

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Arbitration Appeal No.30 OF 2023

Wild Connectivity Solutions Vs. Tadoba Andhari Tiger Reserve Conservation

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Khajanchi, Advocate for the Appellant/s

CORAM : ANIL S. KILOR, J.

DATE : 09.08.2023

1. In the proceeding filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short 'the Act of 1996') for grant of interim injunction before the Principal District Judge, Chandrapur citing urgency for grant of *ad interim* relief, the Principal District Judge, Chandrapur simply issued notice to the non-applicants and kept the matter returnable on 17.08.2023, meaning thereby, *ad interim* relief was denied to the appellant and hence, this appeal.
2. The learned counsel for the appellant points out that the Service Level Agreement entered between the appellant and the respondents was for the period of five years from 10.12.2021 for providing portal of service for online booking of tickets for Tadoba-Andhari Tiger Reserve Conservation Foundation, Chandrapur, (for short 'TATR').
3. Though in the said agreement, there is a clause of appointing an Arbitrator, in case of any dispute, despite the request made by the petitioner on 02.08.2023 for reference of dispute arising out of the breach of agreement by the respondent

No.2, the respondent No.1, instead of appointing an Arbitrator, terminated the Service Level Agreement. It is contended that there is no clause of termination of Service Level Agreement. It is further submitted that no show cause notice was issued before the termination of Service Level Agreement.

4. In the above referred backdrop, the appellant immediately approached to the Principal District Judge, Chandrapur for filing the application under Section 9 of the Act of 1996 for grant of interim injunction, pointing out the necessity of such interim injunction, in the backdrop that the appellant has undertaken booking for TATR Safari up to October-2023. However, the Principal District Judge, Chandrapur simply issued notice to the non-applicants and kept the matter returnable on 17.08.2023.

5. The Co-ordinate Bench of this Court in the case of *Rajendraprasad R. Singh Vs. Municipal Corporation of Gr. Bombay*¹ has held thus:

“9. It cannot be doubted that the power to grant injunction under Rules 1 and 2 of Order 39 includes a power not to grant an injunction. Issuance of a notice under Rule 3 of Order 39 amounts to an order not to grant injunction till notice is served on the opposite party. Therefore, when the court passes an order of issuance of a notice, it amounts exercise of discretion by the court not to grant injunction till notice is issued. As the order granting an ex parte injunction is appealable, so would be the order of declining to grant ex parte injunction. Relying upon the judgment in M/s Parijatha and another v. Kamalaksha Nayak and others reported in AIR 1982 Karnataka 105 and Abdul Shukoor Sahib v. Umachander reported in air 1976 Madras 350, it was contended that the appeal does not lie even against an ex parte order of injunction and the remedy of the aggrieved defendant lies in making an application under rule 4

1 2003(3) Mh. L.J. 759

of order 39 of the code of civil procedure. However, preponderance of judicial view is that an appeal lies against an ex parte order granting ad interim injunction. In Zilla Parishad, Buduan v. Brahma Rishi Sharma reported in AIR 1970 Allahabad 376 the Full Bench of the Allahabad High Court, in M/s Astral Traders v. Haji mohammed shaban dar reported in air 1982 Jammu And Kashmir 124 the Full Bench of the Jammu and Kashmir High Court, in Akmal Ali and others v. State of assam and others reported in air 1984 gauhati 86 the Full Bench of the Gauhati High Court, in Patel Jasmat Sangaji V. Gujrat electricity board and others reported in 1982 (2) gujarat law reporter 104 the division bench of gujrat high Court, in United Commercial Bank vs. Hanuman Synthetics Ltd. reported in AIR 1985 Calcutta 96 the Division Bench of the Calcutta High Court, and in Airport Authority of India vs. Paradise Hotel and Restaurant the Single Judge of the Gauhati High Court have all held that an appeal lies against ex parte order of injunction passed under Rule 1 or Rule 2 of Order 39 of the Code of Civil Procedure. So far as this court is concerned, the matter is concluded by the decision of this court in S.K. Jusa v. Ganpat Dagdu Gire reported in AIR 1976 Bombay 222 wherein a learned Single Judge of this court has held that an appeal lies against an order of court granting ex parte temporary injunction against defendants with a notice to show cause to the defendants. In my opinion, the order granting ex parte ad interim injunction as well as order declining to grant ex parte temporary injunction and issuance of a notice, are both orders passed under Rule 1 or 2 of Order 39 of the Code of Civil Procedure. If the first is appealable, so must be the second.”

6. In that view of the matter, I am of the opinion that the ends of justice would be sub-served, if the Principal District Judge, Chandrapur is directed to hear the application under Section 9 of the Act of 1996 on 11.08.2023 and pass the necessary order in accordance with law.

7. The appellant shall serve the respondents before the matter is heard on 11.08.2023 by private mode, including email.

8. In the meantime, there shall be stay to the termination letter of termination of Service Level Agreement dated 10.12.2021 issued on 03.08.2023 by the respondent No.1.
9. It is made clear that the Principal District Judge, Chandrapur shall not get influenced by the interim order granted by this Court and shall decide the application on its own merits, in accordance with law.
10. Accordingly, the appeal is **disposed of**. No order as to costs.

[ANIL S. KILOR, J.]