

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

FAO-747-2022

Date of decision : March 04, 2022

IndusInd Bank Limited Company

.....Appellant

Versus

Sukhchain Singh Sandhu and another

.....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sandeep Kumar Sharma, Advocate for the appellant.

LISA GILL, J.

This appeal has been filed by the appellant - IndusInd Bank Limited Company, challenging order dated 07.02.2022 passed by the learned Additional District Judge, SAS Nagar, Mohali whereby appellant's application under Section 9 of the Arbitration and Conciliation Act, 1996 (for short – 'the Arbitration') has been dismissed.

Brief facts necessary for the adjudication of the matter are that the appellant, pleaded to be a Company duly registered under the Indian Companies Act, 1956, engaged in the business of Finance and Loan, having its corporate office at Chennai with licence to carry on its business under Banking Regulation Act, 1949 with Branch office at Mohali, filed an application under Section 9 of the Arbitration Act for appointment of Receiver for taking custody of the vehicle in question i.e. truck as described therein. It was pleaded that respondent No. 1 had availed loan/financial assistance to purchase the said vehicle and loan

agreement was entered into between the parties on 12.11.2016. First respondent is described as the borrower and second respondent as the co-borrower in the contract/loan agreement. Amount of Rs.21 lakhs was stated have been advanced as loan with interest charges of Rs.4,94,760/- with total amounting to Rs.25,94,760/-. Respondent was to re-pay the sum with interest in 48 monthly instalments of Rs.55,210/-. First respondent, it is pleaded, did not turn out to be a good borrower and defaulted in payment of regular instalments. He did not repay four instalments and as on 11.03.2019 amount of Rs.21,18,572/- was stated to be pending. Despite the appellant approaching the respondents to repay the monthly instalments on time, first respondent, it is stated, was not making regular payments.

It was further pleaded in the application under Section 9 of the Arbitration Act that with determination of liability under the agreement, borrower became liable to hand over possession of vehicle in question to the appellant and that in terms of Clause 23 of the agreement, any dispute arising between the parties shall be referred to the Arbitrator at the option of the appellant and award of the Arbitrator shall be binding on the parties.

Alongwith the petition under Section 9 of the Arbitration Act, an application seeking interim exparte order for appointment of Receiver was also filed. Vide order dated 13.03.2019 attached as Annexure A4, Receiver was appointed to take the vehicle in question in possession, subject to the conditions mentioned therein.

Thereafter, appellant's application under Section 9 of the Arbitration Act was dismissed by the learned Additional District Judge, SAS Nagar, Mohali vide impugned order dated 07.02.2022 while specifically recording that the appellant had not approached the Court with clean hands and had in fact actively concealed material facts with mala fide intention inasmuch as application under

Section 9 of the Arbitration Act was filed without revealing the fact that final exparte award stood passed by the Arbitrator on 30.08.2018 i.e. before filing of the application under Section 9 of the Arbitration Act. It is further observed that interim order dated 13.03.2019 was obtained from the court in a mala fide manner by intentionally concealing the factum of passing of final award dated 30.08.2018. Learned Additional District Judge, SAS Nagar, Mohali, observed that as the final award already stood pronounced, appellant's application was not maintainable. In this situation, appellant's application was dismissed, while directing appellant as well as Receiver to return the vehicle in question to the person from whose custody the same was taken within fifteen (15) days with the appellant free to take recourse to execution of the award in question which had also not been filed for the reasons best known to the appellant. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant while not denying the fact that it was not brought to the notice of the learned District Judge, SAS Nagar, Mohali at the time of filing of application under Section 9 of the Arbitration Act that final award dated 30.08.2018 stood passed, vehemently argues that application under Section 9 of the Arbitration Act is nevertheless maintainable and should not have been dismissed in such a cavalier manner. Application under Section 9 of the Arbitration Act, it is submitted, can be entertained even after passing of the award. Therefore, dismissal thereof, in this manner merely because certain facts were not brought to the notice of the Court, is unjustified. Learned counsel relies upon the judgment of the Hon'ble Supreme Court in **Arcelor Mittal Nippon Steel India Ltd. versus Essar Bulk Terminal Limited, 2021 (4) RCR (Civil) 249** to submit that application under Section 9 of the Arbitration Act is maintainable at this stage.

Heard learned counsel for the appellant and have gone through the file with his assistance.

Section 9 of the Arbitration Act provides that a party for seeking interim measures may apply to a Court before or during Arbitral proceedings or at any time after the making of arbitral award but before it is enforced in accordance with Section 36 of the Act. However, it is to be noted that in the present case, appellant has not approached the Court with clean hands.

In the instant case, it is a matter of record that an *exparte* final award was passed on 30.08.2018 by the Sole Arbitrator Sh. S.Prasadh at Chennai. Copy of the same attached as Annexure A5 with this appeal. Application under Section 9 of the Arbitration Act was filed by the appellant on 13.03.2019 before the learned Additional District Judge, SAS Nagar, Mohali seeking interim relief without disclosing this fact. In fact, para 10 of the application reads as under:-

“10. That the agreement between the parties also contains an Arbitration clause, being clause No. 23.0 of the agreement which envisages that any dispute arising between the parties under the agreement shall be refer to the arbitrator at the option of the owner (applicant) and the award of the arbitrator shall be binding on all parties including the guarantor i.e. the respondent No. 1 & 2 and the venue of the same is at Chennai and Mr. S.K. Srinivasan, Advocate of Chennai is appointed as the arbitrator by the applicant to adjudicate the matter in controversy between the parties.”

Interim order dated 13.03.2019 was clearly obtained by the appellant by active concealment of material facts. Perusal of said order dated 13.03.2019, which is attached as Annexure A4 with this appeal, reveals that learned Additional District Judge has noted submissions of learned counsel for the appellant to the extent that the matter would be referred to the Arbitrator shortly.

Learned counsel for the appellant is unable to explain the reason as to why such a

route was undertaken by the appellant. The appellant has indulged in active concealment of material facts, which in my considered opinion, disentitles the appellant from any relief in question. It is a settled position of law that a litigant must approach the Court with clean hands. Learned counsel for the appellant, on a pointed query, has candidly stated that execution proceedings have not been initiated till date.

The admitted sequence of events is that exparte award was passed in Chennai on 30.08.2018, with the application under Section 9 of the Arbitration Act being filed on 13.03.2019 with material facts being concealed and in fact misleading and incorrect averments being made before the learned Additional District Judge on 13.03.2019, as reflected in interim order of even date. Learned counsel for the appellant is unable to point out any infirmity, illegality or irregularity in the impugned order, which calls for any interference.

No other argument has been addressed.

Keeping in view the facts and circumstances of the case, I do not find any ground whatsoever to interfere in impugned order dated 07.02.2022 passed by the learned Additional District Judge, SAS Nagar, Mohali.

Accordingly, present appeal is dismissed.

March 04, 2022
rts

(LISA GILL)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No