

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) NO.43 OF 2016

**Wizcraft International Entertainment
Pvt. Ltd.**

..... Appellant

V/s

Curators Host LLP

..... Respondents

Mr. Venkatesh Dhond a/w Mr. Ricab Chand i/b Mr. Rakesh B. Sawant for
Appellant.

None for the Respondents.

**CORAM : ANOOP V. MOHTA &
A.A. SAYED, JJ.**

DATED : 04 FEBRUARY 2016

ORDER:

1 Leave to amend the Appeal is granted to annex copy of impugned order. Amendment to be carried out forthwith.

2 This Appeal under section 37 of the Arbitration & Conciliation Act, 1996, is filed by the Appellant/original Petitioner as learned Single Judge of this Court has refused to grant any ad-interim relief in the Petition filed by the Petitioner under section 9 of the Arbitration & Conciliation Act, 1996. Paragraph 5 of the impugned order dated 2 February 2016 reads as under:

“5 It is to be noted that, in the present proceedings the respondents, by their Email dated 29/06/2015 (page 46, Annexure-K to the petition) specifically informed the petitioner that it is not possible for them to go on with the

event with the petitioner. Apart from that, it is to be noted that the petitioner filed Affidavit of service dated 02/02/2016 stating that the copies were served on the respondents, which is not correct. The service letter shows that the notices were served on one Mr. Radhasham. As the petitioner failed and neglected to serve the respondents, I do not find any urgency in the present petition.”

3 The Petitioner in the Petition seeking to restrain the Respondents from using the concept note and the name “the Great Indian Golchakkar” in the event organized by the Respondents. Learned Counsel appearing for the Appellant has pointed out that the Affidavit of service filed in this Appeal referring to the acknowledgement of three notices by three different persons with mobile numbers endorsed upon it. However, there is no rubber stamp or nothing to show that those endorsements are by the persons authorised and/or the notices are accepted on behalf of the Respondents. The statement is also made by filing Affidavit of service that the Appeal Memo/Notice of Motion taken out in this Appeal are forwarded by email on 3 February 2016. The matter is listed today i.e. on 4 February 2016. No one is appearing on behalf of the Respondents. Therefore, at this stage, whether the service is effective and/or proper itself is an issue.

4 We are not at this stage inclined to accept the case of proper service upon the Respondents which is necessary in the matter like this.

Various factual aspects are required to be noted and accepted before passing an order of injunction in such intellectual property matters. Admittedly, by email dated 29 June 2015, the Respondents communicated the Petitioner that “it is not possible for them to go on with the event with the petitioner”.

5 The Appellant is stated to be an event organizing company. On website of the Respondents it was displayed that the event is scheduled to be held between 5 to 7 February 2016 using the name “The Great Indian Golchakkar”. By communication dated 18 January 2016, the Petitioner has invoked arbitration under clause 12 of the Confidentiality and Non-Disclosure Agreement dated 28 April 2015 between the parties.

6 The Application being O.M.P. (I) No. Comm/29 of 2016 was moved by the Appellant/original Petitioner under section 9 of the Arbitration & Conciliation Act, 1996 in Delhi High Court knowing that the agreed place of arbitration is Mumbai. The learned Single Judge thus refused to entertain the said Application and has not granted any relief and/or protection, however, has granted liberty to apply to the Court of place of arbitration.

7 Learned Single Judge of this Court after hearing the Appellant/original Petitioner, by the impugned order, has refused to grant

ad-interim relief and issued notice to the Respondents and made it returnable after four weeks.

8 In the matter like this, ordinarily merely because there is delay, the Court may not refuse to pass ad-interim relief. However, in the facts so recorded above and basically for want of legal service and in view of the fact that the scheduled event is going to be held from tomorrow for three days viz. 5 to 7 February 2016 at Delhi and as the Respondents have been publishing the same event since long including on website apart from the other publication by other modes and considering the subject matter no case for ex-parte injunction is made out. The particulars of knowledge of the Appellant are not stated and is vague. We are thus not inclined to interfere with the impugned order. The Respondents have already applied for registration of Trademark on 26 June 2015 and the same is pending. The Appellant has all other remedies available to raise defence/objection, if any. Ultimately, the aspect of damages/compensation is always open for the Appellant to insist upon, if a case is made out as contemplated under the intellectual property laws.

9 The Appeal is dismissed. No order as to costs.

(A.A. SAYED, J.)

(ANOOP V. MOHTA, J.)