

IN THE HIGH COURT OF ORISSA AT CUTTACK

**ARBA No.10 Of 2020
(Through hybrid mode)**

Pravat Ku. Parida

....

Appellant

Mr. A.K.Mohapatra(1), Advocate

-versus-

O.S.R.T.C. and another

....

Respondents

Mr. S. Mishra, Advocate

CORAM: JUSTICE ARINDAM SINHA

**ORDER
24.02.2022**

**Order No.
04.**

1. Mr. Mohapatra, learned advocate, appears on behalf of appellant and submits, impugned is judgment dated 19th February, 2020, whereby the Court below rejected his client's petition for interim measure under section 9 of Arbitration and Conciliation Act, 1996. His client wanted interim measure restraining respondents from evicting him on purportedly canceling the licence. The Court below relying on judgment of the Supreme Court in **Himangni Enterprises Vs. Kamaljeet Singh Ahluwalia**, reported in AIR 2017 SC 5137, threw out his client's petition saying, the disputes are not arbitrable.
2. Mr. Mishra, learned advocate appears on behalf of respondents and submits, there could be no interim measure on other grounds being

that where period of licence has expired, the Supreme Court in **Cox & Kings Ltd. Vs. Indian Rly. Catering & Tourism Corporation Ltd.**, reported in **AIR 2012 SC 3391**, paragraphs 23 and 24 said interim measure cannot be granted.

3. It appears to be admitted position that parties have a licence, one of the terms being arbitration agreement. There is no special statute governing the licence, providing for the dispute resolution mechanism to oust the arbitration agreement. **Himangni Enterprises** (supra) was subsequently dealt with by larger Bench of the Supreme Court in **Vidya Drolia vs. Durga Trading Corp.**, reported in **(2021) 2 SCC 1**, paragraphs 79 and 80. By impugned judgment the Court below has erred in appreciating position of law declared on arbitrability

4. Respondents' contention before this Court regarding interim measure not available to a petitioner where based on expired licence was not before the Court below.

5. In the circumstances, impugned order is set aside and the petition restored to the Court below for hearing afresh.

6. The appeal is disposed of.

(Arindam Sinha)
Judge