

KABG040019772022



**IN THE COURT OF THE I ADDITIONAL CIVIL JUDGE AND
JMFC, BELAGAVI.**

PRESENT: SMT. SHARMILA KAMATH .K., B.A. LL.M.,
I ADDL. CIVIL JUDGE & JMFC.,
BELAGAVI.

DATED THIS 24th DAY OF MAY 2023

ORIGINAL SUIT No:1171/2022

1. Shri. Amit S/o. Ulhas Kundargi
Age: 38 years, Occ: Service,
R/o. CTS No.2278, Hattiholi Galli,
Shahapur, Belagavi and Another.

..... Plaintiffs

(By Shri. S.G. Ganachari, Advocate)

V/s.

1. Shri. Gajanan S/o. Prabhakar Nakadi,
Age: 45 years, Occ:Business,
R/o. CTS No.2279, Hattiholi Galli Shahapur,
Belagavi.

..... Defendant

(By Shri. S.B. Mutakekar, Advocate)

ORDERS ON I.A.No. I

The plaintiff has filed I.A.No.I under Order XXXIX Rule 1 and 2 by seeking Ad-interim injunction against the defendant by restraining defendant, his agents servants or any body acting

on his behalf from interfering with actual, lawful possession and enjoyment of suit schedule property.

2. In the affidavit filed in support of I.A.No.I the plaintiff submitted that he is the owner and in lawful possession of property bearing CTS No. 2278. The defendant being the owner of residential property bearing CTS No.2279 has been carrying on business of manufacturing silver articles in his residential property without obtaining permission and license from competent authority. The defendant has installed machinery in his residential property with the help of JCB and causing nuisance to the plaintiff. The sound pollution and vibration caused due to machinery damaged the common wall. It is submitted by the plaintiff that due to continues noise pollution and vibration there is threat of collapse of common wall. Despite request by plaintiff to shift the business the defendant not heeded to the words and continued his business. The plaintiff lodged complaint before jurisdictional police and before competent authority against the nuisance caused by the defendant. The defendant being a influential person managed to the competent authorities by taking action against him. The

plaintiff submitted that he has prima-facie case. Hence prays to allow the I.A.

3. Per contra defendant filed objection by contending that the plaintiff has not mentioned the proper boundaries of suit schedule properties. The house of defendant is constructed with the mud wall and he installed machinery in his residential property for the purpose of manufacturing the silver articles. It is denied that the said machineries causes vibration and sound pollution. The defendant contended that he is running the business after obtaining permission and license from the competent authority. It is submitted that based on the complaint lodged by plaintiff the police and competent authority have visited the spot and not taken any action against the defendant as there is no sound pollution and vibration as alleged by the plaintiff. It is submitted that with the vicinity of Shahapur area of Belagavi District there are several houses wherein people carrying on business of making silver articles with the help of machineries. The defendant is carrying on his business from 9.00 a.m to 6.00 p.m and not working in odd

hours. The house and wall of defendant is in good conditions and there is no threat of collapse of wall. The defendant submitted that after obtaining license from competent authority he is running the business. There are power looms in CTS No.2280 which causes more sound than the hydraulic press used by the defendant. The plaintiff by misleading the court and by suppressing the material facts filed the suit. Hence prays to reject the application.

4. Heard on both side.

5. The following points do arise for the consideration.

POINT No.1: Whether the plaintiff has made out prima-facie case to grant temporary injunction as prayed in I.A. No.I?

POINT No.2: Whether the balance of convenience lies in favour of plaintiff?

POINT No.3: Whether the plaintiff will be put to great hardship if temporary injunction is not granted as prayed in I.A.No.I?

POINT No.4: What order?

6. My answer to the above points are:

POINT No.1: In the Affirmative

POINT No.2: In the Affirmative

POINT No.3: In the Affirmative

POINT No.4: As Per final order for the following:

:REASONS:

7. POINT No.1 to 3: Inorder to avoid the repetition of facts point No.1 to 3 are taken together for discussion. It is the case of the plaintiff that he is the owner and in possession residential house that is RCC building constructing in CTS No.2278. The defendant being the owner of residential house in CTS No.2279 which is situated on the eastern side of suit schedule property is carrying on business of manufacture of silver articles without any license and permission from the competent authority. It is the specific case of the plaintiff that the defendant is carrying on business at odd hours and causing sound pollution and vibration with inturn damaged the common wall.

8. It is settled principle of law that discretion of the Court while granting order of temporary injunction in favour of the plaintiff must meet following requirements:

- (i) Existence of prima-facie as pleaded necessitating protection of rights of issue of temporary injunction.

(ii) When the need for protection of plaintiffs rights is compared with or weighed against the need for protection of defendants rights or material infringement of defendants rights, the balance of convenience in favour of the plaintiffs or defendants.

(iii) Clear possibility of irreparable injury being caused to the plaintiffs if the temporary injunction is not granted. In addition the temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiffs conduct is free from blame and he approaches the Court with clean hands.

9. The plaintiff filed the suit by seeking relief of permanent injunction against the defendant by restraining the defendant from causing nuisance and there by interfering with lawful possession and enjoyment of suit schedule property. It is the specific contention of plaintiff that the defendant is running business of manufacture of silver articles by installing machineries and thereby causing sound pollution and vibration which inturn pose threat of collapse of common wall. In the affidavit filed in support of I.A it is submitted that in CTS

No.2278/A a residential property measuring 96.99 sq.meters and in CTS No.2278/B a residential building measuring 202.34 sq.meters is situated. There is a common wall constructed with brick and mud which runs from north to south direction between the residential properties of plaintiff and defendant. It is the contention of plaintiff that due to sound pollution and vibration which caused due to manufacture of silver articles by the defendant caused damage to the common wall and there is a threat of collapse of common wall. The existence of common wall is not disputed by the defendant. But the defendant contended that in between the common wall and the residential property of plaintiff there is passage around 5 feet. The existence of passage is evident from the photographs produced by the plaintiff. On perusal of photographs of common wall produced by the plaintiff there is small passage which passes in front of house of plaintiff. The wall of defendant's building appears to be made of mud.

10. Learned counsel for plaintiff argued that the defendant has not obtained license to run the business and there is no

document from Competent Authority to show that there is noise pollution. As per affidavit filed by plaintiff he had lodged complaint before Competent Authority but they have not taken any action. On perusal of copy of documents produced by plaintiff lodged complaint on 16.06.2022 before the Commissioner City Corporation Belagavi and on 18.07.2022 before the Environmental Office, Karnataka State Pollution Control Board, Belagavi against the defendant. Both the complaints received by respective Authorities but there is no document before the court to show action initiated by respective Authorities based on complaint. The burden is on the plaintiff to show that no initiation of action against defendant based on his complaint.

11. It is pertinent to note that plaintiff contended defendant without having license from Competent Authority running a business of manufacturing Silver Articles but Defendant produced copy of Trade License issued by City Corporation, Belagavi which is valid from 01.04.2022 to 31.03.2023. On perusal Trade License which was issued 16.12.2022 the "Nature

of Trade/Specific Authority” is mentioned as “ಬೆಳ್ಳಿ ಮಾರಾಟ” i.e sale of Silver Articles and not manufacturing of Silver Articles in CTS No.2279. As per License issued for the purpose of sale of Silver business and there is no mention of manufacturing of Silver Articles. Admittedly the defendant is manufacturing silver articles by installing machineries and the license is evident that not issued for the purpose of manufacture of silver articles. The plaintiff by lodging complaint before City Corporation, Belagavi by against the defendant and exhausted efficacious remedy and appeared this court. As per both parties and on perusal of documents produced by both parties there is no orders passed by City Corporation Belagavi. On perusal of photographs produced by plaintiff there is a mud wall infront of house of plaintiff after passage. The defendant not produced any document to show that he has permission of license to manufacture Silver articles by installing machineries. As per defendant he installed machineries to manufacture silver articles. On perusal of information obtained by plaintiff Under Right to Information Act from Chief Health Inspector, City Corporation Belagavi, The Chief Health Inspector visited the spot

and found installation Silver Articles manufacturing machinery without there being license to run the said industry. Admittedly in the vicinity of residence of plaintiff and defendant is a residential area not industrial area. By considering all these facts there is a prima-facie case to grant temporary injunction and balance of convenience leans, favour plaintiff. If temporary injunction is not granted it is the plaintiff who self irreparable loss and injury. Hence, I answer point No.1 to 3 in the Affirmative.

12. POINT No.4:- It is made it clear that any observations made herein above in point No.1 to 3 are meant for disposal of these I.As only and has no bearing on the merits of the suit. The plaintiff established point No.1 to 3 In the result, I proceed to pass the following:

:ORDER:

The I.A.No.I filed by the plaintiff under Order XXXIX Rule 1 and 2 R/w Section 151 of C.P.C is hereby allowed.

The defendant is hereby restrained from interfere with the peaceful possession and enjoyment of suit schedule property

by causing any sort of noise pollution and vibration by manufacturing Silver Articles by using machineries in CTS No.2279 of Shahapur Belagavi District.

No order as to cost.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the open Court on this **24th** day of **May, 2023**)

Sd/-
(Sharmila Kamath. K.)
I Addl. Civil Judge & JMFC,
Belagavi