e) Court” means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court

of a grade inferior to such principal Civil Court, or any Court of Small Causes;

9. Interim measures, etc. by Court.—*A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—*

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.”

It is undisputed that the arbitral award has not been enforced till date.

In the considered opinion of this Court, the jurisdiction to make a provision for interim measures exclusively lies with the Court as defined in Section 2(e) of the Act. It is not in dispute that the Bank had invoked the jurisdiction of the Court at Jaipur which passed the order permitting the Bank to take the possession. As per Section 42 of the Arbitration and Conciliation Act, the Court, the jurisdiction whereof has already been invoked shall alone have the jurisdiction to deal with and decide all the subsequent applications.

In view thereof, in the considered opinion of this Court, the jurisdiction is exclusive with the Court at Jaipur which passed the order under Section 9 of the Arbitration and Conciliation Act, 1996 on the application filed by the Bank.

In view thereof, the order under challenge is set aside.

Revision petition is allowed.

The plaintiff-respondent shall be at liberty to move an application before the Competent Court of jurisdiction.

13.03.2018

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No