

**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC,
AT SRIRANGAPATNA**

**Present :-
Smt. Chaitra A.M.,
B.Sc., L.L.B.,
Prl. Civil Judge and JMFC,
Srirangapatna.**

Dated this 15th day of March, 2017

O. S. No. 49/2017

Plaintiff :-

Sri. Somashekara. K.,
S/o Late Krishna,
Aged 32 years,
R/at Dahnathadyo Street,
Ganjam,
Srirangapatna Taluk,
Mandya District.

(By Sri. G.N.R.,-adv)

Vs

Defendant :-

Chief Officer,
Srirangapatna Town Municipality,
Mandya District.

(By Sri. H.R.-adv)

**:: Orders on application filed by the plaintiff under Order
39 Rule 1 and 2 R/W/Section 151 of CPC::**

The plaintiff has filed the application seeking for an order of temporary injunction to restrain the defendant, their agents, servants, henchmen or anybody acting on behalf of defendant, restraining them from taking further action about "Tender Notification" dated: 03.03.2017 till disposal of the suit.

2. The gist of the application is as follows;

The plaintiff has filed the affidavit. In the affidavit, it is stated that the plaintiff has participated in the auction conducted by the defendant with respect to boating on 24.02.2016. The plaintiff has become a successful bidder for Rs.3,90,000/- and as such the plaintiff presented a D.D. for Rs.2,00,000/- towards part payment of the bid amount. The place of boating is Dodda Ghosai Ghat. As per instruction given by the defendant, the plaintiff went to the river at Dodda Ghosai Ghat to move the motor boat into river but due to lack of water and big rocks, the plaintiff is unable to move the motor boat and then the plaintiff approached the defendant immediately and explained about the situation and requested with the defendant to give demo as to how to arrange boating in Kaveri River at Dodda Ghosai Ghat but the defendant neglected the request of the plaintiff and postponed. Then the plaintiff got issued legal notice to the defendant on 08.7.2016 calling upon the defendant to arrange demo about boating in kaveri river at Dodda Ghosai Ghat. But the defendant did not given any reply after service of notice then the plaintiff again got issued legal notice to the defendant calling upon the defendant to give demo or return the advance amount given by the plaintiff to the defendant but the defendant even did not reply to the notice got issued by the plaintiff for the 2nd time. But the defendant got issued a notice to the plaintiff calling upon to pay the balance amount to the plaintiff. The plaintiff has replied to the notice got issued by defendant. The plaintiff further stated that the plaintiff came to know yesterday that the defendant is making arrangement to fix a tender of boating at Dodda Ghosai Ghat on 15.03.2017. The plaintiff is carrying on the business in the said place. As the place is not fit for motor boating, the plaintiff is unable to carry on business in the said place. The plaintiff has demanded the defendant to give demo but the defendant did not given demo.

The defendant has not fulfilled the request of plaintiff and as such the tender is against to law and due to the illegal act of the defendant the plaintiff is causing loss as such it is just and necessary to pass an order for temporary injunction to restrain the defendant from taking further action about the tender notification dated: 03.03.2017 till disposal of the suit. On these allegations, the plaintiff prayed to allow the application.

3. On the other hand the defendant has opposed the application by filing detailed objections contending that the application is not maintainable either in law or facts. The plaintiff has no locus standi to prevent the defendant from conducting the auction proceedings. The defendant admits that the plaintiff was successful bidder for the period from 01.03.2016 to 31.03.2017 but contends that the plaintiff cannot restrain the statutory authority from doing their official duties as per the directions of Government. The suit is not maintainable in law and liable to be rejected for want of court fee because the defendant has sought for recovery of advance amount of Rs.2,00,000/- and the plaintiff has to pay necessary court fee to this relief. The suit is not maintainable for want of cause of action. There is no condition in the public notification that the defendant will /shall provide demo of any activity auctioned therein. Therefore seeking a relief of mandatory injunction is against to the defendant for directing to give demo of boating. The plaintiff is due in a sum of Rs.1,90,000/- . The plaintiff has suppressed several facts and not come to the court with clean hands. On these contentions, the defendant prayed to dismiss the application filed by the plaintiff.

4. Heard arguments on application for plaintiff and defendant perused the documents submitted by parties and perused the records.

5. The following points arise for my consideration is as follows:

1. Whether the plaintiff has made out prima facie case against the defendant?
2. In whose favour, the balance of convenience lies?
3. Who will be put to irreparable loss and legal injury?
4. What Order?

6. My findings to the above points are as follows: -

Point No.1 :- In the Negative.

Point No.2 :- Not in favour of plaintiff.

Point No.3 :- Not in favour of plaintiff.

Point No.4 :- As per the final order, for the following;

REASONS

7. Point No.1: The plaintiff has filed the application seeking for an order of temporary injunction restraining the defendant from taking further action about tender notification dated: 03.03.2017 because the plaintiff was a successful bidder in the auction conducted by the defendant in the year 2016. The place chosen was a Dodda Ghosai Ghat. The plaintiff went to the place but due to big rocks, it has become impossible for the plaintiff to move the motor boat. The plaintiff has demanded the defendant to give demo but the defendant did not give a demo. The defendant has not fulfilled the request of plaintiff and as such the tender is against to law and

due to illegal act of the defendant, the plaintiff has suffered loss and if a new tender notification is issued then the plaintiff will suffer loss and as such it is just and necessary to pass an order of temporary injunction. On the other hand the defendant opposed the application by filing detailed objections contending that the application is not maintainable in law. The defendant admits that the plaintiff was a successful bidder in the year 2016 for a period from 01.03.2016 to 31.03.2017 but contends that the plaintiff cannot restrain the statutory authority from doing their official duties as per the directions of government. The suit is liable to be rejected for want of court fee in view of seeking relief of recovery of Rs.2,00,000/-. There is no condition in the public auction notification that the defendant will/shall have to provide demo of any activity of auctioned therein. Therefore seeking a relief of mandatory injunction is against the defendant with a direction to give demo of boating. The plaintiff is due in a sum of Rs.1,90,000/- and the plaintiff has suppressed these facts and the plaintiff has not come to the court with clean hands. On these contentions, prays to dismiss the application.

8. The plaintiff produced tender notation dated: 08.02.2016 to show the place of bid chosen as per notification. The defendant has not disputed about the tender notification about the highest bidder to this notification by the plaintiff. The plaintiff produced legal notice dated: 08.07.2016, 03.01.2017 and 11.01.2017 to show plaintiff got issued notices to the defendant calling upon the defendant to show a demo in the river of Kaveri at Dodda Ghosai Ghat or else to return advance money. The plaintiff produced notice issued by defendant to show that the defendant has told to stop the motor boating in the river of Kaveri at Dodda Ghosai Ghat and told the plaintiff to pay the remaining balance amount. The plaintiff produced 3 postal

receipts to show notices were sent to defendant and two acknowledgments to show notice were received by defendant. The plaintiff also produced tender notification dated: 03.03.2017 to show that the date of bid with respect to tender notification is on 15.03.2017.

9. The defendant produced monthly meeting proceedings presided by Deputy Commissioner. The defendant produced proceedings of Town Municipal Corporation to show that a decision was taken to have boating with respect to the places stated in the tender notification. The defendant produced letter of undertaking to show plaintiff agreed for repaying the amount of Rs.1,90,000/- which was due by him towards bid amount and the plaintiff had undertaken to pay the said amount within 31.05.2016. The defendant produced register of miscellaneous sales or auction to show that plaintiff paid amount of Rs.2,00,000/- and received by the defendant and the period of contract is for a period of 1 years 1 month. The defendant produced notice dated: 24.02.2016 to show that the defendant intimated to the plaintiff to pay part amount. The defendant produced another notice dated: 06.05.2016 calling upon the plaintiff to pay the remaining amount of Rs.1,95,000/- within 3 days from the date of service of notice. The defendant has produced final notice dated: 01.06.2016 to show that the defendant has got issued notice to the plaintiff to pay the remaining amount and in case if he fails to pay the balance amount then the advance amount will be forfeited and they will recover 15% towards fine. The defendant produced postal acknowledgment.

10. It is a specific allegation of plaintiff that to restrain the defendant from taking further auction about tender notification

dated: 03.03.2017 on the allegation that he was a successful bidder in the year 2016 and due to big rocks and as the defendant did not show the demo, the plaintiff could not able to do his business properly and as such the defendant has to refund advance amount which was paid by the plaintiff. On the other hand the defendant opposed the application and contended that the plaintiff has no right to prevent the defendant from taking further notification because the plaintiff agreed to the terms and conditions imposed in the tender notification of the year 2016. The plaintiff has no right to question the same. The only dispute by the plaintiff is that the defendant has to stop taking further auction about tender notification. I have gone through the tender notification dated: 08.02.2016. In the tender notification dated: 08.02.2016 the period prescribed for the successful bidder is from 01.03.2016 till 31.03.2017. It means as the plaintiff was a successful bidder to the notification dated: 08.2.2016, the plaintiff has right to remain or do business in Dodda Ghosai Ghat till 31.03.2017. This aspect is also not disputed by the defendant. Therefore admittedly the plaintiff has right to remain or carry on business till 31.03.2017.

11. The Learned counsel for the plaintiff has argued and highlighted the condition No.5, 6 and 21 of tender notification dated: 08.02.2016. The Learned counsel for the plaintiff argued that in view of condition No.21 in the tender notification dated: 08.02.2016, the contract arises between the plaintiff and defendant. A offer is made by defendant and the acceptance is made by plaintiff. In view of contract between the plaintiff and defendant, the duty to perform the contract shifts on the defendant to show demo. But the defendant did not shown any demo, the defendant has to show the demo or to refund advance amount to the plaintiff. This

argument canvassed by the learned plaintiff counsel is not taken into consideration at this stage because if this aspect is considered right now then it will touches to the merits of the case.

12. Further I have gone through the tender notification dated: 03.03.2017. In the tender notification dated: 03.03.2017, it is mentioned that,

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Therefore as per 3rd line of tender notification dated: 03.03.2017, the right to the successful bidder commences from 01.04.2017 till 31.03.2018. Therefore the proposed successful bidder will get right to run boating in the river of Kaveri at Dodda Ghosai Ghat from 01.04.2017. The date 01.04.2017 is very important because the right of plaintiff will conclude on 31.03.2017

and as per notification dated: 03.03.2017, the right to new bidder will commence from 01.04.2017 i.e., after expiry of the period mentioned in the tender notification dated: 08.02.2016. Further their will be having procedure and the highest bidder has to follow the procedure of tender notification which requires minimum time and the same cannot be completed within a day. Therefore as per notification dated: 03.03.2017 as right to the new successful bidder is given from 01.04.2017 i.e., after conclusion of period as per notification dated: 08.02.201. Under these circumstances, restraining the defendant from taking further notification actions is of no use because the defendant has taken to give the successful bidder to the said place after 01.04.2017 and not before 01.04.2017.

13. The Learned counsel for the plaintiff also argued that while granting or refusing the temporary injunction, the three well established principles must cover. It is further argued that the main object of temporary injunction is to maintain the status quo pending litigation. No doubt the main object of temporary injunction is to maintain the status-quo but without establishing the prima-facie case, the court has no power to grant the temporary injunction. In view of above discussion, the plaintiff has not made out prima-facie case against the defendant and hence I answer this point in the negative.

14. Point No.2 and 3: In absence of establishing prima-facie case against the defendant, the balance of convenience do not lies in favour of plaintiff and if temporary injunction is not granted, the plaintiff will not be put to loss and as such I answer these two points in the negative.

15. Point No.4:- In view of above discussion on point no. 1 to 3, I proceed to pass the following:-

: O R D E R :

The application filed by the plaintiff under order 39 Rule 1 and 2 CPC is hereby dismissed.

No order as to costs.

(Dictated to the Stenographer on line computer, and then corrected by me and pronounced in the Open Court this the 15th day of March, 2017.)

**(Chaitra A. M.),
Prl. Civil Judge and JMFC,
Srirangapatna.**