

KAHV200001092026



Presented on : 02-02-2026
Registered on : 02-02-2026
Decided on : 08-06-2026
Duration : 0 years, 4 months, 6 days

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C., AT BYADAGI.**

Present: Smt.Rajeshwari.J.Puranik, B.A. L.L.B.(Spl.),
Senior Civil Judge & JMFC., Byadgi.

**Dated :- This the 8th day of June-2026
M.A.No.2/2026**

APPELLANT:-

HMS Industries and Chilly Grinding Plant
by its owner Imtiyaz S/o Shafisab Desur,
R/o: Old Kolur Camp Byadgi, Tq: Byadagi,
Dist: Haveri.

(By Sri.K.S.N., Adv.,)

-Versus -

RESPONDENT:-

TMC Chief Officer Municipal Council
Byadgi, Dist: Haveri.

(Resp.by Sri. P. C. S, Adv.,)

Date and nature of the Order : Appeal against the order passed in OS No.336/2025 dated 12-01-2026 passed by the Civil Judge & JMFC, Byadagi.

Date of institution of the Appeal : 02-02-2026

Duration of the Appeal : Year/s Month/s Day/s
00 04 6

JUDGMENT

This appeal is filed U/Order 43 Rule 1 R/w Sec.104 of CPC by the appellant/plaintiff challenging the order passed on IA No.2 dated 12-01-2026 in OS No.336/2025 by Prl.Civil Judge & JMFC, Byadgi.

2. It is contended in the appeal memo that the plaintiff/appellant is owner of suit lands measuring 4 guntas, the plaintiff has installed Chilly grinding machine from 1995, the plaintiff has obtained permission from the Food Safety and Standards Authority of India and also Municipal Council of Byadgi.

3. There are 8-+10 chilly grinding machine near the suit property being run by 1)Shivakiran, 2) Ningayya Nagayya Hiremath, 3) P. B. Malagi, 4) Budihalmath, 5) Mohan Kathi. In byadgi there is no industrial area and plaintiff invested above 20lakhs installed chilly grinding machine. No air pollution is caused on account of running chilly grinding machines

because this industries unit is producing eatable product by crushing the chillies into powder, so it is within the four walls of the industry and no body would be put to any loss or ill health. No complaint from public for all the 30 years. The defendant municipality also renewed license upto 31.03.2025, but defendant contended that public complained on 10.12.2024 against the said machine of the plaintiff and on 29.01.2025 director of health informed to stop the machine. But all these allegations are false and there was no complaint from any body from 1995 till 2025.

4. The defendant issued notice on 11.09.2025 to stop the machine on 25.09.2025 for transfer of unit to industrial area but there is no industrial area hence, plaintiff filed suit and IA No.2 u/o 39 rule 1 and 2 of CPC restraining the defendant from obstructing enjoyment of the industry.

5. The defendant appeared and filed objection and contended that the license issued is not renewed and plaintiff illegally running chilly machine in the suit property. Defendant issued notice to plaintiff on 22.10.2020 and 18.12.2020 for removal of hi-tech chilly grinding machine. This appeal is filed on the following grounds.

GROUND

1. The Trial Court committed error in rejecting IA No.2 and same is wrong and contrary to law and facts of the case.

2. The Trial Court failed to know that plaintiff has got prima facie case as he is running chilly plant from last 30 years (1995 to 2025) without any grievance.
3. The Trial Court should have considered that balance of convenience in favour of the plaintiff because he has invested huge money without objection from anybody.
4. The Trial Court should have considered that irreparable loss would be caused to plaintiff rather than to defendant.
5. The Trial Court should have considered that Chilly grinding machine is not using chemicals for its purpose. The chilly grinding machine means chilies to be crushed to make it a powder. It is within the four walls and it does not affect the health of the people. There cannot be air pollution.
6. The Trial Court has not taken into consideration of other similar chilly grinding machines for which there is no objection by anybody.
7. The Trial Court ought to have allowed IA no.2 pending disposal of this suit.
8. The Trial Court had not considered the fact that from 1995 to 2025 for the last 30 years nobody objected to run the machine and no medical certificates from public who are affected by ill-health.
9. The Trial Court has not exercised its discretion judiciously but the order is arbitrary capricious and perverse.

And on the above said grounds the appellants prayed to set aside the order passed by Trial Court on IA No.2 in OS No.336/2025 dated 12-01-2026 by allowing this appeal.

6. After notice defendant/respondent appeared.

7. Heard both side on misc. appeal memo.

8. In view of the above contention and material on record, the following points arise for consideration;

POINTS

1) Whether the order passed by the Trial Court is illegal, perverse, capricious and liable to set aside and interference of this court is warranted?

2) What orders?

9. My answer to above points are here under;

Point No.1 : In Negative

**Point No.2 : As per final order,
for the following;**

REASONS

10. Point No.1:- In the application and affidavit it is contended that the plaintiff has been running HMS Industries and Chilly Grinding Plant in the suit schedule property in Rs No.205 plot No.178 along with Rs No.205 plot No.179. The food safety and standards Authority of India has issued license to the plaintiff in the year 2021.

11. It is contended in the IA that father of the plaintiff had installed Flour Mill with a license of Municipality dated:24.04.2019, later his father had installed Chilly powder grinding machine for which defendant issued no objection certificate on 24.07.2020. On 30.12.2019 he established HMS

Chilly Grinding Machine, his father started running Chilly Grinding Machine in the year 1995-96. Later on 09.09.2021 Food Safety and Standard Authority of India issued license, but, the defendant had issued notice on 11.03.2025 to the plaintiff and called upon the plaintiff to shift Chilly Machine Unit from Rs No.205 plot no.178 and plot no.179 to other place without spot but not industrial area. But plaintiff invested of Rs.25,00,000/-, but he applied Electricity connection for his Cold storage unit, defendant has issued NOC on 27.06.2020 by issuing such notice for Chilly Grinding Machine Unit and plaintiff has got prima-facie case and balance of convenience lies in his favour and great hardship would be caused to the plaintiff if injunction order is not granted.

12. After service of summons defendant appeared through his through AGP before trial court. And filed memo adopting the written statement as objection to IA No.2. it is contended in the written statement that the plaintiff has filed false suit by suppressing the material facts. The defendant issued license to the plaintiff on 31.03.2025, thereafter said license is not renewed. But plaintiff illegally started Chilly Grinding machine on the suit property which is in residential area of Sangameshwara nagar, defendant had issued notice on 07.02.2020, 27.08.2020 and 09.12.2020 and directed to remove hi-tech Chilly grinding machine from suit property, defendant issued letter to the Karnataka Pollution Board and

said board directed the plaintiff to close the chilly grinding machine. Before that show cause notice was issued to the defendant and the report was obtained by the Karnataka Pollution Board. Hence, the plaintiff has been running chilly grinding machine illegally, instead of shifting his machine, plaintiff filed false suit and prayed to dismiss the suit of the plaintiff.

13. As per case of the plaintiff, he established in HMS Industries and Chilly grinding plant in RS No.205 plot no.178 and 179 of Sangmeshwar Nagar and produced photographs of the suit property. As per photographs chilly grinding machine is installed in residential area, he produced CTS of extract of suit property in respect of RS No.205 of plot no.178 and 179, his father was running the flour mill thereafter he established the chilly grinding machine, no documents was produced by the plaintiff on the date of suit to show that he obtained permission or license for running hi-tech chilly grinding machine from competent authority.

14. Defendant contended that before establishing chilly grinding machine by the plaintiff the residence of Sangemshwar Nagar objected for it and filed their objection on 07.02.2020, 27.08.2020 and 09.12.2020. So, the defendant issued notice on 22.10.2020 and 08.12.2020 to the plaintiff.

15. The plaintiff produced notice copy on 22.10.2020 which discloses that the notice was issued to the plaintiff he was running chilly grinding hi-tech machine in plot no.178

and 179 in residential area. Again another notice was issued to the plaintiff for removal of high tech machine for fixing small machine, on 28.11.2024 public at large filed application before the defendant to stop chilly machine for causing sound pollution by the plaintiff unit. Further defendant produced resolution passed by the municipality dated: 10.01.2025.

16. Under these circumstances it is evident that the high tech chilly grinding machine is being run in residential area illegally by the plaintiff, but the plaintiff is running such high tech chilly grinding machine in residential area, defendant has produced report of the Karnataka State pollution Board dated:17.02.2025, wherein it is mentioned that M/s HMS Industries is running Chilly grinding machine and causing noise pollution to the extent of 87dB(A) Leq, but limit specified for residential area as for regulation and control rules is 55dB(A) Leq, during day time between 06.00 to 10.00 p.m. so the plaintiff is running beyond specified limit to the residential area and causing noise pollution, it is sufficient to hold that the plaintiff is running high tech chilly machine causing noise pollution which is established in residential area.

17. The learned counsel for the defendant specifically argued that the suit of the plaintiff itself is not maintainable. In view of section.46 of Air pollution Control Act 1981, civil court has no jurisdiction to entertain the suit which respect of suit schedule property. Section 46 of Air (Prevention of Control of Pollution) Act 1981 reads as under;

Section 46: Bar of jurisdiction- *No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Appellate Authority constituted under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.*

18. So, the suit of the plaintiff itself is not maintainable, in view of the report filed by the karnataka pollution board. Further plaintiff has not produced any document to show that he was given permission to run such high tech chilly grinding machine. No document is produced to show that since 1995 he has been running the chilly machine moreover he cannot run such high tech machine in residential area. Hence, the trial court rightly held that plaintiff had no prima- facie case, balance of convenience is not in favour of plaintiff. If application is rejected it would not cause any hardship to the plaintiff. Therefore, the order passed by the IA no.2 is legally sustainable and does not find any error. Accordingly, **Point No.1 is answered in the Negative.**

19. Point No.2: For the above stated reasons, I proceed to pass the following:

ORDER

The Miscellaneous appeal filed U/Order 43 Rule 1 R/w sec.104 of CPC is hereby dismissed.

Order dated:12-01-2026 passed by the Civil Judge & JMFC Court, Byadagi on IA No.2 in OS No.336/2025 is hereby confirmed.

No order as to costs.

(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open court, this **8th day of June, 2026**).

(Rajeshwari.J.Puranik)
Senior Civil Judge & J.M.F.C.,
Byadagi.