

(2019) 07 MP CK 0099

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 3011 Of 2019

M/S Rameshwaram Minerals

APPELLANT

Vs

M/S Ansh Constructions & Another

RESPONDENT

Date of Decision : 09-07-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 43 Rule 1(r), Order 39 Rule 2
Madhya Pradesh Land Revenue Code, 1959 — Section 247(5)

Citation : (2019) 07 MP CK 0099

Hon'ble Judges : B.K. Shrivastava, J

Bench : Single Bench

Advocate : R. K. Verma, Amit Seth, Sanjay K. Agrawal, S.K. Sharma

Final Decision : Allowed

Judgement

1. This appeal has been filed on 27/05/2019 under Order 43 Rule 1(r) of the C.P.C. against the order dated 17/05/2019 passed by the III Additional

District Judge, Rewa in Civil Suit No. 127/2019 by which the learned Lower court partly allowed and partly dismissed the application filed by the

appellant/plaintiff under Order 39 Rule 1 and 2 of the C.P.C.

2. It is not disputed that the Civil Suit No. 127/2019 has been filed on 7/05/2019 by the appellant/plaintiff. The appellant is a Proprietorship firm inter

alia engaged in the business of manufacture and trade of â??gittiâ?? through mechanized crusher. Respondents were awarded the work contract for

upgradation of Raipur/Sitapur/Panni road under Sub Division Mangawan, District Rewa vide work order dated 1/05/2018 issued by the Public Works

Department, B/R Division No. 1, Government of M.P., Rewa. Respondents were in need of nearly 4,00,000 Metric Tonnes of â??gittiâ? and the

appellant was already in the business of manufacture and sale of â??gittiâ?,

therefore, an agreement (M.O.U.) was executed between the appellant and the respondent on 20/08/2018 wherein, it was agreed between the parties that on the land bearing Khasra No. 152/3 admeasuring 4.01 hectares situated at Tehsil Mauganj, District Rewa, in the ownership of the respondent, the appellant would establish a stone crusher and would extract/mine/stone from the aforesaid stand and after crushing and manufacturing of "Gitti", would supply the same to the respondents for use in the work contract in question. It was also agreed in the aforesaid M.O.U. that the entire cost of construction and establishment of the plant/machinery/crusher would be incurred by the appellant and nearly a sum of Rs. 1,50,00,000/- would be paid by the respondents to the appellant towards mobilization advance for which ten post dated cheques of Rs. 15,00,000/- each would be given by the appellant to the respondents and respondents would be entitled to encash the same as per understanding between the parties towards refund of the mobilization advance. As per condition enumerated in the said M.O.U. an indemnity bond was also executed between the parties.

3. On 29/04/2019, a letter was issued by the respondents to the appellant alleging that inspite of assurance, the appellant had allegedly defaulted in making the crusher operational as per M.O.U. dated 2/04/2019 and, therefore, the respondents had decided to take over the crusher from the appellant w.e.f. 1/05/2019.

4. In the aforesaid situation, the plaintiff/appellant filed the Civil Suit no. 127/2019 on 7/05/2019 before the Court of III Additional District Judge, Rewa along with the application under Order 39 Rule 1 and 2 of C.P.C. Annexure A-7. The respondents filed the reply Annexure A-8. Thereafter, the learned trial Court, after hearing the argument, passed the order impugned on 17/05/2019. The Court observed that the prima facie case, irreparable loss and the balance of convenience partly are in favour of plaintiff. Therefore, the trial Court partly allowed the application with a direction to the respondents that they shall not sell/alienate the land in question without leave of the

5. As per appellant, the trial Court had not passed any order in respect of prayer of the appellant seeking grant of temporary injunction against the respondents from forcefully dispossessing the appellant and its plant/machinery/

crusher from the land in question during the pendency of the Civil Suit

inspite of holding that there exists prima facie case in favour of the appellant.

6. It is submitted by the appellant that there is no any clause/condition in the M.O.U. empowering the respondents from dispossessing the appellant

during the currency of the M.O.U. agreement itself. The appellant has done the installation of its plant/machinery/crusher over the land in question

incurring expenditure of nearly Rs. 3,00,00,000/-. As per the appellant, during the pendency of the civil suit, the learned Lower court ought to have

issued temporary injunction in favour of the appellant restraining the respondents from forcefully dispossessing the appellant in order to secure the

ends of justice between the parties as there exists strong prima facie case and balance of convenience in favour of the appellant and the appellant is

also likely to suffer irreparable injuries in the event of its forceful dispossession. However, the aforesaid material aspect has been grossly overlooked

by the learned Court below while passing the impugned order dated 17/05/2019. The appellant also draw the attention towards Clause 5, Clause 7 and

Clause 16 of the M.O.U. Therefore, it is requested to set aside the impugned order and to grant the relief of temporary injunction from forceful/illegal

dispossession of the appellant over the land in question and plant/machinery/crusher etc.

7. The respondents filed their reply on 6/06/2019. Before the Lower Court, reply Annexure A-8 was filed. In para 6 of the present reply, it is stated

that the respondents adopt the averments made in the said reply for the purpose of instant appeal and crave for the leave of this Honourable Court to

refer and rely on the reply filed before the trial Court.

8. As per reply of the respondents, in the M.O.U. it was clearly stipulated that the crusher will be installed by the appellant. It is also submitted that

the appellant entered into another agreement dated 2/04/2019 whereby he agreed to complete the work of installation of crusher and to commence

supply the aggregate latest by 15/04/2019. The minutes of the aforesaid meeting were duly signed by Shri Ajeet Singh husband of proprietor of the

appellant. The appellant took no step to complete the work within the prescribed period. There is absolutely no material to show that the appellant is in

lawful possession of the suit land, therefore, the learned Lower Court did not commit any mistake by partly dismissing the injunction application.

9. In this case, the first M.O.U. is an important document which is admittedly executed between both the parties on 20/08/2018. For deciding the issue involved in this case, the conditions mentioned in para 5, 7, 8, 9, 12, 16 and 17 are important which are as under :-

5. If due to any reason, the Crusher does not work, then Rameshwaram shall arrange the aggregate from any other sources at their cost and will ensure smooth and uninterrupted supply at the same rate as mentioned in Clause 4 above.

7. ANS undertakes to complete the Civil work for the said Crusher. The necessary permission from the government dept will be taken by ANS with the help of Rameshwaram.

8. Rameshwaram undertakes to carry out all types of repair, maintenance any other related work. The ownership of crusher and other related machineries for production of crushed stone aggregates shall be of Rameshwaram.

9. ANS will not use this land for any other work other than this above said project.

12. Both the party are agreed to obey all the rules and regulations of government during execution of this agreement.

16. Rameshwaram shall execute and furnish a separate indemnity bond in favour of ANS, so as to keep ANS indemnified at all times, against any

losses which may be suffered by ANS due to the default or any failure on the part of Rameshwaram in discharging any of its obligations under this

MOU but Rameshwaram Minerals may not bound if there is any problem arise which will not control in the hand of Rameshwaram Minerals i.e.

Force Measures like any government disturbance, natural calamities etc.

17. No amendment to or modification of this MOU shall be effective unless made in writing, duly signed by the parties. (Underline by me)

10. It appears from the aforesaid M.O.U. that there was no any time limit fixed between the parties. In para 4 of the agreement, it is mentioned that

during the period of 18 to 24 months. It is not mentioned that when the period will start and what will be the last date of completion of work.

11. The second important point also appeared from the aforesaid agreement that there is no any clause or condition in the said agreement empowering

the respondents from dispossessing the appellant during the currency of the

M.O.U. agreement. There is no any clause regarding termination of the M.O.U. agreement itself.

12. The letter Annexure A-5 was issued by the respondents on 29/04/2019. In this letter, it is stated that "initially the production from above

crusher was to be started and stone aggregate was to be supplied latest by 10/01/2019." The aforesaid date 10/01/2019 is not mentioned in the entire

M.O.U. dated 20/08/2018 Annexure A-1. It is further stated in the aforesaid letter Annexure A-5 that "we had a meeting on 2/04/2019 and the

program of supply of aggregate was rescheduled and committed to start supply by 15/04/2019." The aforesaid memorandum dated 2/04/2019 has

been filed by the respondents with their reply. In this document, it is stated in para 1 that earlier, it is agreed by Mr. Ajeet Singh to start the

crusher/supply of aggregate from 30/01/2019. It is also mentioned that the new date was given from 15/02/2019 and, thereafter, 15/03/2019 and lastly,

the date was given 15/04/2019. Time was the essence of contract or not ? This question will be decided by the Lower Court on merit. Prima facie, it

appears that the respondents relied upon the document Annexure R-7 dated 2/04/2019 and in this document, it is admitted by the respondents that the

agreement was executed by the signature of Ajeet Singh (husband of the appellant). Whether Ajeet Singh was competent or not ? It may be seen

from the first M.O.U. The first M.O.U. was signed by Smt. Monika Singh Parihar. In condition no. 17, it was mentioned that no amendment or

modification of this M.O.U. shall be effective unless made in writing, duly signed by the "parties". Prima facie, it can be said that "Monika

Singh Parihar" was the "party", her "husband" was not the "party" and he was not competent to accept any condition on behalf of her

wife. Therefore, it is not clear at this stage that the document dated 2/04/2019 is having any legal value or not ? It may be decided by the elaborate

evidence before the Lower Court.

13. In condition no. 7 of the M.O.U., it was provided that the necessary permission from the Government Department will be taken by the

respondents with the help of the appellant. Therefore, respondents were liable to obtain all the necessary permission for starting the work of crusher.

The mining permission Annexure A-4 has been issued by the Collector (Mining Branch) District Rewa on 19/03/2019 in favour of respondents. Some

conditions are also imposed in the aforesaid permission. It is stated that permission for entering in the land will be obtained under Section 247 (5) of the M.P. Land Revenue Code for the purpose of extraction work. It is also stated in condition no. 8 that the demarcation will be done by the Tehsildar in

the presence of Mining Department and Forest Department, Mouganj. Thereafter, the Contractor will number the place by making â??Cement

Munareâ?. After establishment of â??Munareâ?, the Mining Department and Forest Department will inspect the work and, thereafter, the

possession of mine will be handed over to the Contractor. Another condition was also mentioned in the last para that within three months, the

Registration will be necessary by submission of necessary document and the application in prescribed form. Therefore, it appears that the liability to

obtain all permission was on the respondents. The M.O.U. was executed on 20/08/2018, while the first permission Annexure A-4 was obtained by the

respondents themselves on 19/03/2019.

14. In the light of the aforesaid permission, it will be also proper to mention here that mere establishment and setting up of the plant/machinery/crusher

is not sufficient for making the crusher operational and supplying the â??Gittyâ? to the respondents unless the Mining lease for extraction of stone

from the land in question is obtained by the respondents and necessary environmental clearance is also necessary. The respondents were responsible

to obtain the clearance from the competent authority of S.I.E.A/Pollution Control Board etc. No any other permission except Annexure A-4 was not

obtained by the respondents. As per M.O.U., the respondents were bound to take all the permissions and the appellant was only obliged to help in the

aforesaid work.

15. It is also stated in the aforesaid M.O.U. that the ownership of Crusher and other related machinery for production shall be of appellant. The

Defendant alleged that he took the possession on 1/05/2019 but the document dated 25/05/2019 filed by the appellant shows that the police inquired the

application dated 20/05/2019 filed by the appellant and when the police reached on the spot, only two employees of the appellant were found. No any

other person on behalf of the respondents was present there. The police recorded the statement of aforesaid two employees named Veerendra

Kumar Dubey and Dharmendra Singh who stated that the work of the company

has been stopped. It is also stated that no any employee or officer/owner of the respondents were present there. The police gave the advice to the complainant that there is a dispute regarding the conditions of the agreement, therefore, they may approach to the Court. Hence, prima facie, it can be said that the appellant is in possession of the land and the Crusher/machinery etc.

16. The appellant cited Nagar Palika Parishad, Malajkhand Vs. Hindustan Copper Ltd. (2009) 2 M.P.L.J. 222 = 2008 S.C.C. Online M.P. 339 in

which it has been said that the possession should be protected by granting the temporary injunction. Ashok Kapil Vs. Sanaullah (Dead) and others

(1996) 6 S.C.C. 342 is also cited by the appellant in which it has been said that any party cannot take advantage of his own wrong. In this case, the

respondents were liable to obtain all permission but they themselves caused the delay, therefore, they could not take any advantage of their own wrong.

17. It is also an admitted position that the land was transferred in favour of the appellant. The conditions are mentioned in the M.O.U. It is also

admitted that machineries have been installed in part on the spot. In this regard, the appellant cited Chetak Constructions Ltd. , Indore Vs. Om

Prakash and others 2002 S.C.C. Online M.P. 424 = A.I.R. 2003 M.P. 145. In this case, the Honourable Court said that the transferee in

possession can protect his possession even if he has not filed the suit for specific performance of the contract. It is also said in Rame Gowda

(Dead) by LRs. Vs. M. Varadappa Naidu (Dead) by LRs. and another (2004) 1 S.C.C. 769 that the settled possession cannot be dispossessed

without recourse of law. In the present case, there was no any stipulation regarding the last date in the contract/M.O.U. There was no any clause for

termination of agreement, or to removal/dispossession of appellant. Therefore, the respondents cannot take the possession without taking the help of law.

18. The appellant also cited B.M. Lal (Dead) by his Legal Representatives, R.N. Dutta Vs. Dunlop Rubber Co. (India) Ltd. and another (1968) 1

S.C.R. 23 = A.I.R. 1968 S.C. 175, Corporation of Calicut Vs. K. Sreenivasan (2002) 5 S.C.C. 361 and Ram Sarup Gupta (Dead) by LRs. Vs. Bishun

Narain Inter College and others (1987) 2 S.C.C. 555 and argue upon the point

that whether the M.O.U. is a lease or license ? Some arguments are also advanced upon the aforesaid point but in view of this Court, the question of 'license' or 'lease' cannot be considered at this stage by this Court. The trial court will consider the aforesaid issue at the appropriate time. At the time of deciding the injunction application, the plaintiff must show a prima facie case, the trivial issue and balance of convenience. No injunction can be granted against rightful owner in favour of a person in unlawful possession.

19. In this regard, the respondents cited Mahadeo Savlaram Shelke and others Vs. Pune Municipal Corporation and another (1995) 3 S.C.C. 33.

Another ruling Ramniklal N. Bhutta and another Vs. State of Maharashtra and others (1997) 1 S.C.C. 134 cited by the respondents which is related to the land acquisition proceedings.

20. Therefore, it appears that in Clause 7 of the M.O.U., there was a specific condition that it would be the responsibility of the respondents to take all

necessary permission from the Government required for setting up the plant/its operation and the appellant would assess the respondents in obtaining

the said permission. The respondents took only one mining permission on 19/03/2019. Clause 5 of the aforesaid agreement also contained a stipulation

that if for any reason, the crusher does not work, then also the appellant would be liable to ensure uninterrupted supply of 'Gitti' to the

respondents from its own source and the appellant would also execute the indemnity bond in favour of the respondents indemnifying the respondents

for any loss suffered by them in case, there is any default on the part of the appellant in supplying the 'Gitti' excluding which are beyond the

control of the appellant. The indemnity bond dated 20/08/2018 Annexure A-2 has been executed. Therefore, it can be said that no irreparable loss will

be caused to the respondents. It is also mentioned in Clause 16 of the M.O.U. that in case, any problem arises which is not within the control of the

appellant, the appellant would not be held liable for any event occurring on account of such problem.

21. The learned Lower Court also came to the conclusion that prima facie all the three ingredients are partly in favour of the appellant. But looking to

the aforesaid all documents and the entire situation of the case, it can be said that the conclusion of the trial Court is not correct. The case prima facie

is in favour of the appellant. If the injunction is not granted, then the appellant will suffer the irreparable injury. Therefore, the balance of convenience

is also in favour of the appellant. The trial Court committed the mistake by dismissing the application in part. Injunction should be granted in toto.

22. Therefore, this appeal is allowed and the respondents are restrained from forcefully dispossessing the appellant and its plant/machinery/crusher

from the land in question during the pendency of the civil suit. It is expected from the trial Court that the suit will be disposed of as early as possible.