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An Empirical Study On Ad-Interim/Interim Measures
In Section 9 Applications Heard By The Bombay
High Court (2020-2021)

TABLE OF CONTENTS

About the Authors	3
Introduction	4
Number of Days from Date of filing till Grant or Refusal of Ad-Interim/ Interim Measures.....	5
Average Number of Listings till the Grant or Refusal of Ad-interim /Interim Measures.....	6
Mode of Hearings	6
Probability of Grant or Refusal to Grant Ad-Interim/Interim Measures	7
Discussion on Arbitrability of Subject Matter/Non-Signatory Parties/Validity of Arbitration Agreement	8
Ex Parte Orders and Frequency of Appeals	9
Methodology	10

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An Empirical Study On Ad-Interim/Interim Measures In Section 9 Applications Heard By The Bombay High Court (2020-2021)

Introduction

This report presents data from an empirical study of applications filed under Section 9 of the Arbitration and Conciliation Act, 1996¹ (“the Act”) seeking interim measures pending constitution of an arbitration tribunal before the Bombay High Court between June 2020 and May 2021. The aim of the study is to present *inter alia* the average timelines for the grant/refusal of interim and ad-interim reliefs/measures in Section 9 applications before the Bombay High Court. Ad-interim relief/measures is temporary interim relief. It lasts no longer than the final hearing and disposal of the interim application. On the other hand, interim orders are passed by a court after finally hearing the interim application.²

Section 9 of the Act enables parties to apply to a court for interim relief/measure before or during the arbitration proceedings. The parties can also seek interim relief/measure after an arbitral award has been made but must do so before it is enforced. As the Arbitration and Conciliation Act is based on the UNCITRAL Model Law³, Section 9 flows from Article 9 of the Model Law in principle. However, unlike Article 9 of the Model Law, the type of interim reliefs/measures that can be granted by the court are specifically provided under Section 9(1). These include preservation, detention or inspection of property, provisions of securities for the amount in the dispute, appointment of a court receiver or any other measure that the court deems convenient and just.

The Court at its discretion may refuse to grant measures while permitting the applicant to press the application before the arbitral tribunal under Section 17 of the Act, after constitution. Orders passed by the tribunal under this section are deemed to be an order of the court and are enforceable under the Code of Civil Procedure of India⁴. It is also important to note that while Section 17 of the Act flows from Article 17 of the Model Law in principle, the types of reliefs that can be granted by the tribunal mirror those under Section 9 of the Act, and not those under Article 17 of the Model Law.

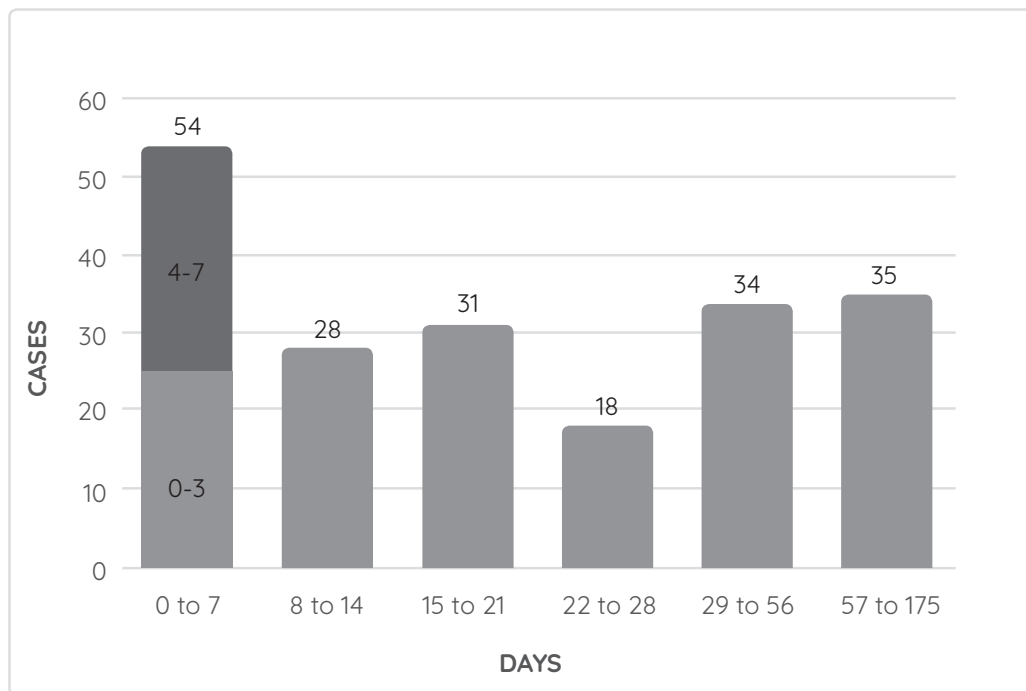
1 Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

2 Abhinav Chandrachud (2018) ‘Litigation 101 (Part 2): Bombay High Court Practice and Procedure’ (www.lawandotherthings.com) September 2018 Available at: <https://lawandotherthings.com/2018/09/litigation-101-part-2-bombay-high-court-practice-and-procedure/> (Accessed: 28th May 2021)

3 UNCITRAL Model Law on International Commercial Arbitration, 1985.

4 The Code of Civil Procedure, 1908, No. 5, Acts of Parliament, 1908 (India).

Number of Days from Date of filing till Grant or Refusal of Ad-Interim/ Interim Measures



NOTE: (i) The number of days referred to in the bar chart above indicates the calendar days and does not account for court holidays and other non-working days.

(ii) The order granting/refusing to grant interim measures refers to the first order in an arbitration petition (Section 9 application) wherein there was an adjudication on ad-interim/interim measures.

The data demonstrates that in 65.5% of Section 9 applications filed, there was at least some sort of decision given by the Court with respect to ad-interim/interim measures within one month from the date of filing of the application. In 27% of the applications an Order refusing or granting measures was passed within a week of filing.

In the Bombay High Court, parties may choose to move for urgent listing of a case that has been filed with the registry by filing a *precipe*⁵ describing the reasons and grounds for urgency or by “mentioning” the matter orally at designated times before the respective Court.

⁵ A written request submitted by the Advocate for the party to describe the need for an out-of-turn listing of a matter. Matters are otherwise listed as per the CMIS date (Computer generated) subject to a standing direction from the concerned Judge prescribing order of listing. ‘Precipe’ is also referred to as ‘pursis’ in other Indian courts.

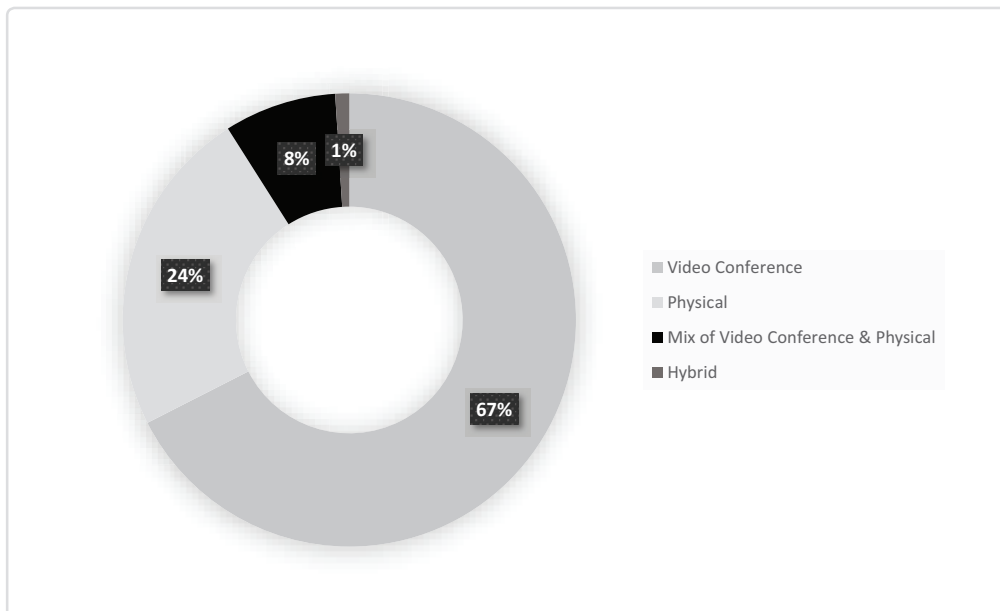
Average Number of Listings till the Grant or Refusal of Ad-interim /Interim Relief

AVERAGE NUMBER OF LISTINGS = 1

In cases where an ad-interim/interim measure was granted in the first hearing itself, the Court ordinarily verified that the respondent party had been duly served and notified of the hearing scheduled before the Court. In cases where an Order deciding on interim measures was passed after two or more listings, the trend observed was that the Court directed the parties to file written pleadings.

An inference maybe drawn that applicants that were successful in presenting a *prima facie* case and where the Court was satisfied that ordering interim measures was imperative for the protection of the applicant's interests, an Order granting measures was often passed on the date of the first listing.

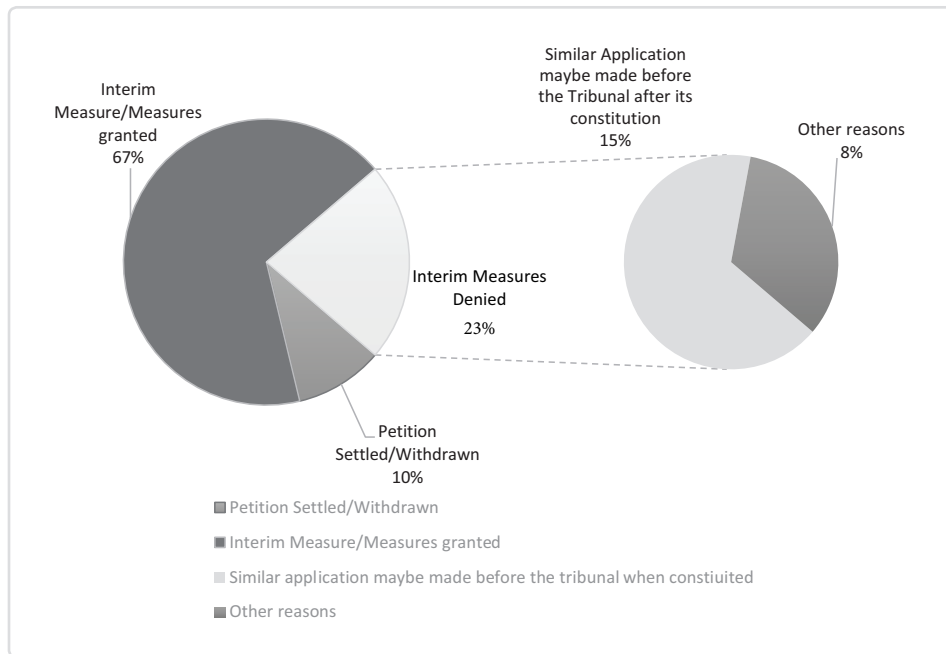
Mode of Hearings



NOTE: (i) Mix of Video Conference & Physical refers to cases where some hearings were held through video conferencing and others in-person.
(ii) Hybrid refers to cases where one party was represented through video conference and the others were represented in-person.

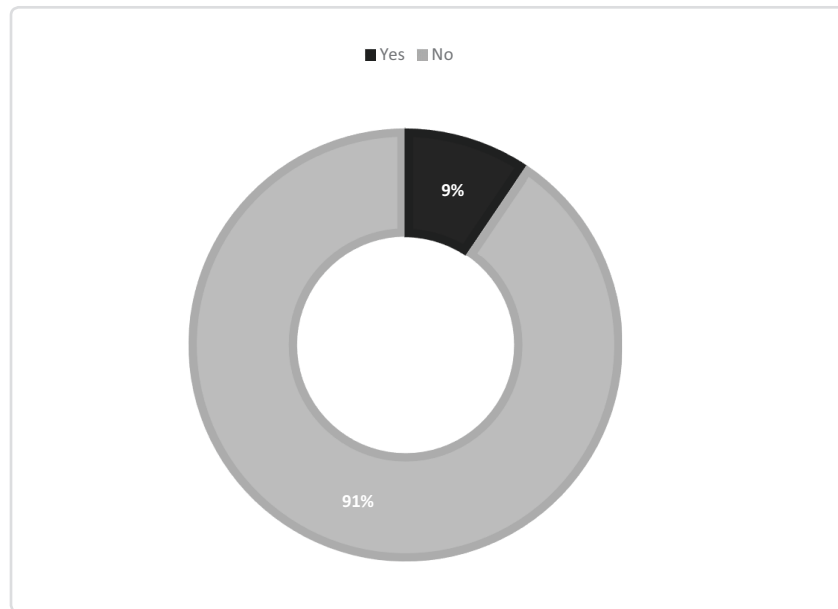
With the onset of the CoVID-19 pandemic, the Bombay High Court began hearing matters through video conferencing. The data reveals that larger proportion of cases were heard completely virtually than through other modes. The data suggests no relation between the mode of hearing and the time taken for adjudication, with the Court moving at a similar pace both physically and virtually.

Probability of Grant or Refusal to Grant Ad-Interim/Interim Measures



NOTE: Cases that were withdrawn by the applicant or settled between the parties and wherein no interim measures were granted or refused have been categorized under 'Petition Settled/Withdrawn'.

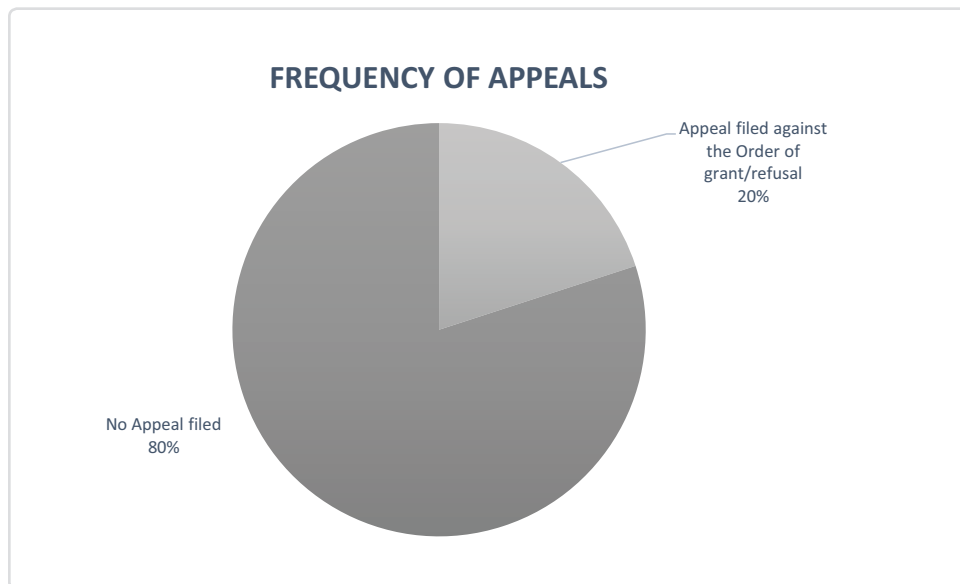
Discussion on Arbitrability of Subject Matter/Non-Signatory Parties/ Validity of Arbitration Agreement



NOTE: Instances when a discussion on arbitrability of the subject matter of the dispute or issues pertaining to non-signatory parties to the arbitration agreement arrayed as Respondents or validity of an agreement to arbitrate have been recorded in the order as reasons for grant or refusal to grant interim measures have been examined.

The orders studied indicated fewer instances of the applicant being denied of any interim protection; by means of an order in the Section 9 application or by way of ensuring liberty to the applicant to approach the arbitral tribunal after its constitution to decide on the application. It was further observed that there were marginal instances of an adverse order against the respondents on merits of the dispute amounting to *res judicata*.

Ex Parte Orders and Frequency of Appeals



NOTE: The data pertaining to cases in which an appeal was filed from the order granting or refusing to grant interim reliefs/measures was collected as on 16th May 2021. Any appeals filed thereafter would not reflect in this report.

The sparse instances of *ex parte* orders and frequency of intra-court appeals filed are illustrative of the refrain exercised by parties in evading service of court filings or notice of listings/hearings to avoid an adverse ruling of the court.

Methodology

The study has analysed 200 applications filed under Section 9 of the Act between June 2020 and May 2021. Since the aim of the study was to determine the average time between the filing of a case under Section 9 and the refusal/grant of ad-interim/interim relief/measure, the first instance of the Court issuing a direction relating to ad-interim relief/measure has been considered.

The study has examined 200 cases filed under Section 9, the orders examined as part of the study should not be treated as an exhaustive list of all the Section 9 applications filed between June 2020 and May 2021.

The researchers have relied on the publicly available data pertaining to the daily orders passed by the different judges of the Bombay High Court which are uploaded on www.bombayhighcourt.nic.in.

31st May 2021