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Section 9 and the Third Party: Can an Indian Court Grant Interim Relief for or Against a Third Party to an Arbitration Agreement?

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ABSTRACT

Section 9 of the Arbitration and Conciliation Act, 1996 empowers a court to grant interim measures of protection in aid of arbitration. A question of growing practical importance is whether that power extends to, or can be directed against, a person who is not a signatory to the arbitration agreement. This article addresses that research question directly. Under section 9 of the Act, the right to invoke the provision is restricted to parties to the arbitration agreement, but the power to grant relief extends beyond them. A court exercising Section 9 jurisdiction may, on appropriate facts, pass interim orders against a third party or in favour of the third party. The article traces the judicial reasoning supporting this position from *Prabhat Steel Traders and Blue Coast Hotels* to the landmark *K. Bala Vishnu Raju* decision of the Telangana High Court examines the restrictive view represented by *Gulshan Townplanners*, and proposes a structured framework for determining when and how Section 9 relief may legitimately reach beyond the signature block.

Keywords: Section 9, interim relief, third party, non-signatory, party-indifferent power, arbitration agreement, Section 17, *K. Bala Vishnu Raju*.

I. INTRODUCTION: THE RESEARCH QUESTION

Arbitration is consensual. The arbitration agreement is the foundation of every right and obligation that flows from it, and it binds, in literal sense, only those who have agreed to be bound. This foundational principle is given statutory form by Section 7 of the Arbitration and Conciliation Act, 1996¹ (the Act), which defines an arbitration agreement as an agreement by the parties to submit disputes to arbitration, and by Section 2(1)(h)², which defines “party” as a party to an arbitration agreement.

Against this background, Section 9 of the Act³ presents a puzzle. It allows a party before, during, or after arbitral proceedings to apply to a court for interim measures of protection. The section presents a range of reliefs, appointment of a guardian, preservation, interim custody, or sale of goods, securing the amount in dispute, inspection of property, interim injunctions, and appointment of a receiver. However, the section is silent on the identity of the person against whom these measures may be directed. It says who can ask for relief. It does not say against whom relief may only be granted.

In this context, section 9 give a way to several questions like firstly, can a court, acting under Section 9, grant an interim order against a person who is not a party to the arbitration agreement, a stranger to the contract? Secondly, can a third party who is affected by a Section 9 order seek to participate in or appeal from those proceedings? This article addresses these questions directly by employing the precedence set by different high Courts and Supreme Court.

II. THE STATUTORY TEXT AND ITS STRUCTURAL ASYMMETRY

A careful reading of Section 9 reveals an intentional distinction between the class of persons who can file the application for interim relief and the class of persons against whom the provision may operate.

Section 9(1) provides:

“A party may apply to a court for interim measure of protection as may appear to the Court to be just and convenient.”⁴

¹ Arbitration and Conciliation Act 1996 (Act No 26 of 1996), s 7.

² Arbitration and Conciliation Act 1996 (Act No 26 of 1996), s 2(1)(h).

³ Arbitration and Conciliation Act 1996 (Act No 26 of 1996), s 9.

⁴ *ibid*.

According to this it is very clear that only a party to the arbitration agreement may move the court under Section 9. A third party to an arbitration agreement cannot file a Section 9 application.

However, nowhere in Section 9 does the legislature restrict the application of this section for or against the non-signatory to the arbitration agreement. The sub-clauses of Section 9(1) make this idea self-evident as Sub-clause (i) contemplates appointment of a guardian for a minor or a person of unsound mind and the guardian need not be a party to the arbitration agreement. Similarly, Sub-clauses (a), (b) and (e) of the clause (ii) allows the application of an interim relief against a third party for example (a) refers to the preservation, custody, or sale of goods, where the goods may be in the hands of a third party and (b) refers to securing the amount in dispute that amount may be in an escrow account held by a bank, which is a third party, Furthermore, (e) refers to interim injunctions, the target of an injunction may be any person whose conduct threatens the subject matter of the arbitration.

This position strongly supports the view that Section 9 was designed to be what the Telangana High Court in *K. Bala Vishnu Raju v. Emaar Hills Township Pvt. Ltd.* described as party-specific as to the applicant but party-indifferent as to the respondent.⁵

While distinguishing section 17 from section 9 of the Act, The Bombay High Court in *Prabhat Steel Traders Pvt. Ltd. v. Excel Metal Processors Pvt. Ltd.*⁶ noted that Section 9 vests the remedy in a party to seek interim protection against a person who need not be either a party to the arbitration agreement or to the arbitration proceedings, whereas Section 17 moves before the arbitrator for an order against a party to the proceedings.

III. THE JUDICIAL LANDSCAPE: THREE VIEWS IN TENSION

The Expansive View

The most authoritative statement of the expansive view comes from the Telangana High Court in *K. Bala Vishnu Raju* (supra). The court held, at paragraph 29 of its judgment:

*"It is significant that section 9(1) of the 1996 Act does not limit the interim measure passed by the Court only to a 'party' (to an arbitration agreement) but leaves the target-respondent open and unspecified. In other words, the power to grant interim relief is subject to a party applicant but is party-indifferent with regard to the intended respondent. There are no fetters on the Court in pulling in non-parties who are strangers to an Arbitration Agreement within the zone of protective measures."*⁷

The court's reasoning has two independent Premises. The first is textual Section 9(1) does not name the respondent and the sub-clauses presuppose third-party targets. The second draws on the evolution of the definition of "party" after the Constitution Bench's decision in *Cox and Kings Ltd. v. SAP India Pvt. Ltd.*⁸ The Telangana High Court observed that *Cox and Kings* effectively did away with the party/non-party dichotomy in the definition of party under Section 2(1)(h) read with Section 7, to include both signatories and non-signatories where the conduct of the non-signatory reflects consent to be bound.

Similarly, the Delhi High Court had reached a materially similar conclusion in *Blue Coast Infrastructure Development Pvt. Ltd. v. Blue Coast Hotels Ltd. & Anr.* The court held plainly:

*"The scope of power of a Court under Section 9 of the Act is not limited to parties to an Arbitration Agreement and the Court can issue interim directions even against a third party. The distinction between the powers under Section 9 of the Act and Section 17 of the Act has a clear rationale. An Arbitrator is a creature of the contract between the parties and therefore cannot venture outside the contract to issue directions to parties who are non-parties to the Arbitration Agreement. This limitation is not applicable to a Court exercising power under Section 9 of the Act."*⁹

This distinction between the tribunal's contractually-bounded jurisdiction and the court's broader supervisory power under Section 9 has been consistently recognised. The Bombay High Court in *Prabhat Steel Traders* case¹⁰ considering whether a third party could appeal under Section 37¹¹ against a Section 9 order held that Section 9 vests the remedy to seek protection against a person who need not be either party to the arbitration agreement or to the arbitration proceedings. The same court in *Girish Mulchand Mehta & Durga Jaishankar Mehta v. Mahesh S. Mehta & Harini Cooperative Housing Society Ltd.* held that third parties can be impleaded in Section 9 proceedings when the grant of the proposed relief would incidentally affect them, and that such third parties have standing to appeal under Section 37.¹²

Furthermore, the Jammu and Kashmir High Court's decision in *Mohammad Ishaq Bhat v. Tariq Ahmad Sofi & Anr.*¹³ held that a stranger to an arbitration agreement may be impleaded in Section 9 proceedings where the court is convinced that the person is a proper and necessary party and that their presence

⁵ *K Bala Vishnu Raju v Emar India Ltd and Ors* MANU/TL/0668/2025.

⁶ *Prabhat Steel Traders Pvt Ltd and Ors v Excel Metal Processors Pvt Ltd and Ors* MANU/MH/2545/2018

⁷ *K. Bala Vishnu* (n 4).

⁸ *Cox and Kings Ltd v SAP India Pvt Ltd* (2024) 4 SCC 1

⁹ *Blue Coast Infrastructure Development Pvt Ltd v Blue Coast Hotels Ltd.* 2020 SCC OnLine Del 1897.

¹⁰ *Prabhat* (n 6).

¹¹ Arbitration and Conciliation Act 1996 (Act No 26 of 1996), s 37.

¹² *Girish Mulchand Mehta v Mahesh S. Mehta* 2009 SCC OnLine Bom 1986.

¹³ *Mohammad Ishaq Bhat v Tariq Ahmad Sofi* 2010 SCC OnLine J&K 41

will enable the court to arrive at a just and proper conclusion. To restrict Section 9 to parties only, the court observed, would leave the person who is materially affected by the dispute to watch proceedings from the fence while the victim of the outcome is none other than the person pushed to the fence.

The Restrictive View

The restrictive view holds that Section 9 jurisdiction is restricted to the arbitration agreement and, since an arbitration agreement binds only its signatories, no relief can be granted against a person with whom the applicant has no arbitration agreement. On this view, to use Section 9 against a third party is to exercise general civil jurisdiction under the guise of a statutory provision, which is inconsistent with the Act's scheme of minimal judicial intervention.

The recent example of this view is the Bombay High Court's decision in *Gulshan Townplanners LLP v. Gulshan Co-operative Housing Society Ltd.*, where the petitioner sought relief against a respondent with whom it admittedly had no arbitration agreement whatsoever. The court rejected the application on several grounds that together represent the strongest statement of the restrictive view.

First, the court held that before granting any relief under Section 9, the court must be satisfied about the existence of an arbitration agreement and since there was none between the petitioner and the respondent against whom relief was sought, the Section 9 machinery simply could not be employed. *Second*, the court observed that interim relief under Section 9 is only in aid of final relief that would be obtained through arbitration, and since the petitioner had no intention of commencing arbitration proceedings against the particular respondent, the Section 9 application lacked its necessary foundation. *Third*, the court held that even the signatory party to the arbitration agreement could not have obtained relief under Section 9 against the respondent in question, and accordingly the developer-petitioner with no privity with that respondent could not use Section 9 as a weapon to obtain reliefs that the contracting party itself could not have sought.¹⁴

For further leveraging the restricting view, The Delhi High Court's in *Arun Kapur v. Vikram Kapur*¹⁵ had also held that Section 9 is attracted only if the nature of the dispute is the subject matter of arbitration proceedings and that it does not contemplate any relief which does not stem from the arbitration proceedings or the disputes referred to arbitration.

The Contextual View

A third line of authority chooses a middle ground where neither allows each and every interim relief against the third party nor denies all the claims against the third party. Instead it promotes the idea that this question is fact-specific in every case.

The Prabhat Steel Traders analyses of Section 9 have noted that courts must determine in each case whether, for the purpose of interim protection, an order affecting a third party can and should be made.

This view has considerable practical merit. Whether a third party's connection to the subject matter of the arbitration agreement is sufficiently proximate to justify a Section 9 order against them is not reducible to a single bright-line test.

IV. THE CRITICAL DISTINCTION: INVOKING SECTION 9 VERSUS BEING BOUND BY IT

A principled resolution of the tension between the expansive and restrictive views requires distinguishing between two analytically separate questions that are frequently conflated in the case law.

The first question is, who may invoke Section 9? The answer to this question is settled and clear. Only a party to the arbitration agreement may apply under Section 9. A person with no connection to the arbitration agreement, who neither signed it nor is bound by it under any recognised legal doctrine cannot file a Section 9 application. The restriction derives from Section 9(1) itself, which confines the application right to "a party," read together with the definition of party in Section 2(1) (h).

The second question is, against whom may a court exercise its Section 9 power? This question is not answered by the same provisions because Section 9 does not identify a restricted class of respondents. The answer to this question is, on a careful textual and purposive reading of the provision, that the court's power is not confined to parties to the arbitration agreement and it may extend to third parties where the circumstances warrant.

This distinction is elaboratively captured in the Prabhat Steel Traders judgment, which explains that even though third parties should not be allowed to be impleaded under Section 9 nor allowed to invoke Section 9, the scope of the power should nonetheless extend to third parties. Accordingly, the court is not curtailed in passing orders against third parties or passing orders that may affect third parties. If the court's power were restricted to the parties to arbitration only, it would be unnecessarily curtailed, making the power akin to that of the tribunal and ultimately frustrating the purpose of interim measures.

This analysis is also coherent with the structural distinction between Sections 9 and 17. Section 17 which confers interim powers on the arbitral tribunal is by nature contractually bounded: the tribunal has no jurisdiction over persons who are not parties to the arbitration agreement. Section 9, by contrast,

¹⁴ *Gulshan Townplanners LLP v. Gulshan Coop. Housing Society Ltd* 2024 SCC OnLine Bom 3111.

¹⁵ *Arun Kapur v. Vikram Kapur*, 2001 SCC OnLine Del 1129.

is a provision conferring power on a court, an institution whose jurisdiction is not derived from and not limited by a private agreement. To equate the reach of Section 9 with the reach of Section 17 is to misunderstand the different foundations on which the two provisions rest.

V. AGAINST WHOM MAY A SECTION 9 ORDER BE DIRECTED? A GRADUATED FRAMEWORK

Accepting that Section 9 may in principle reach third parties, the next and more difficult question is, what conditions must be satisfied before a court exercises this power? The case law suggests a framework based on the quality and nature of the third party's connection to the arbitration agreement and its subject matter.

Connected Third Party

A Section 9 order against that third party is not only permissible but frequently essential to the efficacy of interim protection. Such parties do not claim any independent right in the subject matter and their connection to the dispute is purely instrumental. Courts have consistently passed orders in this category and there is no serious challenge to the jurisdiction to do so. The reference in Section 9(1)(ii)(b) to securing the amount in dispute which will routinely be held by a bank effectively presupposes this category of third-party order.

The Third Party Claiming Under a Signatory

Where a third party claims rights that are derived from a party to the arbitration agreement, in those cases the court has jurisdiction under Section 9 to pass orders affecting that third party. The Kerala High Court in *Shone Sanil v. Coastal Foundations (P) Ltd.*¹⁶ held that a Section 9 application can be directed against any person claiming under a party to the arbitration agreement. This category covers situations where a third party has no independent title but holds its position through the privity of a signatory.

The Non-Signatory Who is Connected to the Agreement

This is the most doctrinally complex category. Where a third party, though not a formal signatory, has a live and proximate connection to the arbitration agreement — through participation in the negotiation, performance, or termination of the underlying contract, through corporate group relationships, through common directorships, or through the receipt of substantial benefits under the agreement a Section 9 order may be directed against them if the necessary and proper party tests are satisfied.

The Telangana High Court's *K. Bala Vishnu Raju* decision exemplifies this category. The respondents had received 95% of the consideration for a plot under agreements intimately connected to the arbitration agreement. The court found them to be not only proper but necessary parties to the Section 9 proceedings, since their presence was essential for the court to adjudicate on the merits of the application for preservation of the plot. The court held that to allow such parties to "sneak across the boundary-line and disappear from the field" would be to permit an abuse that Section 9 must prevent.

The Wholly-Unconnected Stranger

At the other end of the spectrum lies the wholly-unconnected third party, a person who has no relationship whatsoever to the arbitration agreement, no connection to the subject matter, and no transaction with either party that is proximate to the dispute. Against such a person, Section 9 cannot be used. *Gulshan Townplanners*¹⁷ represents the clear limit of the Section 9 power, where there is a complete absence of privity, a Section 9 application amounts to an attempt to exercise general civil jurisdiction in disguise, and it must fail.

The court in *Gulshan Townplanners* identified the decisive consideration as this, even the signatory party could not have obtained relief under Section 9 against the particular respondent. This test whether the party to the arbitration agreement could itself have sought Section 9 relief against the person in question is a useful heuristic. If the very party who agreed to arbitrate could not use Section 9 against someone, the mechanism clearly cannot be stretched to allow a third party to obtain such relief.

VIII. PRACTICAL IMPLICATIONS: WHAT THIS MEANS FOR PRACTITIONERS

The framework developed above has several concrete implications for practitioners seeking or resisting Section 9 relief.

For applicants, the appropriate focus when targeting a non-signatory respondent is the quality of that person's connection to the arbitration agreement. It is not sufficient to show that the third party holds relevant property or that an order against them would be convenient. The applicant must establish that the third party falls within one of the categories discussed above and must satisfy the necessary and proper party tests drawn from *Kasturi v. Iyyamperumal*¹⁸.

¹⁶ *Shoney Sanil v Coastal Foundations (P) Ltd* 2006 SCC OnLine Ker 38.

¹⁷ *Gulshan Townplanners* (n 14).

¹⁸ *Kasturi v Iyyamperumal* AIR 2005 SC 2813.

For respondents seeking to resist Section 9 orders, the Gulshan Townplanners framework provides the most robust defence: if there is truly no arbitration agreement between the applicant and the respondent, and no transaction connecting the respondent to the arbitration agreement, the court lacks the basis to exercise Section 9 jurisdiction. Respondents in this position should challenge the Section 9 application at the threshold, raising the absence of any agreement as a preliminary objection rather than contesting the merits of the interim relief.

For third parties who find themselves affected by a Section 9 order made without their participation, the Prabhat Steel Traders decision confirms their right of appeal under Section 37. Such third parties should be mindful that a Section 37 appeal, though available, is not a forum for re-litigation of the merits but for challenging the jurisdiction of the court to have passed the order and, on the merits, for demonstrating that the order was clearly erroneous.

For courts, the framework counsels against reflexive rejection of Section 9 applications on the mere ground that a respondent is not a signatory to the arbitration agreement. The correct inquiry is whether the respondent's connection to the agreement and its subject matter justifies the exercise of the court's protective power. The court's mandate under Section 9 is to prevent the frustration of arbitration, not to enforce the arbitration agreement itself, a distinction that permits, and sometimes requires, action against persons who are not bound by the agreement but whose conduct threatens the effectiveness of the proceedings.

IX. CONCLUSION

The research question, whether an interim measure under Section 9 of the Arbitration and Conciliation Act, 1996 can be passed for or against a third party or non-signatory to an arbitration agreement admits of a qualified but definite affirmative answer.

Section 9 is structurally asymmetric. The right to invoke it is reserved for parties to the arbitration agreement. But the power it confers on the court is not bounded in the same way. The statutory text, the sub-clauses of Section 9(1), and the fundamental distinction between the court's statutory jurisdiction and the tribunal's contractual authority all support the conclusion that a court may pass Section 9 orders against third parties — including banks, escrow agents, parties claiming under signatories, and non-signatories whose conduct reflects intimate and proximate connection to the arbitration agreement.

The restrictive view represented by Gulshan Townplanners identifies the outer limit correctly: a wholly-unconnected third party, against whom even the signatory party could not seek Section 9 relief, cannot be subjected to the court's Section 9 power. But this limit is defined by the quality of the connection, not by the mere absence of a signature on the arbitration agreement.

The decisive insight of K. Bala Vishnu Raju¹⁹ that Section 9's power is "party-indifferent with regard to the intended respondent" restates the structural asymmetry in its clearest form and should be treated as the authoritative position. Courts should apply it through the graduated framework proposed in this article.

What remains desirable, ultimately, is legislative clarity. A targeted amendment to Section 9, or an authoritative Supreme Court pronouncement specifically addressing the third-party question in the context of interim relief (as distinct from the broader impleadment question addressed in Cox and Kings), would resolve the inconsistency currently exhibited across High Courts and provide the certainty that commercial arbitration demands.

¹⁹ K Bala Vishnu Raju (n 4).