

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

**THIS THE 01ST DAY OF OCTOBER 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, 1<sup>st</sup> 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)**

**ORDERS ON I.A., FILED BY PLAINTIFF UNDER 39 RULE  
1 & 2 READ WITH SECTION 151 CPC:**

This is an application filed by the plaintiff 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 schedule quarry operations/stocks etc., in the interest of justice in respect of tract of quarry lands situated at Dummagere village town/ Hassan area bearing Sy. Nos./F.S NOS/Forest Coup Nos) Sy. Nos.05 containing area there on coloured Red hereinafter referred to as application schedule property.

2. In support of this application, the plaintiff has sworn an affidavit stating that the defendants are the license holders of the application schedule property and their quarry lease continuing in force for total extended period of 30 years with effect from 16.01.2001 i.e., upto 16.01.2031 in the

name of the 1<sup>st</sup> defendant partnership u/S 8-A of the Karnataka Minor Mineral Concession (Amendment) Rules, 2016. It is further mentioned that the defendants have been carrying on quarry mining activity and committed violation of their part of contractual duty against the plaintiff arbitrarily and thus causing irreparable loss, damages and hardship to the plaintiff. It is further mentioned that 1<sup>st</sup> defendant registered partnership firm originally consisted four partners i.e., defendants 2 to 5 managed by 2<sup>nd</sup> defendant as a Managing Partner and also as a GPA authority of the other partners authorising him to act independently on their behalf. It is further mentioned that 1<sup>st</sup> defendant registered partnership firm got transferred the schedule license/lease of the quarry in its name from the 5<sup>th</sup> defendant as the same was standing in his personal name earlier. Whereas the 1<sup>st</sup> defendant registered firm represented by its Managing Partner of the 2<sup>nd</sup> defendant herein desire to sell off/transfer the schedule property license/ lease of quarry to the plaintiff in accordance with procedure for consideration of Rs.2.10 crores and out of which 1<sup>st</sup> defendant registered partnership firm received advance consideration of Rs.15,00,000/- from the plaintiff. It is further mentioned that, thereafter 2<sup>nd</sup> defendant

Managing Partner had also authorized the plaintiff to receive the registered schedule license from the office of the SR, Hassan as, the license of the schedule property got transferred from the 5<sup>th</sup> defendant partner into the name of 1<sup>st</sup> defendant partnership firm. It is further mentioned that the 2<sup>nd</sup> defendant Managing Partner sent an Email on 26.02.2020 through the Email ID of his son i.e., 4<sup>th</sup> defendant, attaching a draft agreement and seeking to revert back immediately so as to enable them to initiate the legal process of sale of quarry license of the schedule land license in favour of plaintiff. These initiatives of the defendants have induced the plaintiff to believe the defendants and consequentially the plaintiff had arranged not only the balance amount of Rs.1,95,00,000/- and also men and heavy quarry machineries but also fixed the orders of the quarry blocks/finished granites down the line. When such being the state of affairs, 1<sup>st</sup> 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 in favour of the plaintiff. This conduct of 1<sup>st</sup> defendant managing partner amounts to breach of the

contract. While returning the advance amount of Rs. 15.00 lakhs he has not at all mentioned about the cancellation of the schedule quarry license. That being so, defendants with a malafide intentions have committed its breach acting arbitrarily one sided have returned the amount of the plaintiff without performing the contractual duties. Plaintiff met defendants several times since 01.06.2020 and demanding them to initiate legal action under the Indian Partnership Act, 1932 during the procedural course of transfer of the lease, license of the schedule quarry by the defendants to the plaintiff. Whereas defendants failed to perform their obligation and have been carrying on the quarry operations now and then through the influence with the help of goondas and political influence without initiating transfer proceedings of the schedule license/lease of the quarry by receiving the consideration of Rs.2.10 crores which, the plaintiff is always ready and willing to give. It is further mentioned that if this application is not allowed, plaintiff will be put to great hardship and hence, pray for allowing this application.

3. The defendants 1 and 2 resisted this application by filing their objections stating that this court has already

disposed of similar application by its order dated 09.02.2022 by considering the contention of plaintiff in detail. These defendants in para-4 of their objection mentioned that the quarrying lease agreement dated 16.01.2001 got expired on 15.01.2011. Thereafter in pursuance of the order of the Hon'ble High Court of Karnataka period of quarrying lease was extended for 20 years w.e.f., from 16.01.2001 and the same was expired on efflux of time on 15.01.2021. The defendant along with these defendants has stopped the quarrying activities. The quarrying lease is granted by the Govt., in the government land and the defendants cannot carry on any quarrying operations after the expiry of the quarrying lease. Plaintiff has come up with identical application and also with similar prayer. An application was filed for renewal of the quarry lease for another period of 10 years. During the pendency of the renewal application, the Govt., of Karnataka issued Notification dated 16.04.2014 extending period of the quarry lease for a period of 20 years from 16.01.2001 to 15.01.2021. That apart during the period of the quarrying lease an adjacent lessee viz., M/s. Mysore Minerals Ltd., (MML), a Govt., of Karnataka undertaking filed a suit contending that the original grantee has encroached upon

its mining area and claimed damage of Rs.1,95,00,000/- and said suit is still pending for consideration. In the mean time the former filed writ petition before the Hon'ble High Court of Karnataka from seeking for an order of transfer of quarry lease dated 02.07.2014, quarrying lease has been transferred. In para-19 of the objections statement, these defendants admit that Govt., of Karnataka has inserted Rule 8-A of the provisions of Karnataka Minor Minerals Concession (Amendment) Rules 2016 wherein the period of quarrying lease or license granted shall be deemed to have been granted for a period of 30 years in respect of specified Minor Minerals and for a period of 20 years in respect of non-specified minor minerals from the date of original grant. The defendant further submits that, the Govt., of Karnataka has not issued any Notification extending the period of quarrying license issued to him in pursuance of special notification. Therefore, there is no cause of action for the plaintiff to file this suit and 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 defendants 1, 2, 6 and 7 as sought for in respect of the application schedule land?
- 2) Whether the balance of convenience tilts in favour of plaintiff?
- 3) Whether the plaintiff will be put to greater hardship and irreparable injury if an order of injunction is not granted?
- 4) What Order?

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

**Point No.1 to 3:-** In the Affirmative

**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.

The learned counsel for the plaintiff while canvassing to consider this application contended that prima facie case

is a case that calls for trial and decision and also mentioned that court deciding question of prima facie case not to record decision on merits of the case. It was further argued that prima facie case is one which cannot be dismissed on technical grounds when there is a serious question to be tried in suit and hence pray for allowing the application. On the other hand, the learned counsel for defendants mentioned that this court has already considered similar application filed by plaintiff and sought for reject the prayer of plaintiff for temporary injunction. Hence, question of considering the same again does not arise. No doubt, this is second application filed by plaintiff for similar relief, however it is submitted that on changed circumstances. This court while considering I.A., filed under Order 39 Rule 1 and 2 along with plaint observed that plaintiff has not produced any prima facie documents to establish his readiness and willingness to perform his part of contract. Whereas by way of this application, plaintiff has produced all bank accounts and also undertaken before this court to deposit entire amount if court directs to do the same towards purchase of quarry licence of defendants.

8. It is not in dispute that there was a transaction between the plaintiff and defendants wherein the

defendants agreed to sell off/transfer quarrying license of application schedule property to the plaintiff herein on receiving Rs.15,00,000/- advance and for a total consideration of Rs.2.10 crores. Further, said advance received is as per Annexure-G dated 29.11.2019. Having received the said advance, after some time the defendants at Annexure-I dated 26.02.2020 mentioned through Email to the plaintiff that the quarry lease has been transferred yesterday and he has attached the draft agreement for the reference of plaintiff once again and thereby asking the plaintiff to revert back immediately. Along with this Email attachment of draft of the agreement was also sent to plaintiff. Having sent the said draft as per Annexure-J later defendants on 01.06.2020 transferred Rs.15,00,000/- to the plaintiff without even mentioning the reasons, as per Annexure-K. This conduct on the part of the Managing Partner of 1<sup>st</sup> defendant establishes that without mentioning the reasons advance amount paid by the plaintiff has been returned to the plaintiff. However, in the written statement and also objection to interim application defendants have taken contention that the quarrying lease was available only for 20 years and same has been expired and thereby question of transferring the license in favour of

the plaintiff does not arise and there is absolutely no cause of action for the plaintiff to file this suit. Whereas plaintiff along with this application has produced Gazette Notification stating that quarrying license issued for 20 years is extended for a period of 30 years. This notification establishes that defendants license is extended for a period of 30 years. Whereas the defendant asserts that the same has not been extended they are not at all in possession of the schedule property which belongs to Government. However, whether the lease has been extended in favour of the defendants, whether defendants can return the advance amount after sending Email agreeing to transfer the lease and also after attachment of draft of the agreement to the plaintiff etc., are all the points to be considered at the time of trial and this court cannot conduct mini trial while considering prima facie case and also application under Order 39 Rule 1 and 2. This is a suit filed by the plaintiff for specific performance i.e., transfer of quarrying lease in his favour by the defendants. Under such circumstances, if defendants are not restrained from carrying out any quarrying activity in the petition schedule premises during the pendency of this suit, the plaintiff will be put to irreparable loss, injury. It is the contention of

defendants that there is absolutely no quarrying license available in their favour and they are not carrying out any quarrying activity in the application schedule property which belongs to Government. Under these circumstances, if an order of temporary injunction is granted against defendants in respect of application land, no hardship would be caused to defendants. Since there is a triable issue, this court opines that plaintiff has made out a prima facie case for an order of injunction and the balance of convenience tilts in his favour. That apart, in a case like this, if the preventive remedy of injunction is granted, as an instant antidote to stop or prevent the invasion of the plaintiff's rights in regard to which this suit has been instituted by the plaintiff, that would meet the ends of justice. That apart plaintiff has also produced documents pertaining to his bank statement and also it is his submission that he is always ready to pay Rs.2,10,00,000/- to the defendants and thereby perform his part of contract. It is the case of plaintiff that as per the Gazette Notification produced by him quarry license has been extended for a period of 30 years. On the other hand, defendants asserts that no such license is extended in their favour and the application schedule property belongs to Government. This

version of both parties establishes that there is triable issue which is nothing but a prima facie case. When there is a prima facie case, it is probable that plaintiff is entitled for the relief of temporary injunction. That apart, plaintiff will be put to irreparable injury if an order of temporary injunction is not granted. Accordingly, I answer Point No.1 to 3 in the Affirmative.

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

### **ORDER**

***Interim Application 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, goondas etc., by way of restraining them from carrying out any of the schedule quarry operations/ stocks etc., in respect of application***

***schedule land is hereby allowed with no cost.***

(Dictated to the Judgment Writer, transcribed by him, corrected and then pronounced by me in open Court on this the **01<sup>st</sup> day of October, 2022**).

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