

A HARDESH ORES PVT. LTD.
v.
TIMBLO MINERALS PVT. LTD. AND ORS.

MARCH 16, 2004

B [SHIVARAJ V. PATIL AND D.M. DHARMADHIKARI, JJ.]

Code of Civil Procedure, 1908:

C *Order 39, rr. 1 and 2—Interim injunction—Iron ore mine—Contractor—Continuing mining activities claiming renewal of contract by conduct—New contractor filing a suit claiming that mining lease owner had refused to renew the contract of old contractor and entered into a fresh contract with him—High Court granted interim injunction in favour of new contractor—Held, the suit is pending for trial on merits—On the basis of three established principles*
D *for grant of temporary injunction e.g., prima facie case, balance of convenience and irreparable loss, it would not be appropriate to interfere with the order of High Court at the present stage of the suit and disturb the working of the mine by the new contractors who have already commenced operations and stated to have entered into business commitments for supply of iron ore to different parties in and outside India—However, the High Court ought not to*
E *have granted unconditional order of temporary injunction by ignoring the huge investments which have been made by the old contractor to operate the mine under an existing arrangement and alleged renewal of the contract by their mutual conduct—The temporary injunction passed by the High Court is accordingly modified with addition of certain conditions.*

F *Provash Chandra Dalui and Anr. v. Biswanath Banerjee and Anr., [1989] Supp. 1 SCC 487 and State of U.P. and Ors. v. Lalji Tandon (dead) through Lrs., [2004] 1 SCC 1, cited.*

Gardner v. Blaxill, [1960] 2 All ER 457, cited.

G CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8586-8587 of 2003.

From the Judgment and Order dated 5.9.2003 of the Bombay High Court at Panaji in A.F.O. No. 49/2003 and 11.9.2003 in C.A. No. 239/2003
H in A. No. 49/2003.

WITH

C.A. Nos. 8588-89 of 2003.

Fali S. Nariman, R.F. Nariman, Dr. M.S. Usganonkar, B.R. Zaiwalla, K. Parasaran, M.N. Krishnamani, Kapil Sibal, G.R. Mallaya, Ms. Pallavi Barua, Rajan Narain, Ms. Shirin Khajuria, Bhavanishankar V. Gadnis, Umapati Ganesh, Ms. B. Sunita Rao, Nitin Popli, Bodhankar, P.H. Parekh, Rohit Alex, Sumit Goel, Sameer Parekh, Bodhankar, Ms. Hari Priya and Ms. Asha Gopalan Nair for the appearing parties.

The following Order of the Court was delivered :

DHARMADHIKARI, J. The dispute in these appeals between the appellant as Iron Ore raising/purchase contractor and the respondents who claim to have been duly appointed as new contractors by the mine owner is regarding their rival claims to exclusively run the Iron Ore mine which is the subject matter of the suit instituted by the new contractors.

The appellant company [shortly referred to as the old contractor] claims right to run the mine on the basis of their alleged existing contract with the mining-lease-owner. According to the appellant, the contract with them was renewed by acceptance of their offer of renewal and consequent conduct of permitting them to work the mine on periodical payments of price in accordance with the original terms of the contract.

The case of the contesting respondent nos. 1 & 2, who are plaintiffs before the trial court [shortly referred to as the new contractors], is that the mining-lease-owner has refused to renew the contract with the appellant and has entered into a fresh contract on payment of higher price with them.

The trial court granted an *ex parte* temporary injunction in favour of the new contractors. After hearing both the parties at length, the *ex parte* interim injunction earlier granted under Order 39 Rules 1 & 2 of the Code of Civil Procedure was vacated by the trial court.

Aggrieved by the order of the trial court refusing to confirm the order of temporary injunction, the new contractors appealed to the High Court. The High Court by its impugned order has allowed the appeal and in terms of the prayer made by the new contractors, has granted temporary injunction in their favour without any conditions. The old contractor is, therefore, before us in these appeals.

A We have heard all the learned counsel appearing for the parties at great length.

B Learned senior counsel appearing for the appellant after referring to various documents on record and strongly relying on the decision in *Gardner v. Blaxill* – [1960] 2 All.E.R. 457, contended that renewal of the contract can be implied by conduct of the parties. It is further contended that admittedly after expiry of the term of the contract, the appellant was running the mine and making payments for the extraction of the ore to the mining–lease–owner. The new contractors by offering higher price to the owner made a surreptitious attempt to take possession of the mine by seeking *ex parte* injunction. The appellant had already filed a caveat in the trial court in anticipation of filing of a suit against them and threat to their rights in the mine. Ignoring the caveat, the trial court was misled into passing an *ex parte* order of temporary injunction without any notice to the appellant. An *ex parte* order of temporary injunction on ground of urgency by invoking proviso to Order 39 Rule 3 CPC was obtained when there existed none and in any case no emergent circumstances confronted the plaintiffs as not to notice the opposite party and grant opportunity of hearing to it. The trial court in the order granting *ex parte* temporary injunction did not record reasons. Hence, the order suffered incurable infirmity.

E It is submitted that thus practising misrepresentation and deception, the new contractors obtained an *ex parte* order of temporary injunction and being armed with it, made forcible entry into the mine. The trial court, later on, vacated the temporary injunction, after hearing both the parties. The submission made on behalf of the appellant is that as the new contractors could not have obtained a contract in their favour during existence of a renewed contract in favour of the old contractor, this Court should allow these appeals, vacate the order of temporary injunction and restore the *status quo ante* by permitting the appellant to take possession of the mine for uninterrupted working.

G On the other hand, learned counsel appearing for the mining lease owner and the new contractors submitted that, in terms of the original contract, a renewal could be made only in writing. Reliance is placed on *Provash Chandra Dalui and Anr. v. Biswanath Banerjee and Anr.*, [1989] Supp. 1 SCC 487 and *State of U.P. and Ors. v. Lalji Tandon (dead) Thr. LRs.*, [2004] 1 SCC 1. The contention advanced is that after expiry of the term of the contract, under some *ad hoc* arrangements with the owner, even if the old contractor might have made some extractions of ore and paid price that

H

cannot be held to be an act of renewal of the contract. The mining lease owner by an express notice sent in writing has refused to renew and terminated the contract of the old contractor. Thereafter, he has entered into a written contract on higher price with the new contractors. The old contractor, therefore, has no right in *presenti* to remain in possession of the mine and to operate it. According to learned counsel for the new contractors, there is no counter suit filed by the old contractor to specifically enforce any alleged agreement of renewal of the contract and such relief cannot be legally granted in view of the bar contained in clause (c) of sub-section (1) of Section 14 of the Specific Relief Act which provides that a Contract in its nature determinable' is unenforceable.

The suit is pending for trial on merits. We would not, therefore, express any opinion, one way or the other, on the merits of the contentions advance. On the basis of three established principles for grant of temporary injunction e.g., *prima facie* case, balance of convenience and irreparable loss, in our considered opinion, it would not be appropriate to interfere with the order of the High Court at the present stage of the suit and disturb the working of the mine by the new contractors who have already commenced operations from June 2003 and, as alleged, entered into business commitments for supply of iron ore to different parties in and outside India.

After considering the comparative merit of the case of either parties and their rival claims, we have formed an opinion that the High Court ought not to have granted unconditional order of temporary injunction by ignoring the huge investments which have been made by the old contractor to operate the mine under an existing arrangement and alleged renewal of the contract by their mutual conduct.

In the course of hearing, on behalf of the old contractor, learned counsel has handed over to us in writing the proposed terms and conditions on which it seeks restoration of possession of the mine and permission to operate the same. The proposed terms suggested by the appellants have been opposed by the new contractors and their response in writing has also been placed before us. Taking tentatively the figures mentioned by the new and old contractors in their proposed terms and responses submitted orally and in writing indicating the extent of investments and estimated profits, we consider it appropriate to modify the impugned order of grant of temporary injunction passed by the High Court by imposing the following conditions :-

(1) As a pre-condition for further operating the mine, the new

A contractors shall furnish a Bank Guarantee or a Solvent Security to the satisfaction of the Trial Court in the sum of Rupees Five Corers towards the estimated investments already made by the old contractor in the mine from the year 1984 in prospecting, developing, digging bore holes, removal of rejection, making benches, putting up infrastructural facilities, acquiring surface rights, to dump rejects, cost of shifting of school, electrification, research and development etc. The Bank guarantee or solvent security, as the case may be, to the satisfaction of the trial court shall be furnished within a period of four weeks from today.

C (2) The new contractors shall, by the end of every month, deposit in the trial court a sum of Rupees 50 per metric ton, on the basis of payment slips of trucks and monthly returns submitted to the statutory mine authorities, on each quantity of ore extracted and exported by them, in order to reimburse, in the event of dismissal of the suit, the loss of estimated profit caused to the old contractor.

D (3) The amounts aforementioned to be deposited in respect of the quantities of Ore extracted and exported shall be kept by the Trial Court, when deposited, in fixed deposit in a nationalised Bank so that they earn current rate of interest. The amounts shall be paid on final decision of the suit by the Trial Court to the party held entitled to it.

E (4) At the conclusion of the trial and decision of the suit, the trial court shall pass consequential orders for payment of the amount covered by the Bank Guarantee or solvent security and the amounts periodically deposited for the ore extracted and exported in the manner directed above.

F (5) As admitted by the parties, the quantity of iron ore already extracted during period of working by the old contractor is stacked at the site in the mining area. Without going into the dispute of extent of quantity of iron ore extracted and stacked at site and its value, we direct that the old contractor shall be allowed to collect and transport the same in accordance with the then existing terms of the written contract between the old contractor and the mining-lease-owner. In collecting and transporting the aforementioned quantity of iron ore, the old contractor shall follow not only the terms of the contract but also all statutory provisions and rules regulating the extraction and transportation of minerals. It shall also submit necessary statutory returns and clear dues, if any, of statutory Authorities in accordance with law. In order of allow the old contractor to take away the iron ore extracted by it and stacked at the site, the trial court shall appoint a Commissioner to be assisted

by a statutory mining authority to supervise the work.

A

Looking to the nature of the dispute, the rival claims and high stakes of the parties involved in running the mine, we direct the Trial Court to expedite the trial of the suit and to make all endeavour to decide the same early and in any event before December 2004.

B

All legal grounds and contentions are left open to the parties to be urged before the Trial Court. The trial court shall, on the basis of the evidence produced before it, decide the suit in accordance with law and regardless of any observations made by the trial court and the High Court in their orders while disposing of the subject matter of grant of temporary injunction.

C

The impugned order of the High Court is, thus, modified with the addition of the conditions mentioned above. The appeals are partly allowed to the above extent. The costs incurred by the parties shall abide the final result of the suit.

R.P.

Appeals Partly allowed.

D