



High Court of Delhi holds that *ex-parte* disposal of petitions under Section 9 of Arbitration Act violates principles of natural justice¹

Brief Facts

New Morning Star Travels (“**Petitioner**”), being a bus service, purchased 16 vehicles under loan-cum-hypothecation agreements with Volkswagen Finance Private Limited (“**Respondent**”), and defaulted on the repayment of certain instalments of the loan due to COVID-19 adversely affecting the Petitioner’s business. Thereafter, the Petitioner came to know that 16 petitions under Section 9 of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) were filed by the Respondent with a prayer for *ex-parte* relief. The trial court passed 16 identical *ex-parte* orders (“**Orders**”) wherein loan recall notices were issued by the Respondent and the Petitioner was called upon to pay the total outstanding of INR 7,139,808/-. Moreover, on the ground that the Petitioner did not pay the said amount and expressing an apprehension that the vehicles may be disposed of, the trial court appointed a receiver to take possession of the vehicles. In this manner, the main petition under Section 9 of the Arbitration Act was disposed of without notice calling upon the Petitioner to file a reply or be present at the hearing. Therefore, the Petitioner filed a writ petition before the High Court of Delhi (“**High Court**”) challenging the Orders passed by the trial court.

Issue

Whether a Court may pass *ex-parte* ad-interim orders disposing of Section 9 petitions?

Judgment

The Court, upon perusal of the Orders, held that Section 9 petitions cannot be disposed of *ex-parte* without giving notice to the respondent therein, especially when coercive orders are being passed. It was clarified that the power to pass ad-interim orders under Section 9 of the Arbitration Act is not in doubt. However, disposal of the petitions, without issuing notice and hearing the respondent as well as directing coercive orders of possession would amount to violation of the principles of natural justice.

The Court observed that standards to be adopted for grant of interim measures under Section 9 of the Arbitration Act are akin to standards applied for grant of interim injunction under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908 (“**CPC**”) and for appointment of a receiver under Order XL of the CPC. Therefore, disposal of Section 9 petitions without even hearing the respondent is contrary to all settled tenets.

Moreover, the grant of *ex-parte* injunctions, *ex-parte* interim measures or appointment of receivers at the *ex-parte* stage would be governed by principles akin to Order XL of the CPC wherein there has to be a grave and imminent apprehension that the property cannot be retrieved if notice is issued. The appointment of receivers at the *ex-parte* stage in matters such as vehicle loans ought to satisfy the test of imminent threat. The court ought to come to a conclusion that there was a deliberate intention not to repay the loan. The Court also held that the trial court should have

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considered the number of instalments due and payable, the conduct of the borrower including the irregularity of payment, the total amounts paid till date, any other extenuating or other factors such as the present pandemic which could justify non-payment etc.

The Court relied on **Sundaram Finance Ltd., v. NEPC India Ltd.**² and **Firm Ashok Traders and Anr. v. Gurumukh Das Saluja and Ors.**³ to hold that Section 9 petitions cannot be disposed of *ex parte* without giving notice to the respondents, but courts can pass an *ex parte* ad-interim order pending the application filed under Section 9 of the Arbitration Act. It also cited **Cholamandalam DBS Finance Ltd. v. Sudheesh Kumar**,⁴ which expressly laid down guidelines that ought to be followed in applications under Section 9 with respect to seizure of vehicles.

Analysis

The Court rightfully reversed the decision of the trial court and set right the situation, preserving the sanctity of the principle of *audi alteram partem* since principles of natural justice are the bedrock of any adversarial judicial system and as such, ought to be complied with. It is also pertinent that the Court has preserved the power of courts to grant *ex-parte* orders while specifying that the same cannot be done without issuing notice and more broadly, reiterated that the power to issue *ex-parte* orders ought to be exercised sparingly while making adverse orders. The Court also protected the interests of the Respondent while directing the Petitioner to make immediate repayment of INR 2.5 million out of the defaulted sum, while remanding the matter to the trial court. For litigating parties, this judgment will mean that they have to take early action to give an adequate opportunity of hearing to the opposite party and also ensure to demonstrate the presence of an imminent threat in their pleadings when asking for an *ex-parte* ad-interim prayer.

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- 1 Authored by Siddhartha Datta, Partner and Surabhi Binani, Associate; *New Morning Star Travels v. Volkswagen Finance Private Limited*, CM (M) No. 553/2020 & CM APPL. No. 28266/2020, High Court of Delhi, judgment dated 9 November 2020.

Coram: Prathiba M. Singh, J.

- 2 (1999) 2 SCC 479.
3 (2004) 3 SCC 155.
4 2010 (1) CTC 481.

PRACTICE AREA EXPERTS

Pallavi Shroff

Managing Partner and
National Practice Head Dispute Resolution
+91 98100 99911
E: pallavi.shroff@AMSShardul.com

Rishab Gupta

Partner
+91 98217 80313
E: rishab.gupta@AMSShardul.com

Binsy Susan

Partner
+91 96500 80397
E: binsy.susan@AMSShardul.com

Tejas Karia

Partner and Head, Arbitration Practice sub-group
+91 98107 98570
E: tejas.karia@AMSShardul.com

Siddhartha Datta

Partner
+91 90070 68488
E: siddhartha.datta@AMSShardul.com

Aashish Gupta

Partner
+91 98189 19857
E: aashish.gupta@AMSShardul.com

Anirudh Das

Partner
+91 98100 98329
E: anirudh.das@AMSShardul.com

Ila Kapoor

Partner
+91 98717 92737
E: ila.kapoor@AMSShardul.com

Smarika Singh

Partner
+91 97170 98075
E: smarika.singh@AMSShardul.com

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