

---

**(2018) 02 UK CK 0008**  
**In the Uttarakhand High Court**  
**Case No : 632 of 2017**

M/s Sir Bio Tech India Limited

APPELLANT

Vs

Carnival Films Pvt. Ltd and another

RESPONDENT

---

**Date of Decision :** 15-02-2018

**Acts Referred:**

[Arbitration and Conciliation Act, 1996](#), [Section 9](#) - Interim measures, etc., by Court

**Citation :** (2018) 02 UK CK 0008

**Hon'ble Judges :** Sharad Kumar Sharma

**Bench :** Single Bench

**Advocate :** Sunil Upadhyaya, Anil Kumar Joshi, D.C.S. Rawat, Ayush Negi, Virendra Singh Rawat

**Final Decision :** Dismissed

---

## Judgement

1. The appellant herein is an opposite party in the proceedings u/s 9 of the Arbitration and Conciliation Act, 1996, which was drawn by the

respondents before the learned District Judge, Almora, as Arbitration Case No. 24 of 2017 ""Carnival Films Private Limited Vs. M/s Sir Bio Tech

India Limited and another"". The learned District Judge, Almora by the impugned order dated 28.10.2017 while considering application u/s 9 of the

Arbitration and Conciliation Act, 1996 had passed the order to the following effect:-

On the basis of observations made in the body of this judgment, the petition is allowed.

By this arrangement, the respondents, their assignee, representative, legal heirs, agents etc. are restrained from transferring, selling, alienating,

encumbering, parting with possession or creating third party interests in the property in dispute till the termination of arbitral proceedings.

File be consigned to the record room.

2. The arguments as principally extended by the learned counsel for the appellant was to the effect that the restraint order dated 28.10.2017, as

passed by the learned District Judge, Almora was nonest in the sense that prior to passing of the order, the appellant had executed a lease-deed on

24.12.2016. It was on that premise that this Court was impressed upon by concealment of fact to pass an order on 14.12.2017, disposing of the

Appeal from Order with certain observations. It is this order, which has been sought to be reviewed by the respondents on the ground that the

order has been solicited by not bringing the entire correct and true facts on record and by not projecting the total case as it was considered by the

learned District Judge, Almora.

3. A short question, which was argued by the appellant's counsel when the order dated 14.12.2017 was passed, it was based on a touchstone to

the effect that after the termination of the arbitration agreement, the appellant has already executed a lease-deed in favour of third person, and for

the said purpose, in the grounds taken in the Memorandum of Appeal, in particular, ground "h", which reads as under:-

h) Because while passing the order impugned dated 28.10.2017 the learned trial court has failed to appreciate that after termination of agreement

to lease the appellant has entered into a memorandum of understanding with Movies Times Cinema Limited after receiving a consideration of Rs.

9,00,000/- on 12.08.2017 much before the passing of the impugned order but this vital aspect of the matter has not been considered.

4. The terminology used therein by the appellant is that it was a "Memorandum of Understanding", which the appellant has entered into with

Movies Times Cinema Limited after exchange of consideration of Rs. 9.00 lacs. In continuation thereto, and what is revealed from the objection

filed by the appellant before the learned District Judge, Almora, in response to the section 9 application, in particular, in para 26, he refers that

after the Memorandum of Understanding dated 12.08.2017, an agreement was entered into on 30.08.2017. Para 26 of the objection shows that

the copy of the said agreement was annexed with the objection, filed by the appellant on 05.10.2017 before the learned District Judge, Almora.

Para 26 is quoted hereunder:-

26. After sending the termination notice, Sir Biotech India Limited, to run its cinema, entered into MOU with Movies Times Cinema limited on

12.08.2017 and after having received a consideration of Rs. 9 lakh entered into an agreement on 30th August 2017. Copy of agreement with

movie time cinema Limited is here by annex with the objection.

5. When the appeal was filed and argued, the sole impact of such agreement or understating was the bone of contention against the grant of

restraint order passed by the learned District Judge, Almora. In all fairness, it was expected from the appellant that when they wanted to

substantiate their argument and they were placing reliance on certain documents under law, they were bound to place the documents in its entirety

and not in piecemeal. On scrutiny of the Memorandum of Appeal, though the objection is on record, but the agreement dated 30.08.2017, which

also formed part of the said objection was not placed before this Court. Rather to the contrary, when the argument proceeded, and also in

accordance with the findings recorded in para 4 of the order sought to be reviewed, a reference was made by the appellant that a lease-deed

which has been executed on 24.12.2016 with the third party, as a matter of fact no such lease-deed is on record or ever executed.

6. Yet again, the said lease deed is not on record even today. Besides this, it was not on record even before the learned District Judge, Almora.

Even if the contention of the learned counsel for the appellant is accepted that there was a lease deed executed on 24.12.2016, it could not have

been referred for the first time before the learned appellate Court, until and unless the veracity of it was tested by the learned District Judge,

Almora, while considering the application u/s 9, and deed dated 30.08.2016 which was pleaded by the appellant was not placed before this Court

to be scrutinized.

7. In either circumstances, whether it was an agreement of 30.08.2016 as referred in ground "h" by the appellant or the alleged lease deed dated

24.12.2016 as argued during the course of the argument of this appeal, since it dealt with a creation of right in relation to an immovable property

with third party, otherwise it cannot be read in evidence, as to be document creating any right. It was required to be considered by both the courts

below i.e. District Court as well as the Appellate Court as to whether it was

validly executed and was conferring a legal right or not and it could not be ruled out that it was due to this intention that the agreement of 30.08.2016 or the alleged lease deed dated 24.12.2016 was not placed on record before this Court. Even otherwise also, since these documents, pertain to immovable property which admittedly were not a registered document, they cannot be taken into consideration, as a document validly conferring title, which could be read in favour of appellant in present circumstances.

8. Learned counsel for the appellant, ultimately, after conclusion of the arguments, submitted that in view of the provisions contained under Arbitration and Conciliation Act, 1996 since the provisions of CPC is not made applicable, the review would not lie. But looking to the manner in which the appellant succeeded in getting the order dated 14.12.2017 passed by this Court, by concealment and distortion of facts and pleadings, I treat the review application as to be a recall application, as there was a deliberate intention given by the respondents about the endeavour made by the appellant to mislead the Court and thus the review application is allowed. The order dated 14.12.2017 is recalled. The appeal from order is dismissed. No order as to costs.