

Misc. Case No.1283 of 2021.
(CNR WBCC01-002983-2021)

Order No.05, dated 27.08.2021

The record is taken up for passing order in respect of Respondents' petition u/s. 151 C.P.C. read with Section 9(3) of Arbitration & Conciliation Act,1996 dated 13.08.2021. No written objection has been filed.

The Respondents made their appearance and the instant petition was filed accompanied by a put up petition praying for vacating the order dated 05.08.2021 passed by this Court as the same was obtained by misleading the Court and to direct the petitioner to return the seized vehicle to the Respondents.

Ld. Advocate for the Respondents submitted that in view of Section 9(3) of Arbitration & Conciliation Act, an application u/s. 9 of the said Act cannot be filed before Civil Court unless petitioner makes out a case before the Court. Ld. Advocate relied upon a Judgement of the Hon'ble High Court of Gujarat at Ahmedabad reported in (2019) 4 GLR 3229.

Ld. Advocate for the petitioner submitted that the Respondents in their instant application have prayed for vacating the impugned order dated 05.08.2021 and not dismissal of the entire application u/s. 9 of Arbitration and Conciliation Act.

Drawing my attending to para 22 and 42 of the section 9 application, Ld. Advocate submitted that the petitioner has stated about pendency of the dispute before Arbitral Tribunal and that this court has also jurisdiction to deal the issue as per provisions. Hence, he submitted that petitioner has indeed come with clean hands. Contending against the second issue of the Respondents, Ld. Advocate for the petitioner submitted that paragraphs 22, 26 and 28 of the section 9 application have in clear terms explained that the petitioner apprehends that the respondents are deliberately avoiding to pay plaintiff's legitimate claim and clandestinely may deal with the subject vehicle to the detriment of the petitioner. Thus, he argued that petitioner has rightly made out a case in its application u/s. 9 of the Arbitration and Conciliation Act.

Heard both parties and considered.

Section 9 reads thus -

9. Interim measures etc. by court –

(1) 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 purpose of arbitral proceedings; or

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

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- (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 an land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or expedient 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.

(2) Where, before the commencement of the arbitral proceedings, a court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the court may determine.

(3) Once the arbitral tribunal has been constituted, the court shall not entertain an application under sub-section (1), unless the court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious.

Thus, according to the introductory lines of section 9(1) of the Arbitration & Conciliation Act, 1996, a party may – (1) before or (2) during arbitral proceedings or (3) at any time after the making of the arbitral award, but (4) before it is enforced in accordance with section 36 apply to a Court. Section 9(2) of the Arbitration and Conciliation Act, 1996 states that a court can pass any interim order of protection before the commencement of arbitral proceedings and section 9(3) of the Arbitration and Conciliation Act states that no application u/s. 9(1) of the Act can be entertained by a Court once the Arbitral Tribunal has been constituted, unless the court finds that there is urgency in the case. The instant application has been made before this court during arbitral proceedings and the urgency is stated in the petition itself. Hence, the instant application is maintainable.

Considering urgency, the impugned order was passed. Now, if the Respondents are aggrieved with the merit of the order, they are at liberty to appear before the higher forum as this court is barred from dealing it's with own order on the grounds of merit.

Thus, the instant application being misconceived stands dismissed and disposed of.

To 30.09.2021 for hearing of the Misc. Case.

Dictated & corrected by me,

Judge.

Judge, Bench-IV,
City Civil Court, Calcutta.
(J.O. Code No.WB01130)