

(2009) 11 JH CK 0084

In the Jharkhand High Court

Case No : M.A. No. 187 of 2009 and C.O. No. 14 of 2009

Khasjamda Mining Company and Monnet Ispat and Energy Ltd.

APPELLANT

Vs

Singhbhum Mineral Company and Sri Ram Mineral Company

 Shri Ram Minerals Company Vs Khasjamda Mining Company, Monnet Ispat and Energy Ltd. and Singhbhum Mineral Company

RESPONDENT

Date of Decision : 27-11-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2
Mineral Concession Act — Section 54
Mineral Concession Rules, 1960 — Rule 37
Partnership Act, 1932 — Section 69
Specific Relief Act, 1963 — Section 14(1), 14(3), 4

Citation : (2009) 11 JH CK 0084

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : Vikash Agarwal, Aparesh Kr. Singh and Hardeo Pd. Singh, for the Appellant; Anil Kumar Sinha and A. Sen, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—This appeal has been filed against the order dated 14.5.2009, passed by learned Sub Judge-1. Chaibasa in Title Suit No. 12 of 2008 rejecting the prayer of injunction made by the appellants (hereinafter referred as the plaintiffs).

2. The learned trial court held that though the plaintiffs have got prima facie case and the balance of convenience also lies in their favour but no irreparable loss or damages will be caused to them, which can not be compensated in terms of money, if the injunction is refused. However, it was ordered that the respondents (hereinafter referred as the defendants), shall not enter into a contract for mining and lifting of minerals with any other party.

I.A. No. 3265 of 2009

This I.A. has been filed for condoning the delay of about 19 days in filing the cross objection.

Heard.

On being satisfied with the grounds, the delay in filing the cross objection is condoned.

I.A. No. 3265 of 2009 is disposed of.

C.O. No. 14 of 2009

3. This Cross Objection has been filed by the defendant No. 2-Sri Ram Mineral Company (SRMC for short) against the said findings of the trial court that- the plaintiffs have got prima facie case and the balance of convenience also lies in their favour.

It appears that some of the partners of defendant No. 1 Singhbhum Mineral Company (SMC for short), reconstituted the Firm in the name of SRMC. Before the court below, only SRMC appeared and contested the injunction matter. In this Court also, only SRMC has appeared by filing Caveat and Cross Objection. In these circumstances, the appeal and the cross objection were heard together and are being disposed off in the absence of SMC, with the consent of learned Counsel appearing for the parties.

4. Mr. Vikash Agarwal, learned Counsel appearing for the plaintiffs, supported the findings of the trial court given in favour of the plaintiffs and assailed the findings given against them.

5. On the other hand, Mr. Anil Kumar Sinha, learned senior counsel appearing for the defendant No. 2 (SRMC), assailed the findings recorded in favour of plaintiffs and supported the findings recorded in favour of the defendant No. 1.

6. The relevant facts in short are as follows. The present title suit has been instituted by the plaintiffs for permanent injunction restraining the defendants from interfering with the mining work carried by plaintiffs. The petition for injunction filed on behalf of the plaintiffs has been rejected and against that order, these appeal and cross objection have been filed.

The defendant No. 1-SMC, being lessee with respect to Manganese & Iron Ore Mines, entered into an agreement dated 25.9.2002 with one Mr. Sukhdev Singh, the then proprietor of M/s Khasjamda Mining Company (KMC), now a partnership firm, for mining and selling the minerals subject to grant of sanction, for transfer of the lease, under Rule 37 of the Mineral Concessions Rules, 1960 (MC Rules for short). It was also stipulated that if for any reason, renewal and transfer is not permitted, Mr. Sukhdev Singh will continue to work of raising and selling, as mutually agreed upon. SMC executed a power of attorney in favour of one Mr. Sanjay Purushottam Date for the purpose of carrying out the said agreement,

followed by another power of attorney dated 28.9.2002.

The power of attorney holder, Mr. Date, representing that he is fully entitled for working the said Mines for extracting and wining Ores, entered into an agreement on 6.8.2003 with plaintiffs No. 2-MIEL, for entering into a partnership, in which Mr. Date and MIEL were to be inducted as partners and thereafter Mr. Sukhdev Singh, the original proprietor, was to retire from the Firm.

Accordingly, on 14.8.2003, the parties entered into a partnership with Mr. Sukhdeo Singh having 1%, Mr. Date having 1% and the MIEL having 98% shares for running the Mines in question.

On 30.10.2003, under a partnership deed, Mr. Sukhdev Singh retired and Mr. Date continued as partner with 1% share and MIEL continued with 99% share.

On or about 8.12.2003, SMC and KMC applied for sanction for transfer of the lease in favour of plaintiff-KMC. By letter dated 9.12.2005, the Deputy Commissioner recommended for fourth renewal of the lease as well as its transfer in favour of the plaintiffs. But by letter dated 18.9.2008, the said application under Rule 37 of the MC Rules was rejected by the Department of Mines, against which an appeal is pending before the Central Government, Mining Tribunal.

On 6.11.2008, the power of attorney executed in favour of Mr. S.P. Date and on 30.1.2009, the agreement dated 25.9.2002 were cancelled.

7. Learned trial court considered the respective cases and the materials brought on the record by the parties in detail while rejecting the prayer of injunction the defendants from interfering with the mining work carried on by the plaintiffs. While recording the finding that plaintiffs have got a prima facie case, it inter alia observed that in terms of the agreement, KMC was allowed to do the work of mining and selling Mineral, pending sanction under Rule 37 of MC Rules and even if such permission was rejected, an arrangement was made between the parties to continue raising and selling the minerals on mutually agreed terms. It was further observed that SMC proposed to transfer the lease in favour of KMC and not in favour of Sukhdev Singh, with whom the agreement was originally entered into as proprietor of KMC and that all rights, titles and interest of Sukhdev Singh merged in the partnership Firm-KMC and accordingly they were entitled to file suit and injunction petition. Regarding the objection that-the KMC being unregistered Firm, was not entitled to file suit, learned trial court observed that on such ground the case of the plaintiffs cannot be thrown out if plaintiffs otherwise satisfy the Court that the case of injunction is made out. The trial court also observed that KMC is in actual possession, whereas the defendants were in de jure possession.

With regard to balance of convenience, the trial court, inter alia, observed that KMC continued in possession for a long time and therefore the balance of convenience was also in its favour.

8. However, on the question of irreparable loss and damages, the trial court observed that no irreparable loss and damages will be caused to the plaintiffs, which cannot be compensated in terms of money, and moreover it has reserved its right for claiming damages. The judgment reported in *Adhunik Steels Ltd. Vs. Orissa Manganese and Minerals Pvt. Ltd.*, was relied.

9. Mr. Vikash Agarwal, appearing for the plaintiffs, submitted as follows. The plaintiffs have been illegally dispossessed after the impugned order was passed and before this appeal could be listed in this Court. It has been rightly observed by the trial court that the plaintiffs acquired all the rights, which the proprietor-Sukhdev Singh had in plaintiff No. 1-KMC and moreover the defendants were fully aware of constitution/reconstitution of Firm i.e. KMC. The agreement dated 25.9.2002 is not in violation of Rule 37 of M.C. Rules as the KMC has been carrying on mining in dual capacity i.e. as the proposed transferee and also as the authorized agent of SMC. In view of the judgment reported in *M/s. Haldiram Bhujawala and Another Vs. M/s. Anand Kumar Deepak Kumar and Another*, the trial court rightly held that the suit and the application for injunction was not barred by Section 69 of the Partnership Act but the trial court wrongly relied only on Section 14(1) of the Specific Relief Act whereas u/s 14(3)(c)(1) the court can determine the exact nature of work since the contract/agreement is unambiguous. In the case of *Adhunik Steels Ltd. (supra)*, only the agreement was entered into and it was terminated for the reason that it violates Rule 37 of MC Rules and no mining work was started by the proposed transferee but in the present case on the basis of the agreement in question, the plaintiffs continued mining work for about 5 years involving their men, machine and expertise. Moreover in that case the agreement was only for raising minerals, whereas in the present case the agreement was for raising and selling minerals. He also referred to the order dated 12.12.2008, passed in WPC No. 5864 of 2008, which was filed by plaintiffs for quashing the order passed by the trial court rejecting the plaint on the ground that the cause of action fell out of jurisdiction of the Court, as per the Wilkinson Rule. He lastly submitted that the plaintiffs' right for getting the mines transferred is pending adjudication before the Central Mining Tribunal, Delhi in a revision filed by the plaintiffs u/s 54 of the MC Rules, against the order of the State Government, dismissing the application of transfer of Mines in favour of the plaintiffs.

10. On the other hand, Mr. A.K. Sinha, learned senior counsel appearing for SRMC, submitted as follows. The agreement was entered into with Mr. Sukhdev Singh as proprietor, but by manipulation, the power of attorney holder of SMC i.e. Mr. Date transferred the rights under the agreement to the plaintiffs mischievously by adversely affecting the rights of the defendants, about which they learnt after a long time and then the power of attorney and the said agreement were cancelled. In view of Section 4 of the Act and Rule 37 of MC Rules, no mining right could be granted to the plaintiffs and that for violation of any law, the defendants may be held liable. The plaintiffs cannot be allowed to continue the mining work against the law. Further the plaintiffs have not

challenged the cancellation of the agreement in the suit till date. The suit is not maintainable in view of Section 69 of the Partnership Act. Thus, it was wrongly held by the trial court that the plaintiffs had prima facie case; and that the balance of convenience was also in favour of the plaintiffs. But the trial court rightly held that the plaintiffs will not suffer any irreparable loss. All the mining activity carried by the defendants is recorded, and returns are submitted, on the basis of which, loss and damages, if any, can be ascertained in terms of money. Moreover the plaintiffs were not in possession, rather they put sub contractor-Maa Tara Enterprises in possession.

11. After hearing the parties at length and going through the records, I am satisfied that the impugned order needs no interference. Prima facie in view of the judgment of Haldiram Bhujawala (supra), Section 69 of the Partnership Act, is no bar for filing the suit and praying for injunction. However, whether the terms and conditions of the agreement in question, is against any provision of law, is yet to be determined by the trial court/competent authority. Admittedly KMC continued in possession for a very long period and therefore it was rightly held that there is a prima facie case in it's favour and the balance of convenience is also in favour of KMC. But then it was also rightly held that if injunction is not granted, loss and injury, if any, suffered by the plaintiffs could be claimed in terms of money. Section 14(3)(c) of Specific Relief Act, relied on behalf of the plaintiffs, is also attracted if the compensation in terms of money, for non-performance of contract, is not an adequate relief. Then in paragraph 23 of the judgment of Adhunik Steels (supra), it has been inter alia observed as follows:

23. The question here is whether in the circumstances, an order of injunction could be granted restraining OMM Private Limited from interfering with Adhunik Steels working of the contract which OMM Private Limited has sought to terminate. Whatever might be its reason for termination, it is clear that a notice had been issued by the OMM Private Limited terminating the agreement entered into between itself and Adhunik Steels. In terms of Order 39, Rule 2 of the Code of Civil Procedure, an interim injunction could be granted restraining the breach of a contract and to that extent Adhunik Steels may claim that it has a prima facie case for restraining OMM Private Limited from breaching the contract and from preventing it from carrying on its work in terms of the contract. It is in that context that the High Court has held that this was not a case where the damages that may be suffered by Adhunik Steels by the alleged breach of contract by OMM Private Limited could not be quantified at a future point of time in terms of money. There is only a mention of the minimum quantity of ore that Adhunik Steels is to lift and there is also uncertainty about the other minerals that may be available for being lifted on the mining operations being carried on. These are imponderables to some extent but at the same time it cannot be said that at the end of it, it will not be possible to assess the compensation that might be payable to Adhunik Steels in case the claim of the Adhunik Steels is upheld by the arbitrator while passing the award.

12. In the result, this Appeal as well as the Cross Objection are dismissed, and the impugned order is upheld. It goes without saying that the observations, if any, made in the impugned order or this order, will not prejudice the parties in the suit or other proceeding.