

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

ARBITRATION APPEAL NO.14 OF 2022

(Shri R Rama Prasad, Managing Director M/s Hayagrev Civil Engineering Pvt. Ltd. Vs.
M/s. Bharat Heavy Electricals Limited, Nagpur)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. Y. D. Nagpure, Advocate for Appellant.

CORAM: ROHIT B. DEO, J.

DATE: 27th APRIL, 2022.

This appeal is preferred challenging the order dated 08.04.2022 rendered by the District Judge-2 and Additional Sessions Judge, Nagpur in Miscellaneous Civil Application 314/2022 whereby the hearing is adjourned till 06.05.2022. The order impugned reads thus:

*As stipulation of contract 60 days notice was
to be given. Notice issued on 5.4.22.
That period is not yet over. In view thereof
P.U. for Order on 6.5.22.*

2. This appeal is preferred on the assumption that by postponing the consideration of the application, the interim relief sought in the application under Section 9 of the Arbitration and Conciliation Act, 1996 (Act) is refused.

3. The learned District Judge has postponed the hearing on the ground that the Arbitrator is to be appointed

by the employer within sixty days of the issuance of notice invoking the arbitration clause.

4. While the learned counsel is right in submitting that the reason given for postponing the consideration is not legally sustainable, and this Court does not approve of the reasons recorded, the relief which is sought cannot be granted at least at this stage, and that too in appeal under Section 37 of the Act.

5. The fact that the period of notice contemplated by the agreement could not have been a ground for postponing the consideration of the application since the Contractor was statutorily entitled to claim interim measures before or during the arbitration proceedings. Till the Arbitral Tribunal is constituted, it is always open for the Court to consider an application under Section 9 of the Act, and even after the constitution of the Tribunal, if the Court finds that the remedy under Section 17 of the Act is not efficacious, such measures can be considered.

6. However, the application virtually seeks final and permanent relief in as much as stay is sought to the termination of the contract, which termination has already come into force as far back as on 04.03.2022. Even if the submission of the counsel that the termination will come into effect on the date of the service of the notice which according to the counsel is 16.03.2022 is accepted, stay of the termination would be wholly permissible, and at any

rate would not be permissible as an *ex-parte* interim measure.

7. However, the learned District Judge will have to consider the application and the prayer for *ad-interim* relief on merits immediately.

8. While I am not inclined to interfere in the order impugned, the learned District Judge-2, Nagpur is directed to decide the prayer for *ex-parte* interim relief within two days of the appearance of the appellant.

9. The appellant shall appear in the Court of the District Judge-2, Nagpur on 28.04.2022 and shall produce copy of this order.

10. Nothing observed in this order shall prejudice the case of the appellant in the proceedings under Section 9 of the Act.

11. Steno copy is granted.

12. Appeal is disposed of.

JUDGE