

**IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT
BHUBANESWAR.**

Present :

Dr. D.P. Choudhury,
District Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 2nd Dec. '14.

Arb. (P) No.157 of 2010.

(Under Section 9 of the Arbitration and Conciliation Act, 1996)

Sonu Agrawal, aged about 25 years,
S/o. Samarmal Agrawal, R/o. Hirakud, P.S. – Hirakud,
Dist. – Sambalpur.

... **Petitioner.**

-V e r s u s-

1. Soumya Ranjan Megh, aged about 30 years.
 2. Sunil Megh, aged about 28 years.
 3. Gyana Megh, aged about 22 years.
- All are sons of Jagannath Megh of Vill. – Areda,
P.O. – Badi, P.S. – Khariar, Dist. – Nuapada.

... **Opp. Parties.**

Counsel :

For Petitioner	--	Shri N.P. Parija & Associates.
For Opp. Parties	--	None (Set Ex parte).

Date of argument : 27.11.2014.

Date of judgment : 02.12.2014.

J U D G M E N T

This is an application under section 9 of the

Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') filed by the petitioner praying for an order of injunction restraining the opposite parties, their men and agents from receiving the sale proceeds of oil from M/s. Maa Santoshi Filling Station, Raj Khariar, Dist. – Nuapada and from disposing of its machinery & tools or to appoint him as its Receiver.

2. Factual matrix leading to the case of the petitioner is that opposite party No.1 is the Proprietor of M/s. Maa Santoshi Filling Station (in short, "Filling Station") situated at Raj Khariar in the district of Nuapada. Said opposite party No.1 entered into an Agreement with the petitioner on 10.07.2009 under which the latter was appointed as the Manager of the Filling Station. It was stipulated in the Agreement that the petitioner will arrange working capital and loss & profit will be shared equally. The petitioner had the right to manage the outlet, appoint staff members and grow sale. It was also stipulated that opposite party No.1 shall not have any claim over the working capital. As per the Agreement, the petitioner deposited Rs.4,78,000/- on 10.07.2009 and Rs.1,44,000/- on 22.08.2009 in favour of Indian Oil Corporation, Sambalpur. The said Corporation consigned 8000 litres of diesel and 4000 litres of petrol in favour of the Filling Station on 06.09.2009. It is averred in the petition that the opposite party took a sum of

Rs.2,28,000/- in cash for the treatment of his wife. It is alleged that on 10.09.2009, the opposite party scolded and threatened one Bhim Singh, who was appointed by the petitioner to sell oil commodities, and took away the keys of two operating machines of diesel and petrol. On being informed, the petitioner came to the Filling Station on 11.09.2009 and noticed the mala fide intention of the opposite parties who wanted to drive him out in order to grab the money invested by him. Because of such activity of the opposite parties, who are brothers, the petitioner lodged FIR at Kharavelanagar Police Station. Realising the manner and behaviour of the opposite parties, the petitioner abandoned to continue in the business and claimed that he is entitled to the refund of Rs.8,50,000/- along with interest @ 18% per annum. In this connection, on 01.05.2010, the petitioner sent a notice through his Advocate to opposite party No.1, but he turned a deaf ear to the claim of the petitioner. Since the petitioner came to know that opposite party No.1 is going to sell away the Filling Station with all its accessories in order to avoid his obligations under the Agreement and the Agreement contains an arbitration clause, the petitioner has filed the present petition seeking an interim order, as mentioned earlier.

3. As no step was taken by the opposite parties and

were absent on repeated calls, the matter is heard ex parte.

4. Taking through the copy of Agreement dated 10.07.2009 filed on behalf of the petitioner, learned counsel appearing for the petitioner has made a forceful contention that unless a Receiver is appointed in respect of the Filling Station in question, the opposite parties are restrained from selling away the Filling Station with all its accessories, difficulties may arise for realization of the award to be passed in arbitral proceeding. The petitioner has also filed copy of FIR and notice dated 01.05.2010 issued to opposite party No.1.

5. There is a clause in the Agreement that if any dispute arises between the parties, the same shall be referred to Arbitrator appointed by the parties under the Indian Arbitration Act in force and the decision of the Arbitrator shall be final and binding upon the parties. Section 9 of the Act prescribes that 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 Sec. 36, apply to a Court for an interim measure of protection, as provided therein. In the present case, in spite of efforts made by the petitioner to resolve the dispute, the opposite parties are said to have failed to make payment of the sum in question. Despite reasonable opportunity afforded to the opposite parties, they have failed to put-forth their case

denying the averments in the petition and the claim made by the petitioner. As a result, the claim of the petitioner remains un rebutted and the same finds support from the documents relied upon by him. Therefore, it can be safely concluded that opposite party No.1 is liable to make payment of the amount claimed by the petitioner and he being required to pay such a high amount, apprehension of the petitioner appears to be genuine. Hence, there is a prima facie case in favour of the petitioner. If the Filling Station is sold away, there will be inconvenience on the part of the petitioner to recover the money in question from opposite party No.1. On the other hand, balance of convenience lies in favour of the petitioner. If the opposite parties dispose of the Filling Station, there will be irreparable loss or injury to the petitioner as the subject-matter of dispute will no longer exist to settle the amount. Thus, the petitioner has proved all the ingredients to obtain injunction under section 9 of the Act. Moreover, for preservation of the property, appointment of Receiver as interim measure is necessary for the interest of justice.

6. Regard being had to the facts and circumstances of the case, in my considered view, it would be just and appropriate to restrain the opposite parties from selling, transferring, alienating and/or encumbering M/s. Maa Santoshi

Filling Station at Raj Khariar in the district of Nuapada and from selling, disposing or encumbering their movables and immovables.

Further, if the petitioner or his representative is appointed as a Receiver to run the Filling Station through his representative or hirer and appropriate/adjust the usufructs thereof towards satisfaction of the amount claimed after meeting necessary expenses for the functioning of the Filling Station, the interest of justice would be best served. Such appointment of Receiver shall stand cancelled in the event opposite party No.1 furnishes security in shape of Bank Guarantee for an amount of Rs.8,50,000/- (Rupees Eight Lakhs & Fifty Thousand).

The petitioner is at liberty to seek the assistance of police while taking over possession of the Filling Station as a Receiver after making an inventory thereof for future reference and his appointment as such shall remain in force till satisfaction of the amount claimed in the case.

7. In the result, to the extent of observations made above, the petition under section 9 of the Act is allowed in part with cost.

District Judge, Khurda
at Bhubaneswar.
02.12.2014.

Dictated, corrected by me and pronounced in the open Court
this day the 02nd December, 2014.

District Judge, Khurda
at Bhubaneswar.
02.12.2014.