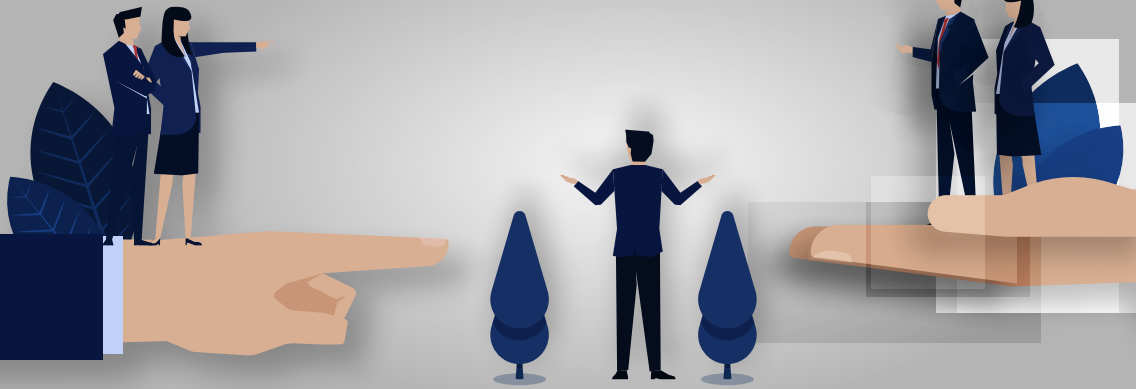


August 2024



High Court of Karnataka holds that the Commercial Courts Act does not bar an appeal against an order refusing to grant *ex-parte* ad-interim relief under the Arbitration Act, and clarifies the scope of judicial interference in appeals against orders granting or rejecting *ex-parte* ad-interim relief¹

Brief Facts

M/s KLR Group Enterprises (“**Appellant**”) approached the Commercial Court in Bengaluru seeking *ex-parte* ad-interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) against Mr. Madhu H. V. and certain others (“**Respondents**”). On 13 February 2024, the Commercial Court denied the Appellant’s request (“**Impugned Order**”). Aggrieved by the Impugned Order, the Appellant preferred an appeal before the High Court of Karnataka (“**Court**”) under Section 37 of the Arbitration Act (“**Appeal**”).

In the Appeal, the Respondents contested its maintainability on the ground that an order refusing *ex-parte* interim relief under Section 9 of the Arbitration Act is non-appealable and barred under the proviso to Section 13(1A) of the Commercial Courts Act, 2015 (“**CCA**”) read with Section 37 of the Arbitration Act.

The Appellant argued that:

- Orders denying *ex-parte* interim measures are orders within the meaning of Section 9 of the Arbitration Act and consequently, appealable under Section 37 of the Arbitration Act. Moreover, such *ex-parte* interim orders are recognised under the High Court of Karnataka Arbitration (Proceedings before the Courts) Rules, 2001 as orders under Section 9 of the Arbitration Act. Therefore, they are subject to appeal.
- This question was laid to rest by a co-ordinate bench of the Court in **Sorting Hat Technologies v. Vishal Vivek**,² which held that such an appeal would be maintainable.

The Respondents argued that:

- Orders denying *ex-parte* interim relief under Section 9 of the Arbitration Act are not final orders as the application would be pending before the lower court for final consideration.
- The proviso to Section 13(1A) of the CCA prescribes that only orders covered under Order XLIII of the Code of Civil Procedure, 1908 (“**CPC**”) are appealable. An order denying *ex-parte* relief under Section 9 of the Arbitration Act is not covered under Order XLIII of the CPC and is therefore, non-appealable.
- The decision rendered in **Sorting Hat** (*supra*) was not conclusive and therefore, ought not to be considered by the Court. Rather, the decision of a Single Judge in **Symphony Services Corporation v. Sudip Bhattacharjee**³ ought to be followed, which held that ad-interim orders in proceedings under Section 9 of the Arbitration Act are non-appealable.

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Whether the phrase “*granting or refusing to grant any measure under Section 9*” appearing in Section 37 of the Arbitration Act includes only a final order under Section 9 of the Arbitration Act or also includes an *ex-parte* interim measure in view of the proviso to Section 13(1A) of the CCA?

Judgment

The Court held that the Impugned Order was appealable under Section 37 of the Arbitration Act and Section 13(1A) of the CCA did not bar its maintainability for the following reasons:

- Section 37(1)(b) of the Arbitration Act allows for appeals “*granting or refusing to grant any measure under Section 9*”. Therefore, the scope of Section 37 does not only include final orders but also *ex-parte* interim measures.
- The proviso to Section 13(1A) of the CCA prescribes that only orders of the nature listed in Order XLIII, Rule 1 of the CPC and orders under Section 37 of the Arbitration Act are appealable. The Court observed that appeals under Section 37 of the Arbitration Act are not linked in any way to appeals Order XLIII, Rule 1, and must solely be governed by considerations under Section 37. Moreover, a conjoint reading of Section 13(1A) of the CCA and Section 37 of the Arbitration Act does not prescribe in any manner that only final orders are appealable. Therefore, Section 13(1A) of the CCA did not act as a bar to the Impugned Order.
- As such, measures granting or refusing *ex-parte* interim measures, similar to the Impugned Order, are appealable under Section 37 of the Arbitration Act, whether those proceedings are pending before a commercial court or a court exercising jurisdiction under the Arbitration Act.
- The Court also held that an order denying *ex-parte* relief is in the nature of a final order as the relief of an *ex-parte* order stands declined because once notice is issued to the other side, there is no opportunity to grant an *ex-parte* order. Consequently, orders denying or granting *ex-parte* interim measures under Section 9 of the Arbitration Act have all the attributes of a final order and are subject to appeal.
- The decision of the Single Judge in ***Symphony Services*** (*supra*) was accordingly overruled.
- The Court did caveat its ruling by stating that any appeal against the granting of an *ex-parte* interim measure ought to be entertained only in exceptional cases as it was efficacious for an aggrieved party to challenge such order before the commercial court or a court under the Arbitration Act by entering appearance and seeking vacation of the order.

Analysis

The Court has now settled the question of whether the refusal to grant an *ex-parte* ad-interim order under Section 9 of the Arbitration Act by a commercial court and a court under the Arbitration Act, is appealable. In doing so, the Court has set aside the decision of the Single Judge in ***Symphony Services*** (*supra*) and distinguished a judgment of the High Court of Meghalaya in ***National Thermal Power Corporation Ltd. v. Meghalaya Power Distribution Corporation. Ltd. & Ors.***,⁴ which held such appeals to be non-maintainable.

Parties can now prefer appeals under Section 37 of the Arbitration Act instead of being relegated to filing proceedings under Articles 226 and 227 of the Constitution of India.

Crucially, the Court has once again emphasised judicial restraint in matters of arbitration by stating unequivocally that the scope of interference in an appeal against an order: (i) granting *ex-parte* relief is to be entertained only in exceptional circumstances as the aggrieved party will have the opportunity to seek vacation of the *ex-parte* order before the same court that passed it; and (ii) refusing *ex-parte* relief is limited as the appellate court is only required to consider whether the granting of such relief can be deferred till the appearance of the respondent.

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Endnote

- 1 Authored by Karan Joseph, Partner and Yash Khanna, Associate; *M/s KLR Group Enterprises v. Madhu H.V. & Ors.*, Commercial Appeal No. 56 of 2024, High Court of Karnataka, 2024 SCC OnLine Kar 65, judgment dated 19 July 2024.
Coram: Anu Sivaraman and Anant Ramanath Hegde, JJ.
- 2 Commercial Appeal No. 274/2022.
- 3 (2008) 2 KLJ 24.
- 4 AIR 2021 Meghalaya 53.

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