

**Issue of Arbitrability Need Not Be Decided
While Deciding an Interim Relief
Application Filed Under S.9 of The
Arbitration And Conciliation Act, 1996**

Author

S. Ravi Shankar

International & Domestic Arbitration Lawyer

Senior Partner – Law Senate Arbitration Firm

www.lawsenate.com

B3/73, Safdarjung Enclave, Lower Ground Floor, New Delhi - 110029 India.

+91-11-26102873, +91-11-26104773

contactus@lawsenate.com, info@lawsenate.com

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Justice Mr. Dhanuka of Bombay High Court by a very recent judgement dated 1st July 2015 held that the issue of arbitrability of the disputes does not arise at the stage of dealing with an application seeking interim relief under S.9 of the Arbitration and Conciliation Act, 1996, because the application seeking interim relief can be filed much before the start of the arbitration proceedings as per the arbitration Act in India. He also further held that in an application under S.9 the Court also has power to direct the respondent to disclose the amount collected by him after the contract period. He also differentiated the nature of application filed under Order VII Rule 11 of the Code of Civil Procedure, 1907 from an application filed under S.9 of the Arbitration and Conciliation Act, 1996 (herein after “Act”).

Brief Facts and Contentions of The Parties: The applicant who filed the application under S.9 of the Act, seeking various directions from the court including injunction to use his trade mark, disclosure of accounts etc., is the owner of the Trade Mark “Euro Kids”. After the contract period also the respondent alleged to have used the same name, trade mark, gave paper advertisements admitted students and collected moneys from the students and without paying the royalty to the applicant. The Respondent alleged to have run the school under the same name without paying royalties and after the first three years contract period without any extension being granted by the owner.

Since the contract between the parties had an arbitration clause in it, the applicant approached Bombay High Court under S.9 of the Act seeking to restrain the respondent from using the trade mark, running the school under the same trade name, furnishing of the details of the amounts collected by the respondent etc.,

The Respondent contended that the petitioner is seeking a relief with regard to the ownership of a trade mark; a right over the usage of trade mark is a right in rem and hence not arbitrable. The court recorded that nobody is disputing the owner of the

trade mark. An issue of arbitrability will arise only while seeking a matter to be referred to arbitration, on an application seeking appointment of arbitrator under S.11 of the Act or after filing of the claim petition before an arbitrator.

The Respondent also contended that asking the filing of an affidavit with regard to the amounts collected by him can be done only in a Civil Court after complying with the requirements of Order VII Rule 11 of the Code of Civil procedure. The said requirements include the establishment of a proper cause of action and the right of the petitioner over the disputed property. The Court held that under S.9 of the Act, there is no requirement to fulfil the conditions stipulated under Order VII Rule 11 of the Act. The Court also granted reliefs as prayed by the applicant.

Comments: In India Civil Procedure Code does not apply to arbitral proceedings. The scope of S.9 of the act is filed in a different stage that is before starting of any proceedings but an application under Order VII Rule 11 is filed along with the plaint. Hence the High Court is correct in deciding the S.9 application by granting the interim relives as prayer for.

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