

**IN THE COURT OF LXXXV ADDL. CITY CIVIL &
SESSIONS JUDGE, AT BENGALURU (CCH-86)
(Commercial Court)**

THIS THE 09TH DAY OF FEBRUARY 2022

**PRESENT:
SMT. LATHAKUMARI M.
M.A., LL.M.,
LXXXV ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU.**

Com. O.S. No. 251/2020

BETWEEN:

H.S. Abdul Hafeez Sayeed,
S/o late H.S. Sheik Habeeb,
Proprietor,
M/s. Oriental Granites,
No.21, Rohini Complex,
Hassan - 573 201.

: PLAINTIFF

**(Represented by Sri. S. Nagaraj
- Advocate)**

AND

1. M/s. Navyasri Minerals,
C2, Casa Lavelle 4, 12/1,
Lavelle Road,
Bangalore - 560 001
Rep. By its Managing Partner
2. Sridhar Babu
Aged about 70 years
S/o late P.S. Raju

- M/s. Navyasri Minerals,
C2, Casa Lavelle 4, 12/1,
Lavelle Road,
Bangalore - 560 001
3. Smt. Meera Sridhara Babu
Aged about 54 years,
W/o Sridharababu,
R/o No.C2, Casa Lavelle 4,
12/1, Lavelle Road,
Bangalore - 560 001
4. Yashas Sridhara Babu
Aged about 32 years,
S/o sridharababu,
R/o No.C2, Casa Lavelle 4,
12/1, Lavelle Road,
Bangalore - 560 001
5. Balakrishna H.G.
Aged about 61 years
S/o late Gopala Setty,
R/o No.11, 1st Main Road,
Vyalikaval,
Bangalore - 560 003
6. T.N. Devaraju
Partner
M/s. Navyasri Minerals,
No.18, Salgame Village,
Kasaba Hobli,
Hassan - 573 219
7. T.D. Arjun,
Partner,

M/s. Navyasri Minerals,
PWD Colony Minerals,
PWD Colony, RC Road,
Near NCC Office
Hassan - 573 201

: DEFENDANTS

**(Represented by Sri. K.B.Shiva Kumar
for D1 to D4, D6, D7,
Sri. Bharath Kumar.V, for D5, Advocates)**

ORDER ON I.A.NO.I

This is an application filed by the plaintiff under Order 39 Rule 1 and 2 r/w Sec. 151 of CPC praying to pass an order of temporary injunction against the defendants 1, 2, 6 and 7 and their agents, goondas etc., by way of restraining them from carrying out any of the quarry operations/stocks etc., in the tract of quarry lands situated at Dummagere village town description of area or areas Hassan in (Mahal/taluk) in the registration District Sub-Registrar and Hassan District bearing Sy. No.5 hereinafter referred to as plaint schedule property.

2. In support of this application, the plaintiffs sworn an affidavit stating that the defendants are the license holders of the schedule quarry lease and they have committed violation of their part of contractual duty against plaintiff arbitrarily by acting one sided instead of complying with the

directions of law. It is further mentioned that 1st defendant registered partnership firm originally consisted four partners i.e., defendants 2 to 5 and said partnership firm was managed by the 2nd defendant as a Managing Partner and also as a GPA authority as per GPA executed by the other partners in its favour. It is plaintiff's further case that 1st defendant registered firm got transferred the schedule license/lease of the quarry in its name from the 5th defendant as the same was standing in the personal name of 5th defendant earlier. Whereas the 1st defendant partnership firm represented by its Managing Partner 2nd defendant herein desire to sell/transfer the quarry license/lease in favour of the plaintiff in accordance with procedure known to law for consideration of Rs.2.10 crores and out of which 1st defendant registered partnership firm received advance consideration of Rs.15,00,000/- from the plaintiff. However, thereafter 2nd defendant authorized the plaintiff to receive the registered schedule license/lease of the quarry from the office of the SR, Hassan as, the license/lease of the schedule quarry got transferred from the 5th defendant partner into the name of 1st defendant partnership firm. Thereafter the 2nd defendant had sent an Email on 26.02.2020 through the Email ID of his son i.e., 4th

defendant, 3rd partner of the firm by attaching a draft agreement and also informed that amount received is revert back so as to enable them to initiate the legal process of sale of quarry license/lease. All these initiatives on the part of defendants induced the plaintiff to believe the defendants and consequently the plaintiff had not only arranged balance amount of Rs.1,95,00,000/- but also necessary men and machinery to carry out quarry activities. When such being the case, 1st defendant returned the advance amount of Rs.15,00,000/- to the bank account of the plaintiff voluntarily and desired to receive the total consideration of the subject transaction of rs.2.10 crores at one shot in the end i.e., at the time of actual transfer of the schedule quarry license in favour of the plaintiff. Plaintiff was always ready and willing to perform his part of contract. Whereas defendants have exhibited their malafide contentions and motives and committed breach not at all transferred the quarry licence in favour of the plaintiff. In stead of complying with their promise returned the advance amount of Rs. 15.00 lakhs have been carrying on the quarry operations of full scale without initiating transfer proceedings of the schedule license/lease of the quarry by receiving the consideration for sale/transfer of the schedule

license/lease of the quarry of Rs.2.10 crores which, the plaintiff is ready and willing. Hence, plaintiff pray to allow this application in the interest of justice and equity.

3. On issuance of suit summons and also emergent notice to defendants appeared through their counsel and resisted this application by filing their objections. 1st defendant appeared through his counsel and filed objections contending that the plaintiff has sought for an interim order restraining the defendants, their agents, goondas etc., from restraining them from carrying out any of the schedule quarry operations/stocks, etc., in respect of the schedule property. The 1st defendant in page No.2 of his objections mentioned that in concurrence with the other defendants he asserts that the quarrying lease granted on 16.01.2001 got expired on the eve of 15.01.2011. Thereafter in pursuance of the orders of the Hon'ble High Court the period of the quarrying lease was extended for 20 years with effect from 16.01.2001 and the same has expired by efflux of time on 15.01.2021. The defendant along with other defendants has stopped quarrying activities. The quarrying lease is granted by the Government land and the defendants cannot carry any

quarrying operations after the expiry of the quarrying lease. Hence, pray for dismissal of this application with cost.

4. I have carefully scrutinized the entire cords placed before me. Heard arguments.

5. Now the points that arise for my consideration are:-

- 1) Whether the suit Plaintiff has made out a prima facie case for an order of temporary injunction against defendant as sought for in respect of the suit schedule property?
- 2) Whether the plaintiff will be put to greater hardship and irreparable injury if an order of injunction is not granted?
- 3) Whether the balance of convenience stilt in favour of plaintiff?
- 4) What Order?

6. My answers to the above Points are as under:

Point No.1 :- In the Negative

Point No.2 & 3:- Does not arise for consideration

Point No.4 : - As per the final Order

for the following reasons.

REASONS

7. Point No.1 to 3:- These three points are taken up together for common discussion for the sake of convenience.

It is the case of plaintiff that schedule quarry license/lease was standing in the personal name of 5th defendant herein. Hence, 1st defendant partnership firm in order to transfer of said quarrying license/lease in favour of plaintiff for Rs.2.10 crores made all formalities and discuss the issue with the plaintiff and also received Rs.15.00 lakhs from the plaintiff towards advance sale consideration. However, later 2nd defendant being the Managing Partner of 1st defendant firm through his sons Email ID i.e., 3rd defendant herein also sent the draft copy of the agreement proposed to be entered into between the parties with regard to quarry license/lease. In spite of the same, later 1st defendant returned the advance amount of Rs.15.00 lakhs with an understanding that plaintiff shall pay the entire amount of Rs.2.10 crores at once and failed to comply with the terms of the implied contract and proceeded to carry out quarry activities in the schedule land. On the other hand, learned counsel for defendant contended that the quarrying license/lease has already

been expired and same has not been renewed in favour of the defendants. It is not in dispute that Rs.15.00 lakhs given by the plaintiff in favour of 2nd defendant was transferred to plaintiff. In the proposed agreement attached to plaintiff's mail through the Email of 3rd defendant the period of the lease period is mentioned as 30 years. To show that said lease period was only for 20 years, defendant has not produced any document. However, it is the contention of plaintiff that he is always ready and willing to pay the total sale/transfer of schedule license/lease of the schedule quarry of Rs.2.10 crores at one shot. Further prima facie there is no material produced at this stage by the plaintiff to establish that Rs.15.00 lakhs paid by him was returned by 1st defendant on a condition that plaintiff shall pay the entire sale consideration of Rs.2.10 crores at once to the defendants. Further, plaintiff has also not produced any prima facie material before this court to show that the defendants are carrying out quarrying activities in the schedule land. As per plaintiff's own document, Annexure-E(c) the period of the lease is stated to be expired on the eve of 15.01.2021 and the remaining period of the lease is only mentioned as 10 months 25 days. This document has been sent to Sub-Registrar on

10.03.2020 by 1st defendant Managing Partner. In the absence of prima facie material with regard to financial capacity of the plaintiff and also the validity of the lease period, this court opines that plaintiff failed to establish his prima facie case for an equitable relief of injunction against the defendants. In the absence of prima facie case question of considering other two ingredients i.e., balance of convenience and also irreparable injury does not arise. Accordingly, I answer Point No.1 in the **Negative**. Point No.2 and 3 does not arise for consideration.

8. Point No.4 : - In view of my findings on Point No.1 to 3, I proceed to pass the following Order.

ORDER

I.A.No.1 filed by the plaintiff under Order 39 Rules 1 and 2 r/w Sec. 151 of CPC seeking order of temporary injunction against the defendants 1, 2, 6 and 7 and their agents etc., by way of restraining them from carrying out any of the schedule

***quarry operations/stocks etc., is dismissed
with costs.***

(Dictated to the Judgment Writer, transcribed by him, corrected and then pronounced by me in open Court on this the **09th day of February, 2022**).

**(LATHAKUMARI M.),
LXXXV Addl. City Civil & Sessions Judge,
Bengaluru.**