

## IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-CW-309-2020

**Rodrigues and Associates**  
**Rep. By Proprietor,**  
**Lydon Rodrigues**

..... **Petitioner****V e r s u s****Kodee Recourses**..... **Respondent**

Adv. B. Sardesai for the Petitioner.

**CORAM: DAMA SESHADRI NAIDU, J.****DATE: 2nd November 2020.****ORDER:**

The petitioner claims that he entered into a contract with the respondent for purchasing iron ore. He is said to have paid one crore. But the respondent did not honour the contract. When confronted, he issued cheques to the petitioner for the discharge of the amount he took under the contract. Those cheques were dishonoured.

2. Nevertheless, as the contract, dated 18/6/2020, provided for arbitration. So the petitioner invoked Section 9 of the Arbitration and Conciliation Act, 1996, and applied to the Commercial Court-cum-Civil Judge, Senior Division, "A" Court, Vasco, for interim protection.

3. As seen from the record, the Commercial Court ordered notice to the respondent. In that regard, the petitioner claims that the respondent has deliberately provided a wrong address and has evaded notice. Then the

petitioner applied to the Commercial Court for substituted service, and it was granted. But before the petitioner could serve notice on the respondent, he apprehended that the respondent may alienate or transport away the iron ore. Then, all the petitioners' efforts would come to a naught.

4. Under these circumstances, the petitioner applied to the Commercial Court under section 151 of CPC for an order of, as the petitioner's counsel puts it, status quo until the Court took up the matter on the merits. And that could happen only after the petitioner served notice on the respondent.

5. Exercising its discretion, the Commercial Court adjourned the matter to 5/12/2020. It did not deem it necessary to grant any interim protection to the petitioner. Thus, questioning the Commercial Court's issuing notice, instead of granting an ad-interim relief, the petitioner has filed this writ petition.

6. Heard the learned counsel for the petitioner.

7. There is no cavil about the proposition that this Court is averse to exercising its supervisory jurisdiction merely because the trial Court issued a notice, instead of an interim order. An order issuing a notice or adjourning the matter cannot be treated as a justiciable issue. But, the technicalities apart, the Court's aim at serving the substantial interest of justice, rather than bogged down by technicalities. Here, the petitioner wanted interim

protection, or status quo, as to the stock, on which he is said to have either a charge or a lien, until the trial Court hears the matter on the merits. *Prima facie*, the petitioner could establish before the trial Court that the respondent has been evading service of notice.

8. The petitioner's apprehension seems to be genuine and well-founded, of course, prima facie. His initial efforts to notify the respondent proved futile. So he felt any more delay would prejudice his claim in the suit, and the source for his recovery would be dissipated in the meanwhile.

9. Under these circumstances, I issue a notice to the respondents, returnable on 2/12/2020.

10. In the meanwhile, status quo as on today concerning the stock shall be maintained. That is, there shall be an interim relief in terms of prayer clause "b".

The petitioner is permitted to serve the respondent through Humdast and also any other permissible mode of private service.

**DAMA SESHADRI NAIDU, J.**

**AP/-**