



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MS. JUSTICE TARA VITASTA GANJU

WRIT PETITION NO. 5501 OF 2026 (IPR)

BETWEEN:

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AGED ABOUT 36 YEARS,
PROPRIETOR OF SISKAN PHARMA,
HAVING ITS OFFICE AT DYNASTY BUSINESS PARK,
4TH FLOOR, 'A' WING,
ANDHERI KURLA ROAD,
CHAKALA ANDERI EAST,
MUMBAI - 400 059.

...PETITIONER

(BY SRI. ANANTHA J, ADVOCATE FOR
SRI. VIVEK HOLLA, ADVOCATE)

AND:

M/S. SANWISH PHARMA LLP
A LIMITED LIABILITY PARTNERSHIP
INCORPORATED UNDER THE LLP ACT, 2008,
HAVING ITS REGISTERED OFFICE AT NO.3021,
1ST FLOOR, 4TH PHASE, VHBCS LAYOUT,
BANASHANKARI 3RD STAGE,
BENGALURU - 560 085,
REPRESENTED BY ITS DESIGNATED PARTNER
AND AUTHORISED SIGNATORY
MR. YARRAPUREDDY SREENIVASULU REDDY

...RESPONDENT

(BY MS. DIANA LAURENCE PAUL, ADVOCATE FOR
SRI. SANJAY NAIR, ADVOCATE)



THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS OF THE CASE IN COM.A.A.NO.498/2025, ON THE FILE OF HONBLE LXXXVIII ADDL. CITY CIVIL AND SESSIONS JUDGE (CCH-89), BENGALURU AND BE PLEASED TO SET ASIDE THE AD-INTERIM EX-PARTE ORDER OF TEMPORARY INJUNCTION DATED 15.12.2025 (ANNEXURE-A) PASSED ON THE I.A.NO.2 FILED UNDER ORDER 39 RULE 1 AND 2 OF CPC (ANNEXURE-G) AND ETC.,

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL ORDER

1. The present petition seeks to challenge an order dated 15.12.2025, passed by the LXXXVIII Addl. City Civil And Sessions Judge (CCH-89), Bengaluru, in Com.A.A.No.498/2025 (hereinafter referred to as 'Impugned Order'). By the Impugned Order, the learned Commercial Court allowed an application under Order 39 Rule 1 and 2 filed by the respondent/plaintiff and the petitioner/respondent has been restrained from using



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products 'DyraANC' or any other similar trademark to 'DyraANC'.

2. Learned counsel for the petitioner/respondent submits that this Court has the power under Article 227 of the Constitution of India to maintain a challenge on these proceedings against the Impugned Order. In this behalf, he seeks to rely upon the judgment of the Supreme Court in the case of ***Jindal Steel And Power Limited And Another vs. Bansal Infra Projects Private Limited And Others***¹.

3. Learned counsel for the petitioner/respondent submits that the Supreme Court has held that the High Court can exercise its supervisory jurisdiction under Article 227 of the Constitution of India, in a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'A & C Act') including where an

¹ 2025 SCC Online SC 1041



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interim protection has been granted. Thus, he submits that this Court should exercise jurisdiction in this case.

4. Learned counsel for the respondent/plaintiff on the other hand contends, that the respondent/plaintiff had filed a petition under Section 9 of A & C Act. During the pendency of this petition, an application under Order 39 Rule 1 and 2 CPC has filed which has been allowed and a temporary injunction has been granted. Learned counsel further contends that the petitioner/respondent had executed an assignment deed with the respondent/plaintiff and wherein the adoption and use of a trademark "DyraOne" and "DyraANC", the terms of which have been violated. She further submits that the assignment deed contains an arbitration clause and thus this petition was filed.

5. Learned counsel for the petitioner/respondent in addition states that in terms of the requirements of Section 9 of the A & C Act, the arbitral notice commencing proceedings under the A & C Act, has been sent to the



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petitioner/respondent on 17.12.2025. She further contends that no response has been received to the notice as yet.

6. No doubt this Court can exercise its jurisdiction under Article 227 of the Constitution of India, in circumstances which may include arbitral petitions. However, such jurisdiction to be exercised only in exceptional cases. The judgment relied upon by the petitioner/respondent- ***Jindal Steel's case*** was the case where a petition Section 9 of A & C Act, proceeding was filed restraining the invocation of a bank guarantee or interfering with the invocation of a bank guarantee. The facts in the said case reflected established fraud, as well as irretrievable injury and it is in these exceptional circumstances, that the Supreme Court in the ***Jindal Steel's*** case, chose to exercise its jurisdiction.

7. It is settled law that judicial interference in arbitration proceedings is drawn to the judgment of in the



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case of ***Deep Industries vs. Oil And Natural Gas Corporation²***, wherein the Supreme Court after discussing the non-obstante clause contained in Section 5 of the A & C Act, has held that the policy of the A & C Act is for speedy disposal of the arbitration cases and it is a self-contained code dealing with arbitration and that the High Court must be extremely circumspect in interference. It was further held that the legislative policy in respect of revisional jurisdiction must be kept in mind, while exercising jurisdiction under this provision. The Supreme Court in the ***Deep Industries*** case relied upon its judgment in the case of ***SBP And Co. vs. Patel Engg. Ltd.³*** to hold that Courts should refrain from exercising jurisdiction in proceedings under the A & C Act. The relevant extract of the judgment is set out below:

16. *Most significant of all is the non obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under **Part I of the Arbitration Act, no judicial authority shall intervene except where so provided***

² (2020) 15 SCC 706

³ (2005) 8 SCC 618



in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed [see Section 37(2) of the Act].

17. ***This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.***

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19. In *SBP & Co. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618]* , this Court while considering interference with an order passed by an Arbitral Tribunal under Articles 226/227 of the Constitution laid down as follows: (SCC p. 663, paras 45-46) :

"45. It is seen that some High Courts have proceeded on the basis that any order passed by an Arbitral Tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. Under Section 34,



the aggrieved party has an avenue for ventilating its grievances against the award including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act. The party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. **This appears to be the scheme of the Act. The Arbitral Tribunal is, after all, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the Arbitral Tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution. Such an intervention by the High Courts is not permissible.**

46. The object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage.”

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23. **We reiterate that the policy of the Act is speedy disposal of arbitration cases. The Arbitration Act is a special Act and a self-contained code dealing with arbitration.** This Court in *Fuerst Day Lawson Ltd. [Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2011) 8 SCC 333 : (2011) 4 SCC (Civ) 178]* , has specifically held as follows: (SCC p. 371, para 89)

"89. It is, thus, to be seen that Arbitration Act, 1940, from its inception and right through to 2004 (in *P.S. Sathappan [P.S. Sathappan v. Andhra Bank Ltd., (2004) 11 SCC 672]*) was held to be a self-contained code. Now, if the Arbitration Act, 1940 was held to be a self-contained code, on matters pertaining to arbitration, the Arbitration and Conciliation Act, 1996, which consolidates, amends and designs the law relating to arbitration to bring it, as much as possible, in harmony with the *Uncitral Model* must be held only to be more so. **Once it is held that the Arbitration Act is a self-contained code and exhaustive, then it must also be held, using the lucid expression [S.N. Srikantia & Co. v. Union of India, 1965 SCC OnLine Bom 133 : AIR 1967 Bom 347] of Tulzapurkar, J., that it carries with it.**"

[Emphasis Supplied]

8. However, in the present case, the challenge before this Court is to an order under Order 39 Rule 1 and 2 CPC and not a final decision in an Arbitration Petition filed under Section 9 of the A & C Act.



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9. The issue as to whether such an order is amenable to challenge under Article 227 of the Constitution of India or appealable is no longer *res integra*. The Supreme Court in the case of ***A.Venkatasubbaih Naidu Vs. S. Chellappan and Others***⁴ has held that the power to grant an *ex-parte* injunction is derived from Order XXXIX Rule 1 of the CPC, since Order XLIII Rule 1(r) of the CPC makes an order under this rule appealable, the choice of remedy which lies with the parties is that they can either move the Trial Court to vacate the order under Order XXXIX Rule 4 or file an appeal under Order XLIII Rule 1(r) of the CPC. The Court further held that the statute does not distinguish between *ex-parte* and final orders in exercise of the provisions under Order XXXIX Rules 1 and 2 of the CPC and thus the disposing of an application under Order XXXIX of the CPC would be amenable to such challenge. The relevant extract of this judgment is set out below:

"6. The first respondent, on behalf of himself and Respondents 2 to 5, **filed a revision petition invoking**

⁴ (2000) 7 SCC 695



Article 227 of the Constitution before the High Court of Madras alleging that they purchased the property from the owners thereof as per different sale documents executed on 15-3-1996, and they were in possession and enjoyment of the property.

They further alleged that one Ranganathan, MLA and one Hithayatullah together expressed a wish to purchase the property from the respondents, but it was not agreed to and then those two persons exerted threat and pressure on them to capitulate to their demand. As they did not yield to such threats a suit was filed in 1998 by some parties who are now supporting the present plaintiff. The respondents further alleged that the said suit was filed at the instance and instigation of those two named persons. When they failed to get any relief there from another suit was caused to be filed through one M. Devasinghamani on the strength of some concocted documents. As no relief was obtained in that suit also the present suit, which is the third one in the series, has been filed at the behest of the above-named persons, according to the respondents.

7. **Learned Single Judge of the High Court of Madras who disposed of the revision made the observation that the trial court ought not have granted an order of injunction at the first stage itself which could operate beyond thirty days as the court had then no occasion to know of what the affected party has to say about it.**

Such a course is impermissible under Order 39 Rule 3-A of the Code, according to the learned Single Judge. He, therefore, set aside the injunction order "for the clear transgression of the provisions of law" and noted that this is the third suit filed in reference to the suit property and hence deprecated the grant of ex parte injunction without notice. Though learned Single Judge further declined to go into the other allegations, he has chosen to make the following observations also:

"However, prima facie, I am satisfied that these materials are relevant for consideration before granting ad interim injunction. As per the plaint and affidavit averments I admit that the first respondent is occupying a vacant portion of



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1670 sq ft and running paper business and charcoal. But there is no document to show that the first respondent is actually in possession and running such a business except the lease deed. Hence the ex parte order is unsustainable. For all these reasons, I am of the view that the order passed by the learned Judge is liable to be set aside and it is accordingly set aside."

8. After holding thus, learned Single Judge directed the trial court to take up the interlocutory application for injunction and pass orders on merits and in accordance with law expeditiously."

[Emphasis Supplied]

9.1. A contention was raised in the **Venkatasubbaiah's** case that the party aggrieved could have either filed an application for modification before the Trial Court or file an appeal before the Appellate Court. It was however held by the Supreme Court that a petition under Article 227 of the Constitution of India could not be entertained. The Supreme Court examined the provisions of Section 104 and Order 43 as well as Order 39 of the CPC and has held it cannot be contended that ex-parte orders are not amenable under Order 39 of the CPC. It was held that ex-parte orders like the remaining orders under Order 39 of the CPC, are also amenable to appeals under Order XLIII



Rule 1(r) of the CPC. It was further held that the party aggrieved must file an application before the Appellate Court or the same Court as follows:

9. *Shri Sivasubramaniam, learned Senior Counsel contended that the High Court should not have entertained a petition under Article 227 of the Constitution when the respondent had two remedies statutorily available to him. First is that the respondent could have approached the trial court for vacating, if not for any modification, of the interim ex parte order passed. Second is that an appeal could have been preferred by him against the said order. It is open to the respondent to opt either of the two remedies, contended the Senior Counsel.*

10. Section 104 of the Code says that:

"104. (1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders:

(i) any order made under rules from which an appeal is expressly allowed by rules:"

11. Order 43 Rule 1 says that:

"1. An appeal shall lie from the following orders under the provisions of Section 104, namely—

(r) an order under Rule 1, Rule 2, Rule 2-A, Rule 4 or Rule 10 of Order XXXIX;"

12. Order 39 Rule 1 says thus:

"1. Where in any suit it is proved by affidavit or otherwise—



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(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or disposition of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit, until the disposal of the suit or until further orders."

13. It cannot be contended that the power to pass interim ex parte orders of injunction does not emanate from the said Rule. In fact, the said Rule is the repository of the power to grant orders of temporary injunction with or without notice, interim or temporary, or till further orders or till the disposal of the suit. Hence, any order passed in exercise of the aforesaid powers in Rule 1 would be appealable as indicated in Order 43 Rule 1 of the Code. The choice is for the party affected by the order either to move the appellate court or to approach the same court which passed the ex parte order for any relief."

[Emphasis Supplied]

10. A similar view has been taken by the Supreme Court in the case of **Virudhunagar Hindu Nadargal Dharma**



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Paribalana Sabi and others Vs. Tuticorin Educational Society and Others⁵ and ***Mohamed Ali Vs. V.Jaya and Others***⁶ wherein it has been held that, where a petition under Article 227 of the Constitution of India was filed challenging such an order held that the petition is not maintainable. The relevant extract of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabi's*** Case is below:

"11. Secondly, the High Court ought to have seen that when a remedy of appeal under Section 104(1)(i) read with Order 43, Rule 1(r) of the Code of Civil Procedure, 1908, was directly available, Respondents 1 and 2 ought to have taken recourse to the same. **It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In A. Venkatasubbiah Naidu v. S. Chellappan [A. Venkatasubbiah Naidu v. S. Chellappan⁷], this Court held that "though no hurdle can be put against the exercise of the constitutional powers of the High Court, it is a well-recognised principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a constitutional remedy".**

12. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before civil courts in terms of the provisions of Code of Civil Procedure, and (ii) cases where such alternative remedy is available

⁵ (2019) 9 SCC 538

⁶ (2022) 10 SCC 477

⁷(2000) 7 SCC 695



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under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which Respondents 1 and 2 invoked the jurisdiction of the High Court. This is why, a 3-member Bench of this Court, while overruling the decision in *Surya Dev Rai v. Ram Chander Rai* [*Surya Dev Rai v. Ram Chander Rai*⁸, pointed out in *Radhey Shyam v. Chhabi Nath* [*Radhey Shyam v. Chhabi Nath*⁹, that "orders of civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts".

13. Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. **Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.**"

[Emphasis Supplied]

11. Concededly, the petitioner has instead of availing of the remedy provided under Order XLIII Rule 1(r) of the

⁸ (2003) 6 SCC 675

⁹ (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67



CPC, has chosen to file the present petition under Article 227 of the Constitution of India. In view of the settled law in this behalf, this petition cannot be entertained.

12. Accordingly, the petition is ***disposed of*** granting liberty to the petitioner to take appropriate steps in accordance with law.

13. It is clarified that this Court has not examined the matter on merits. All rights and contentions of both parties are left open, to be agitated before the appropriate Forum.

(TARA VITASTA GANJU)
JUDGE

JJ / YN
List No.: 2 Sl No.: 7