

**IN THE HIGH COURT OF BOMBAY AT GOA
APPEALS FROM ORDER No.54/2012 & 8/2015**

APPEAL FROM ORDER No. 54 OF 2012

- 1 Smt. Kunda Madhukar Shetye, of
Major age, Indian National,
resident of “Ramakant Niwas”,
Altinho, Panaji, Goa. Appellant.

Versus

- 1 Smt. Shaila Subrao Shetye,
wife of late Subrao Shetye,
major in age, landlady,
resident of “Shriram Smruti”,
Bordem, Bicholim-Goa.
- 2 Shri Shriram Gajanan Shetye,
son of late Gajanan Shriram
Shetye, Major in age, married,
Indian National, resident of
“Shriram Smruti”, Bordem,
Bicholim-Goa.
- 3 Shri Pandurang Gajanan Shetye,
son of late Gajanan Shriram
Shetye, Major in age, married,
Indian National, resident of
“Shriram Smruti”, Bordem,
Bicholim-Goa.
- 4 Shri Vijay Gajanan Shetye,
son of late Gajanan Shriram
Shetye, major in age, married,
Indian National, resident of
“Shriram Smruti”, Bordem,
Bicholim-Goa.

- 5 Mr. Ramakant Subrao Shetye,
son of late Shri. Subrao S.
Shetye, major in age, Indian
National, resident of “Shriram
Smruti”, Bordem, Bicholim-Goa.
- 6 Damodar Mangalji and Co. Ltd.,
A company incorporated under
the Companies Act, 1956, having
its Office at Damodar Niwas, M.
G. Road, Panaji-Goa.
- 7 M/s. Rajani Mineral Exports,
A Partnership Firm, registered
under the Indian Partnership
Act, 1932, having office at
Damodar Niwas, First Floor,
M.G. Road, Panaji Goa.
- 5 M/s. Damodar Mangalji Mining
Company, a Partnership Firm,
registered under the Indian
Partnership Act, 1932,
having its office at Damodar
Niwas, M.G. Road, Panaji Goa. Respondents.

Mr. S. D. Lotlikar, Senior Advocate with Mr. Shivan Dessai,
Advocate for the Appellants.

Mr. Rafiq Dada, Senior Advocate with Mr. S.S. Kantak, Senior
Advocate with Mr. Preetam Talaulikar and Mr. A. Kamat,
Advocates for Respondents No.1 to 4.

Mr. V. A. Lawande, Advocate for respondent No.5.

Mr. A. N. S. Nadkarni, Senior Advocate with Mr. D. Lawande,
Mr. Nikhil Pai and Mr. S.S. Rebello, Advocates for Resp. No.6.

Mr. Y. V. Nadkarni, Mr. N. Noronha and Ms. Divya Shirgam,
Advocates for Respondent No.7.

Mr. D. J. Pangam, Advocate for respondent No.8.

**WITH
APPEAL FROM ORDER No.8 OF 2015**

- 1 Smt. Shaila Subrao Shetye
Wife of late Subrao Shetye
Major in age, Resident of
“Shriram Smruti”, Bordem,
Bicholim, Goa.
 - 2 Shri Shriram Gajanan Shetye
Son of late Gajanan Shriram
Shetye, Major in age, married,
Indian National, Resident of
“Shriram Smruti”, Bordem,
Bicholim, Goa.
 - 3 Shri Pandurang Gajanan Shetye
Son of late Gajanan Shriram
Shetye, Major in age, married,
Indian National, Resident of
“Shriram Smruti”, Bordem,
Bicholim, Goa.
 - 4 Shri Vijay Gajanan Shetye
Son of late Gajanan Shriram
Shetye, Major in age, married,
Indian National,
Resident of “Shriram Smruti”,
Bordem, Bicholim, Goa.
- Appellants
(Ori.Defendant
Nos.1 to 4)

Versus

- 1 Smt. Kunda Madhukar Shetye
Major of age, Indian National,
Resident of “Ramakant Niwas”
Altinho Panaji Goa. Respondent
(Ori. Plaintiff)
- 2 Mr. Ramakant Subrao Shetye,
Son of late Shri Subrao S.
Shetye,
Major in age, Indian National,
Resident of “Shriram Smruti”,
Bordem, Bicholim Goa. Respondent
(Ori. Def.No.5)
- 3 Damodar Mangalji and Co. Ltd.
A company incorporated under
the Companies Act, 1956, having
its Office at Damodar Niwas, M.
G. Road, Panaji Goa.
- 4 M/s. Rajani Mineral Exports,
A partnership Firm, registered,
Under the Indian Partnership
Act, 1932, Having office at
Damodar Niwas, First Floor,
M.G. Road, Panaji Goa.
Represented through its partner
Shri Harish Rajani,
Major of age.
- 5 M/s. Damodar Mangalji Mining
Company
A partnership Firm, registered
under the Indian Partnership
Act, 1932, having its office at
Damodar Niwas, M.G. Road,
Panaji Goa.
Represented through its
Partner Mr. Manoj Rajani
Major of age. Respondent
Nos.3 to 5
(Ori.Defendant
Nos.6 to 8)

Mr. Rafiq Dada, Senior Advocate with Mr. S.S. Kantak, Senior Advocate with Mr. Preetam Talaulikar and Mr. A. Kamat, Advocates for the Appellants.

Mr. S.D. Lotlikar, Senior Advocate with Mr. Shivan Dessai, Advocate for Respondent No.1.

Mr. V.A. Lawande, Advocate for Respondent No.2.

Mr. A.N.S. Nadkarni, Senior Advocate with Mr. D. Lawande, Mr. N. Pai, Mr. P. Dangui & Mr. S.S. Rebello, Advocates for Respondent No.3.

Mr. Y.V. Nadkarni, Advocate for Respondent No.4.

Mr. D. Pangam and Mr. P. Sawant, Advocates for Respondent No.5.

CORAM: NITIN M. JAMDAR, J.

DATED : 12 MARCH 2015

ORAL JUDGMENT:

Both these Appeals From Order arise from the same suit and are between the same parties and they have been argued together, and are disposed of by this common judgment.

2. The Appeal From Order No.54/2012 challenges the order passed by the Civil Judge, Senior Division, Bicholim in Special Civil Suit No.2/2012 dated 25 June 2012 in the application for interim relief filed by the appellant-original plaintiff. The Appeal From Order No.8/2015 is filed by the original defendants No.1 to 4 in the same suit challenging the order

dated 2 February 2015 dismissing the application filed by them under Order 39 Rule 4 of the Civil Procedure Code, 1908 for modification of the order dated 25 June 2012.

3. The parties to these appeals, Kunda Madhukar Shetye that is the original plaintiff, defendant No.1 Shaila Subrao Shetye, defendant No.2 Shriram Gajanan Shetye, defendant No.3 Pandurang Gajanan Shetye and defendant No.4 Vijay Gajanan Shetye, are related. They have been carrying out business together as partners in partnership Firm under the name and style of "M/s. R.S. Shetye and Brothers". Defendant No.5 Ramakant is the son of defendant No.1 Shaila Shetye. Defendants No.6, 7 & 8 part of Damodar Mangalji Group, are third parties with whom the Firm has certain commercial agreements.

4. The suit relates to affairs of the partnership Firm M/s. R.S. Shetye & Brothers. Firm has a mining lease of mine situated at Deuvlem Pissurlem Sattari Taluka, Goa. Lease was earlier a mining concession bearing T.C. No.70/1951. The concession was granted by erstwhile Portugese Government. This mining lease is the only substantial asset of the Firm. Lease initially came to be granted to late Ramakant Subrao Shetye. After his demise he was succeeded by his mother Vatsalabai. Thereafter a partnership Firm M/s. R.S. Shetye and Brothers was constituted on 1 April 1970. It comprised of four brothers i.e.

Ramakant, Madhukar, Gajanan and Subrao. On demise of Ramakant, the Firm came to be reconstituted in the year 1972. Thereafter reconstitution took place in the year 1975, 1988, 1990, 1995, 1998, 1999. In the year 2003, after the death of Subrao, Shaila Subrao Shetye – his wife i.e. defendant No.1 was admitted as a party. Another reconstitution took place in the year 2003 after Madhukar's death when his wife i.e. the plaintiff came to be admitted as a partner of the Firm. Her share in profit was defined at 34%.

5. The business of the Firm continued with Shaila, Shriram, Pandurang, Vijay and Kunda as partners of the Firm. The Firm had entered into various agreements with Defendant Nos.6, 7 and 8 - M/s. Damodar Mangalji Group. The first agreement was some time in the year 1952. An agreement was also entered into with M/s. Damodar Mangalji Mining Company – sometime in the year 1966, appointing them as Raising Contractors to raise and extract ore from the Mines. There were also certain other agreements in respect of M/s. Rajani Mineral Exports. An agreement, which was entered into between the Firm and M/s. Damodar Mangalji Mining Company on 19 July 1999, was to extend till 31 December 2020.

6. Some time around 7 October 2011, certain newspaper reports were published that illegalities were committed by Damodar Mangalji & Company Limited, showing production of

lacs of tones ore from the mines adjoining the mine of the Firm, when no such mining had taken place. It was also reported that the Indian Bureau of Mines had issued certain directions to the said M/s. Damodar Mangalji Mining Company and had suspended their mining licence in respect of the adjoining mines.

7. It was communicated by the Firm through defendant No.5 on 24 November 2011 to M/s. Rajani Mineral Exports that their appointment as a contractor was terminated. The plaintiff however disagreed with this decision and issued a public notice on 25 November 2011 stating that the termination of Rajani Minerals Exports was not by the Firm, and it was not effective. It was notified by the plaintiff that she had terminated the authority bestowed on Defendant No.5 Ramakant and that agreement with M/s.Rajani Mineral Exports for raising of export, and the sale agreement with Damodar Mangalji & Company Limited are in full force and they were not suspended.

8. On 21 December 2011, a communication was issued by Shaila, Shriram, Pandurang and Vijay (referred to as Majority) to the plaintiff that the declaration issued by her was contrary to the decision taken by the Firm, and that the plaintiff was acting against the interest of the Firm and in the interest of Damodar Mangalji Group. By this communication, the Majority

expelled the plaintiff from the Firm. They also ratified all the acts including the communication dated 24 November 2011 addressed by Ramakant - defendant No.5. The Majority thereafter addressed a communication to the Registrar of Firm in respect of recording a change in the Registrar of Firm after the expulsion of the plaintiff. The plaintiff wrote to the Registrar of Firm and informed the Registrar that the Majority may apply for change in the constitution of Firm which should not be permitted as there is no provision in the partnership deed for expulsion of any partners and such attempt is illegal and void.

9. The plaintiff thereafter filed the Special Civil Suit bearing No.2/2012 in the Court of Civil Judge, Senior Division, Bicholim. The plaintiff narrated the history of grant of lease in favour of the Firm and various reconstitutions that had taken place. The plaintiff also placed on record the long standing commercial relationship with Damodar Mangalji Group. According to the plaintiff the action of the Majority of issuing the notice of expulsion was illegal and void and not in the best interest of the Firm. She alleged that the Majority is acting at the behest of some other entity. The plaintiff accordingly prayed for a declaration that the plaintiff continues to be a partner in the Firm and the communications are null and void. She also prayed for a declaration that defendant No.5 Ramakant has no authority to pose himself as a partner and all

deeds and acts effected by him are void and do not bind the Firm. The plaintiff also sought declaration that notices of suspension dated 27 November 2011 and 24 November 2011 served on M/s. Rajani Mineral Exports are illegal and void. The plaintiff sought an injunction restraining defendant Nos.6, 7 and 8 from acting on the letters of termination and to restrain them from avoiding discharge of their obligations. The plaintiff also sought for injunction against the Majority from obstructing her from carrying out day to day business of the Firm.

10. Written statements came to be filed on behalf of the Majority and the defendant No.5-Ramakant. It was contended by them that the plaintiff was rightly expelled for acting against the interest of the Firm. It was contended that any further commercial relationship with the Damodar Mangalji Group was not in the interest of the Firm, as action was taken against them by the Indian Bureau of Mines. The insistence of the plaintiff that these defendants should be associated with the Firm was endangering the only asset of the Firm. It was contended that plaintiff has been set up by said Damodar Mangalji Group. It was contended that defendant No.5-Ramakant was not a stranger to the partnership Firm, but was a partner earlier and held valid power of attorney of defendant No.1 – his mother. It was contended that the decision to expel taken by the Majority was under the articles of the partnership deed, and the plaintiff was rightly expelled from the Firm. It was also contended that

Damodar Mangalji Group cannot claim any relief in the suit filed by the plaintiff, neither seek any injunction as per the settled legal position.

11. Written statements were also filed by defendant Nos.6, 7 and 8 - Damodar Mangalji Group, in which it was stated that they have no intention of reneging from their commitments under the contract with the Firm. It was contended that the agreement of sale with the Firm, which also a loan agreement, mandated the Firm not to change its constitution and the plaintiff could not have been expelled. It was also contended that the action taken by Indian Bureau of Mines was being contested and the allegations made against them were denied.

12. In this suit plaintiff took out an application for temporary injunction. The plaintiff prayed for a temporary injunction to restrain the defendant No.5 from acting as a partner of the Firm; to restrain the Damodar Mangalji Group from taking advantage of termination/suspension; to restrain the Majority from creating any third party rights in respect of the mines, without consultation and agreement of the plaintiff; to restrain the Majority from obstructing the plaintiff from carrying out day-to-day business.

13. In the meanwhile, a writ petition was filed by the Majority in this Court from rejection of an application to delete

the defendant Nos.6, 7 and 8 - Damodar Mangalji Group. The learned Single Judge allowed the application of the Majority to delete defendant Nos.6, 7 and 8. A Letters Patent Appeal was thereafter filed, which is pending. In this Letters Patent Appeal there is a stay to the further proceedings in the suit, except hearing of the interim applications.

14. The application for temporary injunction came up for consideration before the learned Trial Judge. The learned Trial Judge held that the respective claims of the parties involved serious issues to be decided by leading evidence. The learned Judge held that interim relief prayed for by the plaintiff could not be granted as it would amount to deciding the suit at interim stage and disturbing the status quo would create a chaos in the administration of the Firm. The learned Judge held that the Majority is carrying out maintenance activity in the Mine and there was no prima facie evidence to show any extraction of iron ore. The learned Judge held that challenge to the letters of expulsion, and termination in respect of Damodar Mangalji Group, would require evidence on merits. The learned Judge also held that no clearance certificate from Pollution Control Board was placed on record to show that there was any permission to carry out any mining. The learned Judge held that since the Majority is not ready to join the plaintiff as a partner, if a mandatory order is passed, it will be difficult to run the administration of the Firm, as the Majority will not consent

to any decisions of the plaintiff, and the case needs to be decided on merits first before passing any order in favour of the plaintiff. The learned Judge also took note of the order of Indian Bureau of Mines and decision of this Court in PIL No.6/2011. As regard the contention of the Majority that defendants No.6 & 7 had committed criminal breach of trust the learned Judge held that this will have to be decided on merits by leading evidence. The learned Judge also held that case of the plaintiff that she should be allowed to run the affairs of the Firm could not be considered as she was no longer a partner. The learned Judge held that even assuming the case of the plaintiff was held to be correct, she would not be entitled to the reliefs claimed in the application, except the direction to the Majority to maintain status quo as on 31 March 2012 and direction that they will not create third party rights in the Mine. The learned Judge disposed of the application by directing the Majority to maintain status quo in respect of the Mine and not to create third party rights. As regards the other reliefs prayed for by the plaintiff, and they were not granted. The application was accordingly disposed of by order dated 25 June 2012.

15. After the order dated 25 June 2012 was passed the Majority filed an application for review bearing No.12/2012 on 26 July 2012. It was the case of the Majority that the observations that there was no proper certificate of Pollution

Control Board was outside the context of the case, as it was never put in issue. It was contended that Writ Petition No.69/2012, papers of which were on record, showed that Pollution Control Board had granted permission, and that all permissions were in place. It was also contended that, after holding that possession of the mine was with the Majority, it was incorrectly held that they were carrying out only maintenance work. It was submitted that the observation that there was nothing to show that the extraction of ore was being done, needed to be set aside. Accordingly, the Majority sought a review as regard the observation that the Majority is only maintaining the mines so also the clarification that they are also operating the mines with extraction and they had all the permissions.

16. On 25 September 2012, the plaintiff filed the Appeal From Order No.54/2012 challenging the order passed by the learned Trial Judge dated 25 June 2012, as regard denial of some of the reliefs prayed for by her in the interim application. A Contempt Petition was also filed by the plaintiff against the Majority alleging that, inspite of the order of status quo, had carried out work, which they were prohibited from doing. In Contempt Petition, the Majority filed their reply and contended that Review Application filed by the Majority was pending. The Appeal From Order No.54/2012 was admitted on 3 January 2013.

17. In the meanwhile, certain events took place as regards the mining operations in the State of Goa, in general. On 10 September 2012, State of Goa issued orders stopping the mining operations in the State. Thereafter, on 14 September 2012, the Ministry of Environment and Forest, Government of India, suspended environmental clearances granted for mining. On 5 October 2012, by an order passed by the Apex Court mining activity in the State of Goa was stopped. The order of the Apex Court continued till 1 April 2014, when the Apex Court vacated it. The State of Goa on 11 January 2015 revoked the ban on mining imposed on 10 September 2012.

18. Various complaints were received by State Government in respect of mining illegalities in mining of iron ore and manganese in Goa in contravention of the relevant provisions. Central Government appointed 'Justice Shah Commission' to inquire into the various illegalities in the operations of various mines in Goa and also to inquire and determine the nature of violations and to identify as far as possible, the persons, firms, companies and others who were engaged in such illegal mining, transportation, and to fix responsibility on such persons. Justice Shah Commission visited Goa and submitted its report. It was noted by Justice Shah Commission that there were large scale violation of Rules 37 and 38 of Mineral Concessions Rules, 1950 in respect of mining leases in Goa.

19. Based on the findings in the report, a Non-Government Organization - Goa Foundation filed a public interest petition calling upon the authorities to prosecute all those who were involved in pilferage of State revenue, through illegal mining in the State of Goa. Various other petitions challenging the Shah Commission Report were filed. All petitions were transferred to the Apex Court alongwith the Public Interest Litigation.

20. In that context the entire issue as regard mining the State, was examined by the Apex Court in the case reported in ***Goa Foundation v/s Union of India & ors.***, reported in **(2014) 6 SCC 590**. Central Empowered Committee (in short, CEC) was appointed, which also submitted it's report. It reported that there were been large scale violations of the rules in the State of Goa. The CEC reported that several complaints received by the State Government that the leases have been operated by the persons other than the lessees. It was pointed out that State of Goa had condoned such actions on the ground that it was a prevailing practice in the State of Goa. The Apex Court in the case of *Goa Foundation* (supra) held that, if violations of Rule 37 of Mineral Concession Rule are allowed, there will be substantial leakage of revenue and the mining operations will be affected.

21. During the hearing of the *Goa Foundation* case it was brought to the notice of the Apex Court that the Goa (Prevention of Illegal Mining, Storage and Transportation of

Minerals) Rules, 2013 (for short, Rules of 2013) were framed by the State Government under Section 23(c) of the Mines and Minerals (Development and Regulation) Act, 1957. It was brought to the notice of the Apex Court that these rules regulate and provide adequate safeguard to prevent illegal mining and to regulate the sale, export and transit of ore, storage of mineral and transportation and winning of mineral. The Apex Court accordingly issued directions to strictly enforce the Rules of 2013 and to take action against the concerned parties. The Apex Court also directed that the mining leases which are to be granted and operated, will be strictly in terms of the Act and rules, in consonance with constitutional provisions.

22. The Rules of 2013 dealt with prevention of illegal mining and to regulate the sale, export and transit of ore, storage of mineral and transportation and winning of mineral. It defined certain terms, and in chapter 12 provided a methodology for prevention of illegal mining. Rule 3 places certain restrictions as regard storing, supplying, transporting mineral. Rule 5 dealt with registration of raising contractors. Rule 6 specified registration of transport contractors, and rule 7 provided that all contracts and agreements whether registered or otherwise entered into, in respect of minerals and also long term purchase contract for fix sharing price would come to an end on the publication of the rules.

23. Consequent upon the publication of the rules, the Majority on 20 January 2015, filed an application under Order 39 Rule 4 of the Code of Civil Procedure, 1908 seeking to modify or vary the order of status quo directing only maintenance of mines and to enable the Majority to carry out mining operations. It was stated that there has been change in the circumstance since the Rules of 2013 have come into force from 17 October 2013, since the agreements with defendants No.6 & 7, which is the foundation of plaintiff's claim now cease to have have force of law. It was also stated that second renewal order dated 9 January 2015 for renewal of the mining lease was issued, and one of the conditions is payment of substantial sum of stamp duty of almost Rs.36 crores and more. It was contended that if the lease is not renewed with the period specified in the renewal order, it would lapse. It was also contended that the Majority be permitted to carry out the mining operations by renewing the lease. This application was opposed by the plaintiff and the defendant Nos.6, 7 and 8 - Damodar Mangalji Group. According to them there were no change in circumstance whatsoever and having not filed any appeal against the order dated 25 June 2012, under the garb of modifying the order, the Majority should not be permitted to get it set aside. It was contended that the Rules of 2013 have no relevance to the facts of the case and do not apply to the agreements in question.

24. The learned Trial Judge considered the application filed under Order 39 Rule 4 of the Code. The learned Judge held that the order dated 25 June 2012 is subject matter of challenge in Appeal From Order No.54/2012 and any modification of the nature sought by the Majority would amount to setting aside the order dated 25 June 2012. The learned Judge held that the application was filed on 20 January 2015 when the rules were published on 17 October 2013 and the application is barred by latches. The learned Judge held that the enactment of Rules of 2013 cannot be termed as a change in circumstance. The learned Judge accordingly held that no case was made out for modification of the order dated 25 June 2012, considering the parameters of Order 39 Rule 4 of the Code. The learned Judge by order dated 2 February 2015 dismissed the application filed by the Majority. Against this order the Majority has filed an Appeal From Order No.8/2015.

25. When the Appeal From Order No.8/2015 came up for admission on 12 February 2015, it was submitted on behalf of the plaintiff that Appeal From Order No.54/2012 was already admitted and no relief could be granted in Appeal From Order No.8/2015 unless Appeal From Order No.54/2012 was heard. It was also agreed that the lapsing of leave was not in the interest of either of the parties and the issue needed to be resolved, and accordingly both the appeals were directed to be taken up for final disposal together.

26. I have heard learned Counsel Mr.Rafiq Dada, learned Senior Advocate for the appellants; Mr.Lotlikar, learned Senior Advocate for the respondent No.1; Mr.V.A. Lawande, learned Advocate for the respondent No.2, Mr.A.N.S.Nadkarni, learned Senior Advocate for the respondent No.3; Mr.Y.V. Nadkarni, learned Advocate for the respondent No.4; and Mr.D. Pangam learned Advocate for the respondent No.5.

27. Mr. S.D. Lotlikar, the learned Senior Advocate for the plaintiff in support of his appeal No.54/2012 submitted that the impugned order passed by the learned Judge does not consider various important facets. He submitted that the order proceeds as if the plaintiff has already been expelled from the partnership. He submitted that voluminous material was produced on record by the plaintiff to show that the plaintiff was dealing with the partnership, has not been considered. He submitted that the learned Trial Judge was in error in holding that the relief prayed for by the plaintiff could be granted as it would amount to grant of final relief. He submitted that this is not a correct proposition of law, as in given circumstance, such relief can always be granted. He submitted that there was no provision at all in the partnership deed in respect of expulsion of a partner, and the only course of action open to the Majority was to seek dissolution or to step outside the partnership firm. He submitted that not only there was no power in the

partnership deed but the action of Majority was not in good faith. He submitted that the severance of long standing commercial relationship with defendant Nos.6, 7 and 8 - Damodar Mangalji Group was a disastrous decision which was not at all in the interest of the Firm. He submitted that the Damodar Mangalji Group owns adjoining mines and any further excavation in the mine of Firm can only be in co-operation with the Damodar Mangalji Group. He submitted that, there was no further expansion possible as the most of the mines bordering the mine of the Firm were owned by Damodar Mangalji Group. He submitted that the Majority were acting on behest of some other person and when the plaintiff tried to save the partnership from financial ruin, the Majority had malafide issued a notice. He submitted that in view of the position that there was no power vested in the Majority, there was no termination in the eyes of law, and therefore the plaintiff continued and carried on the business of the Firm. The learned Trial Judge was in error to view the entire matter on a premise that the plaintiff stands outside the Firm when it should have been the other way round that the Majority was no longer in the Firm. He contended that therefore plaintiff should be allowed to continue with the affairs of the Firm. He submitted that Majority has formed some other unregistered entity which has nothing to do with the Firm and it is difficult to carry on business as an unregistered entity. He also submitted that since defendant No.5-Ramakant had no authority to issue notices of

termination of the agreements with defendant Nos.6, 7 and 8, there could be no subsequent ratification of the same. It was contended that there was no cause for these defendants to institute any proceedings because there was no termination in the eyes of law. It was contended that when the reconstitution of the firm was sought, it was opposed by the plaintiff. It was submitted that the finding that the Majority is in possession, is incorrect. The Majority had not carried out any kind of excavation. In fact they had attempted to use force by unauthorized means. It was also contended that if defendant Nos.6, 7 and 8 - Damodar Mangalji Group decides to enforce their right and seek damages then the plaintiff will also be held liable which was also not in her interest or of the Firm. Mr. Lotlikar accordingly submitted that the order of status quo needs to be vacated in favour of the plaintiff and the plaintiff be permitted to carry out the affairs of the Firm since there was no expulsion of the plaintiff in law.

28. On behalf of Defendant Nos.6, 7 and 8 - Damodar Mangalji Group, Mr.A.N.S. Nadkarni, Mr.Y.V. Nadkarni and Mr.Pangam supported the submissions made on behalf of Mr. Lotlikar. In addition it was submitted that defendant No.5- Ramakant had no authority to terminate or expel the plaintiff and also terminate the agreements. It was also contended that the Majority could not take any decision of such nature or change the contractual relationship without the consent of the plaintiff, since it would be in violation of Section 12(c) of the

Indian Partnership Act. It was contended that decision to sever the contractual relationship with defendant Nos.6, 7 and 8 would be a change in the nature of business and the Firm itself never had any expertise nor was involved in the mining operations. It was contended by Mr.A.N.S. Nadkarni that the agreement entered into with defendant No.7 had placed an embargo on the Firm not to change its composition. He submitted that loan was advanced to the firm which is not repaid and the embargo continue to operate. It was further submitted that defendant No.5 had no authority to terminate the agreements and no ratification is permissible in view of Section 200 of the Indian Contract Act. It was also contended that the report of the Indian Bureau of Mines which was referred to by the Majority was being contested before the appropriate authority and the said report is without any substance. It was therefore submitted that the plaintiff is right in contending that she is never expelled from the partnership and she is entitled to relief that she should be allowed to operate a partnership Firm as prayed for in the appeal.

29. On behalf of the Majority, Mr. Kantak, the learned Senior Counsel contended that scope of interference in an Appeal From Order is extremely limited and the Court will consider whether the discretion used by the Trial Court is reasonably possible. He submitted that there are specific clauses in the partnership deed which casts obligation on a partner and if the partner commits a

breach of the same the Majority would have a power to expel him/her. It was contended that having placed an obligation on the partner the Majority cannot be rendered helpless if the obligations are breached. He submitted that pleadings of the plaintiff and her correspondence clearly indicate that the plaintiff herself understood that she was expelled from the partnership and sought a declaration. He submitted that since the plaintiff has been expelled, by an interim order she cannot be inducted as a partner in the Firm and the decision of the Trial Court in that regard was a proper use of discretion. He also submitted that the learned Judge was right in holding that such interim relief will bring the affairs of the partnership to a standstill. He submitted that even assuming the plaintiff has a prima facie case her interest can be protected by various methods however her entry back in the Firm would be a complete shut down of the administration of the Firm. He also submitted that the Majority was forced to take a decision to expel the plaintiff because her insistence of continuing commercial relations with Damodar Mangalji Group whom the Majority had lost faith and trust. He submitted that as regard Damodar Mangalji Group their agreement stood terminated and it is open for them to seek their remedies as per law. It was contended that in the suit of plaintiff no relief can be granted to defendant Nos.6, 7 and 8 - Damodar Mangalji Group. It was further contended that the plaintiff is being set up by Damodar Mangalji Group only to subserve their interest and she does not

have interest of the Firm in mind. Mr. Kantak accordingly submitted that decision of the learned Trial Judge to hold that the plaintiff was expelled and that she should not be put back in the Firm by way of interim relief does not require any interference. He submitted that the decision to sever relationship with defendant Nos.6, 7 and 8 – Damodar Mangalji Group has to be considered in light of what a prudent business man would do.

30. Before the rival contentions are addressed certain peculiar facts of the case need to be noticed. The mining lease is the only asset of the Firm. It is given by the Government as grant of concessions for extraction of minerals. The lease has come up for renewal. If the renewal is not granted the lease would expire and the only asset of the Firm will be lost. The Government, in the order of renewal, has given a time bound directions to renew the lease. The lease will have to be renewed at the payment of a substantial cost. If the lease lapses then it will not be in the interest of either of the parties, since mining lease is the only asset and business of the partnership. The parties will benefit if the operations starts. From the arguments advanced it is clear that there is a consensus that the lapsing of lease does not benefit either of the parties. It is the case of the Majority in their appeal that they should be permitted to renew and operate the mine, while the ultimate goal of the plaintiff is that she should be allowed to operate the

the mine. It is in the interest of the Firm that the lease is renewed and the business starts.

31. Though detailed arguments have been made on all sides, it has to be kept in mind that what is under consideration is only an equitable arrangement pending the suit, and the suit itself is not being tried. Many of the argument will relate to the merit of the suit. Various aspects have to be considered while arriving at an equitable arrangement. Though in this appeal, what is sought is redressal of individual's disputes, ultimately the relief is of carrying out mining operations. The extraction of minerals is also a matter of public policy. In such cases, while granting any equitable order the Court must keep in mind the public policy. Therefore any order is to be passed in this appeal must be keeping in mind the public policy, and the relevant legislation and the observations of the Apex Court, in respect of mining activities.

32. Attempts were made to find out an amicable solution before considering the appeals on merits, but the attempts have failed. During the hearing, offer was repeatedly made by the Majority that if plaintiffs support their action of severing ties with defendant Nos.6, 7 and 8, they will take her back in partnership, but the stand of the plaintiff is resolute. She contends that she is still a partner and there is no question of termination of defendant Nos.6, 7 and 8. She has insisted that,

any activity of mining must be with defendant Nos.6, 7 and 8 – Damodar Mangalji Group. In short, plaintiff states that it is either with Damodar Mangalji Group, or no mining at all. Keeping this in mind the contentions in Appeal From Order No.54/2012 need to be considered.

33. The first ground is that there is no power of expulsion. The partnership deed is placed on record. I have perused the partnership deed. Section 33 of the Indian Partnership Act deals with expulsion of a partner. Section 33 reads as under:

33. Expulsion of a partner - (1) *A partner may not be expelled from a Firm by any Majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.*

(2) *The provisions of sub section (2), (3) and (4) of Sec. 32 shall apply to an expelled partner as if he were a retired partner.*

Section 33 states that the expulsion has to be by Majority in exercise of good faith of power conferred by contract.

34. Clause 12 and 18 of the partnership deed have been relied upon by the Mr.Kantak. These clauses read as under :

“Clause 12: *Each partner shall :*

i) be just and faithful to the others;

ii) devote his/her time and attention to the partnership business;

iii) render true and correct accounts of the partnership business to the others on demand at all times;

Clause 18: *No partner shall do any act, deed or thing whereby the interest of the firm and/or the other partners may be jeopardised.”*

These clauses cast a responsibility on the partner not to do any act or deed against the interest of the Firm or other partner and to see that the other partners are not affected. Having cast this obligation there must be some way that it can be enforced. It is the contention of Mr. Lotlikar that these clauses are only reiteration of a general law, and there is nothing specific about these clauses. Even that position is accepted, the question still remains is whether a Majority can be rendered helpless if one partner does acts which virtually amount to destruction of the partnership.

35. Mr. Lotlikar relied upon decision of the learned Single Judge of this Court in the case of ***Mahendra N. Thakkar V/s. Yogendra N. Thakkar & Ors.*** reported in ***2008 (6) Bom.C.R. 775***. He submitted that in this decision Court has taken a view that the power of expulsion of a partner has to be provided in the agreement between the partners. Firstly, it has to be

considered that the present matter is at a prima facie stage. The facts of the case in *Mahendra* (supra) would show that the matter arose from arbitration proceedings under Section 34 of the Arbitration Act. The learned Arbitrator therein had rendered his award which was being challenged under Section 34. The learned Arbitrator had held that in absence of any specific power of expulsion no power existed in one partner to expel 5 partners. While exercising jurisdiction under Section 34 of the Arbitration Act, the learned Judge held that the view taken by the Arbitrator cannot be said to be absurd or unsustainable. Therefore this decision is of no avail to Mr. Lotlikar. The next decision relied upon by Mr. Lotlikar was in the case of Division Bench of Allahabad High Court in the case of *Modern Metal Industries V/s. Smt. Shanti Parolia* reported in *AIR 2004 Allahabad 249*. This was an appeal from order passed under Section 9 of Arbitration and Conciliation Act. Mr. Lotlikar relied upon the decision to contend that where the sole bank account was Firm was unilaterally taken it was held that it was not an ordinary decision but a major decision and ought to have been taken with Majority. However, in this case there was no case put up by the other side on merits and the learned District Judge whose view was being upset by the learned Division Bench had made the observations on his own. In this matter the Division Bench considered the provisions of Section 12(c) of the Act and held that the decision of the Majority should be for the benefit of the minority.

36. In the present case the Majority is of the opinion that the plaintiff's stand will lead to destruction of the Firm and consequently the Mine. If the Majority is correct, then it cannot be that plaintiff takes steps to virtually destroy the firm and then say that others have no power to expel her. If such an obligation is cast, then *prima facie*, the power to expel is implied in the agreement. If such an implied power is not read then the clauses casting duties and responsibilities, will be meaningless. If therefore *prima facie* the power exists and is exercised, the only way for the plaintiff is to seek a declaration that the expulsion is bad in law, which will be decided at the trial. But it cannot be contended at this stage that expulsion is non-est.

37. As regards the contention of Mr.Lotlikar that the new Firm is merely reconstituted and not registered again, it has been pointed out by Mr.Kantak that even when the plaintiff entered the Firm it was by the same methodology wherein original Firm continued and new partner was inducted and there was a reconstitution and procedure under Section 63 of Partnership Act was followed. *Prima facie* there is merit in this submission. After expulsion of the plaintiff, the remaining partners had to follow the methodology under Section 63 of the partnership Firm and as reconstitution has taken place for 8 times in the Firm. Mr.Kantak has also submitted that if the argument of the plaintiff is to be accepted then that would mean the present suit

itself will be hit by bar of Section 69 of Partnership Act. Both the submissions *prima facie* have merit and therefore the argument regarding effect of non-registration cannot be considered.

38. As regard the applicability of Section 12(c) of the partnership Act is concerned it was debated whether change of contractors would amount to change in nature of business. Firstly, this ground would have to be considered *prima facie*. It is the case of the Majority that the plaintiff was consulted. In the reply to the notice, the plaintiff herself has stated that she was being coerced in taking a decision which she did not approve. Thus, it appears that the plaintiff was consulted. The nature of business would change if any activity other than mining was to be undertaken. All that the Majority has done is to change their contractors. Whatever longstanding relationship there may be and howsoever the desirable relationship, it may not amount to change in nature of business if contractors are changed. The object of business of mining continues. In any case this is an issue which has to be tried at the time of hearing of the suit. *Prima facie*, it appears that there is no change in the nature of business.

39. The next question then would arise is whether the action of the Majority is in good faith. While considering whether the action was in good faith it will have to be judged in context of the welfare of the Firm. The Majority had taken a note of

report of Indian Bureau of Mines as regard suspension of mining licence in respect of Damodar Mangalji Group. The Indian Bureau of Mines is an authority which controls the activity of mining. It had found fault with the way mining was done by these defendants. It is no doubt true that the commercial agreement between the Firm and Damodar Mangalji Group was a long standing one, but in view of the suspension by the Indian Bureau of Mines and the newspaper reports, a decision had to be taken by the Majority whether to continue the commercial relationship. It is not for the Court to sit in appeal over wisdom of partners in deciding with whom they will have commercial relations. It could be that the decision would end up in an error on their part but as long as they had a material in front of them i.e. the suspension and newspaper reports, the action taken by them to severe relationship with Damodar Mangalji Group cannot be termed as completely arbitrary or lacking in good faith. It is also for the defendants - Damodar Mangalji Group to protect their interest by filing appropriate proceedings.

40. It was the decision of the Majority that any further commercial relationship with defendants - Damodar Mangalji Group would imperil their business. Whether it would imperil the business or it would benefit the business is not for the Court to decide by substituting their wisdom. Even otherwise, as a normal businessman, if the party with whom the contracts

are entered into is being indited by the authorities, leading to suspension of their mines, apprehension that similar action may follow, in respect of their mine cannot be said to be unfounded. The plaintiff had opposed the decision for severance of this relationship. It was her insistence, which has continued during the hearing of the appeal, that the relationship with Defendant Nos.6, 7, 8 - Damodar Mangalji Group should be restored, without any other compromise. The Majority was not ready for this for the reason stated above. Her insistence and action was contrary to the decision of the Majority, which the Majority had taken in the interest of the Firm. In view of this impasse, the Majority was forced to expel her. This decision cannot be termed as not in good faith. Thus prima facie it cannot be said that there was no power to expel the appellant nor that there was no reason to expel her. The learned Judge had recorded this conclusion. Mr.Lotlikar submitted that the Majority had taken away large amount from the Firm account. An explanation given by the Majority that the amounts were simply transferred and thereafter re-transferred in apprehension of coercive action by the plaintiff. This explanation cannot be considered as a impossible one. Therefore, when there was material in terms of the report available on record regarding suspension and the plaintiff's instance to continue with such third parties, an inference cannot be drawn that the action was not in good faith.

41. Once it is seen that the view taken by the learned Trial Judge is a possible view, then the decisions of the Apex Court in the case of ***Mohd. Mehtab Khan & Ors. V/s. Khushnuma Ibrahim Khan & Ors.*** reported in ***(2013) 9 SCC 221*** and ***Wander Ltd. V/s. Antox India (P) Ltd.*** reported in ***1990 Supp SCC 727*** will have to be kept in mind. In these decisions the Apex Court has laid down the parameters of interference in the appeal from discretionary orders. In the case of ***Wander Ltd.*** the Apex Court held as under:

“8. On a consideration of the matter, we are afraid, the Appellate Bench fell into error on own important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the Appellate Court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocinations as to the quality of Antox's alleged user of the Trade-Mark on which the passing-off action is founded. We shall deal with these two separately.

9. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or

*refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph* [1960]3SCR713 :*

*... These principles are well established, but as has been observed by Viscount Simon in *Charles Oseption & Co. v. Johnston* the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.*

The appellate judgment does not seem to defer to this principle.

The decision in **Mohd. Mehtab Khan** (supra) followed the decision in **Wander Ltd.** (supra) and laid down as under :

“16. Though the above discussions would lead

us to the conclusion that the learned Appellate Bench of the High Court was not correct in interfering with the order passed by the learned Trial Judge we wish to make it clear that our aforesaid conclusion is not an expression of our opinion on the merits of the controversy between the parties. Our disagreement with the view of the Division Bench is purely on the ground that the manner of exercise of the appellate power is not consistent with the law laid down by this Court in the case of Wander Ltd. (supra). Accordingly, we set aside the order dated 09.10.2012 passed by the Appellate Bench of the Bombay High Court and while restoring the order dated 13.04.2012 of the learned Trial Judge we request the learned Trial Judge, or such other court to which the case may, in the mean time, have been transferred to dispose of the main suit as expeditiously as its calendar would permit with the expectation that the same will be possible within a period of six months from the date of receipt of this order. The appeal shall stand disposed of in terms of the above.”

Therefore once the view taken by the trial Court that prima facie plaintiff stood expelled and for good reasons, the finding cannot be interfered with in appeal – as I have found that it was a possible view to be taken. The only question then remains is how best the interest of the plaintiff can be protected, pending the suit.

42. As regard the rights of defendant Nos.6, 7, 8 - Damodar Mangalji Group are concerned, it is for them to agitate the

same, in substantive proceedings. The appeal is filed by the plaintiff and the controversy must be looked at keeping the interest of the plaintiff as a partner in mind. There is an expulsion and *prima facie* it is in good faith. Then to grant a final relief of putting plaintiff back in the partnership is not desirable and warranted. Though Mr. Lotlikar has relied upon various decisions to show that it is not impermissible to grant such a final relief, facts of each case have to be considered.

43. The sole insistence of the plaintiff is that the relationship with defendant No.6, 7, 8 - Damodar Mangalji Group must be restored. The Majority have reasonable grounds not to restore such a relationship. Then putting the plaintiff back in the partnership would lead to complete standstill in the administration. This view taken by the learned Trial Judge is a possible view. The appeal is not to be decided on the basis that had I heard the matter as a Trial Judge I would come to a different view, but has to be heard only to ascertain whether the use of discretion is reasonably possible. The Appeal From Order is an appeal on principle.

44. The impasse has occurred because of insistence of the plaintiff in backing defendant Nos.6, 7, 8 - Damodar Mangalji Group. The relationship with them though longstanding one was purely commercial. Ultimately, the agreements entered into by the Firm with defendant Nos.6, 7, 8 -Damodar Mangalji

Group are no different than any other commercial agreements. A termination notice is issued by the Firm. The plaintiff is not the partner at present. The existing partners treat the agreement as terminated. Therefore the defendant Nos.6, 7, 8 cannot insist that the agreements continue and therefore there is no need to seek any relief.

45. The argument of Mr.A.N.S. Nadkarni that under Section 200 of the Contract Act any ratification will not be to the prejudice of the third party, will be considered at the stage of hearing of the matter. But all that it means that it is one of the grounds to challenge the termination. The Damodar Mangalji Group has not chosen to challenge the action of termination. The explanation that they consider it as no termination in the eyes of law and because the plaintiff is not expelled, is something which cannot be countenanced.

46 The reason why defendant Nos.6, 7 and 8 have not sought any relief is apparent. It is because as per the decision of the Apex Court in *Adhunik Steels Ltd. V/s. Orissa Manganese & Minerals (P) Ltd.* reported in (2007) 7 SCC 125, they can only seek damages. It was open to these defendants to challenge their respective termination. At a prima facie stage no declaration can be given that defendant No.5-Ramakant could not terminate the agreement, when an authority is given to him to take a decision. Furthermore, defendant No.6 has been indited in the report of the Indian Bureau of Mines. Even if

these defendants had to come up in proceedings of their own the Court would have to consider whether to extend equitable jurisdiction in their favour in view of their inditement.

47 The decision relied upon by Mr. Lotlikar of learned Single Judge of Delhi High Court in the case of **Suresh Kumar Sanghi V/s. Amrit Kumar Sanghi & Ors.** reported in **AIR 1982 Delhi 131** is in a different context. In the said case suit was instituted to restrain the other partners of a car dealership Firm from suspending their commercial relationship with car manufacturer Mahindra and Mahindra, for supply of motor vehicles. The learned Single Judge in Delhi High Court had granted such a relief. However, as it has been rightly pointed out by Mr. Katak that, that it was not a case of partnership at will and it is in that context the observations have been made by the learned Single Judge. It also needs to be kept in mind that in the present case, the question is of entrustment of excavation of a mineral to a contractor who has already been indited. Such was not the fact situation in the case of **Suresh Kumar** (supra).

48 In this appeal, I am called upon only to look at the nature of relief to be granted to the plaintiff, and though the learned counsel for the defendant Nos.6, 7, 8 – have argued their cases in detail, the only area open to them is to argue in support of the plaintiff. Considering all these aspects, I am of the opinion that there is no merit in the Appeal No.54 of 2012 and it

requires to be rejected.

49. Now turning to the Appeal No.8 of 2015 filed by the Majority. Order 39 Rule 4 of the Code of Civil Procedure permits a party to apply for modification on the ground of change in circumstance. The learned Judge has rejected the application on the ground that there has been no change in circumstance and there has been a delay, even if Rules of 2013 was a change in circumstance. The Appeal No.8/2015 has been opposed by the plaintiff and the defendant Nos.6, 7, 8 - Damodar Mangalji Group firstly on the preliminary ground that the order 26 June 2012 is sought to be varied without filing an appeal against the order dated 26 June 2012.

50. There are two facets in this regard. Firstly whether a party can challenge an order without filing any cross-objection or an appeal. It is the submission of Mr. Kantak that the Majority is not challenging the order passed by the Trial Court. He submitted that only the finding that the Majority does not have any permissions and is not carrying out any activity, is being contested. He submitted if this finding is clarified then there is no question of modification of order of status quo, which can then continue. He submitted that a party can always assail the finding rendered against if in the appeal filed by the other side and no separate appeal or cross-objection is necessary.

51. Perusal of the order dated 26 June 2012 shows that the learned Trial Judge has refused relief sought by the plaintiff and has granted status quo after observing that the Majority is not carrying out any mining activity and that they do have requisite permissions. Thus if this factual finding that the Majority cannot proceed since they do not have permission, and that they are not carrying out mining, is set aside, then the status quo would continue with these factual findings. There is substance in the submission of Mr.Kantak that, the issue as to whether Majority had any permission, was never put in contest. Furthermore, if that was the impediment, the Majority could have been called upon to produce the permission. The copy of an earlier writ petition produced on record does show that the permission of Pollution Control Department was in place.

52. It also needs to be noticed that a review was filed by the Majority before the appeal No.54/2012 was filed by the plaintiff. In this review application, the Majority had sought to raise the very same grounds. In the contempt proceedings, when Majority took up a defence that they had moved for review of the factual findings, it was the stand of the plaintiff that these grounds can be urged in the present appeal.

53. Even otherwise the second issue of invocation of Order 39 Rule 4 remains. This provision gives power to the Court to modify the order of interim relief on the basis of subsequent

development and hardship. It will have to be then seen whether ingredients of Order 39 Rule 4 have been met. The main subsequent event is framing of Rules of 2013 and the renewal. In my opinion the learned Trial judge was in clear error in not considering this as a change in circumstance.

54. In the order dated 25 June 2012, the learned Trial Judge had heavily relied on the agreements between the Firm and defendant Nos.6, 7 8 - Damodar Mangalji Group. When the learned Trial Judge passed the order of status quo on 25 June 2012 he kept the interest of defendant Nos.6, 7, 8 - Damodar Mangalji Group in mind. Thus the fact that Firm had contractual relationship with defendant Nos.6, 7, 8 - Damodar Mangalji Group, was one of the foundation of order dated 25 June 2012. The stand of plaintiff that the contractual relationship be restored, was also noted. If the statutory rules subsequently framed have an effect of making such agreements invalid, then it is a fundamental change in the position. The insistence of plaintiff and the reliance on these agreements, if they are in contravention, would not longer be legal.

55. The decision of the Apex Court in the case of **Goa Foundation** (supra) took note of the state of affairs as regard mining in the State of Goa. CEC had reported that the leases have been operated by the persons, other then lessees. Inaction of the State of Goa in not curbing such behind the scene mining

was not approved by the Apex Court. The Apex Court observed that if such behind the scene mining is allowed, it would amount to substantial leakage of revenue, and cannot be tolerated. The Apex Court took note of the Rules of 2013. It observed that those rules were made to prevent illegal mining and to regulate sale, storage, transportation of the material. The Apex Court directed that these Rules have to be strictly enforced by the State of Goa. Thus by directing implementation of these rules, unregulated state of affairs in the State of Goa, was brought under stringent regulations.

56. The Rules of 2013 are extremely important as they now seek to regulate various facets of mining. The learned Judge was therefore not right in holding that the framing of these Rules were not a change in circumstance. Since the Rules are also founded on public policy and are directed by the Apex Court to be strictly implemented, the application based on these rules could not have been brushed aside only on the ground of delay.

57. Next issue arises whether these rules are applicable to the facts of the present case. Rule 5 in chapter II of the Rules read as under:

5. Registration of raising contractors.— *All the raising contractors by whatever name called engaged in winning of mineral on behalf of leaseholder in a leasehold area shall register with the Department failing which the*

machinery of such contractor shall not be allowed to be used in any lease hold area. The contractor shall provide such detail as may be called for, to the satisfaction of the Director that the contractor is genuinely raising the mineral for the leaseholder. The processing fee of rupees one lakh shall be deposited with every application for Registration of Raising contractor. Every application shall be renewed before end of financial year payment of same fees.

58. Rule 7 reads thus -

“7. Bar on contracts for sharing of mineral or long term sale agreements.- All contracts/agreements whether registered or otherwise by whatever name called, entered between lease holders and end-users or traders, raising contractors, transport contractors which authorize sharing of minerals under such contract for transport, raising, processing or trading of mineral shall be void from the date of publication of these Rules. Similarly, long term purchase contract at fixed price shall also come to an end from the date of publication of these Rules.”

Rule 7 declares that all contracts entered into between lease holders, traders, raising contractors, transportation contractors, for sharing of minerals, shall be void. So also, long terms purchase contract at a fix price. The phrase “trader” has been defined in Rule 2(z)(g) as under:

(zg) “trader” means any person who carries on business of buying, possessing, storing, selling, supplying, transporting, distributing or delivering for sale or processing of

mineral(s), directly or otherwise for cash or for deferred payment or for commission, remuneration or other valuable consideration or uses mineral/s and/or it's ingredients as a raw material and valuable consideration or uses mineral/s and/or it's ingredients as a raw material and shall also include such person who has mineral sharing agreement with the lease holder or who has sufficient capital investment in the lease including the person having raising contract with the lease holder or any person involved in winning or mining of minerals other than member of family acting in capacity of agent or Power of Attorney and the like; and includes person who buys and processes minerals for sale or for utilization for their own purposes or a person who holds a mining lease granted under Mineral Concession Rules, 1960;

59. It was argued that whether these rules are applicable and whether the contracts are hit by bar of Rule 7 would be a matter of trial as it is a question of fact and law. If the written statement filed by Damodar Mangalji Group and the plaint is perused it is clear from these pleadings itself that almost all rights in respect of the lease are claimed by the Damodar Mangalji Group. As noted by the Apex Court in the case of **Goa Foundation** (supra) such behind the scene operations by the persons other than the ones to whom legitimate leases are granted, has resulted in highly undesirable and unregulated situation in State of Goa.

60. It was then urged that the rules speak of sharing of minerals and none of the agreements have any clause about sharing of minerals. This agreement is misconceived. The Government grants concession for extraction of mineral wealth. When the Rule 7 bars of sharing of minerals, the phrase "sharing of mineral" will have to be understood in the context of underlying policy of the Rules. The object of the Rules is clear. They enable the Government to regulate the mining activities and for that purpose there cannot be anybody else between the Government and the lessee, except the ones who are registered. Rules envisage that mining shall be by the lessee and the authorized contractors so that there is transparency and accountability. Thus, the phrase 'sharing of minerals' means sharing of the privilege to mine. One does not have to travel beyond pleadings in the plaint and written statement to come to conclusion that the agreements in question were precisely for its purpose.

61. It was contended by Mr. A.N.S. Nadkarni, that there is no long term purchase contract at fixed price with defendant No.6. He submitted that each year the amount would vary and therefore it is a variable contract, and these phrases are well understood in the Sale of Goods Act. The perusal of the agreement would show that there is a fixed increment every year. Thus one can easily foresee what the amount would be after specified number of years. Variable would mean that

parties are not sure what the amount would be. Therefore there is no substance in the contention that the agreement is not for fixed price. It will have to be held that, the agreements entered into with Damodar Mangalji Group by the Firm, on the basis of pleadings itself, are no longer operative and it will be against public policy to give effect to them. And thus the position brought about by these rules, has fundamentally altered the ambit of the litigation and it is a change in circumstances to warrant exercise of powers under Order 39 Rule 4.

62. What will be the consequence of this position then. The appeal filed by the plaintiff seeking permission to operate the partnership Firm with commercial transaction with Damodar Mangalji Group cannot be entertained. I have already held that refusal of such relief by the Trial Court could not be termed as an unreasonable view.

63. It was contended by Mr. Lotlikar that only alteration in position can be renewal of lease but no mining should be done by the Majority. It is difficult to appreciate this insistence. Once it is found that the agreements with defendant Nos.6, 7, 8 - Damodar Mangalji Group are against public policy and they have been indited by the Indian Bureau of Mines, how could such insistence be still continued. The plaintiff wants renewal of the lease, but mining operation only through the Damodar

Mangalji Group.

64. In the case of *Adhunik Steels Ltd.* (supra), the Apex Court has held that lease holder cannot be stopped at the instance of the contractor from undertaking mining, and contractor's claim is only for damages. It is clear that to obviate this position of law, the plaintiff has been put up by the Damodar Mangalji Group to achieve, indirectly which they cannot achieve directly. It is clear that the plaintiff is keeping only the interest of Damodar Mangalji Group in mind, even though any further relationship with them on the basis of the agreement would be against public policy and against the interest of the Firm.

65. So the stand of plaintiff and defendant Nos.6, 7, 8 – Damodar Mangalji Group is that if the appeal of the plaintiff is to be dismissed, then there should not be any mining operation at all, at the most there can be renewal of the same. So what is sought is an injunction against the Majority from carrying on business except with defendant Nos.6, 7, 8.

66. An equitable arrangement has to be found whereby interest of both the Majority, the Firm and the plaintiff can be protected. I am not inclined to take into consideration what will be equitable arrangement for Damodar Mangalji Group as they can pursue their own remedies if available in law. The Firm can benefit only if the business takes place. The business is of

mining. If the mining is carried out, as per regulations, substantial revenue is paid as royalty to the Government and mineral wealth will be available for consumption. Thus lawful, regulated mining, would be in the interest of all. It will generate revenue both for the Government, and for the partners. During rains, it will be difficult to keep merely maintaining the mine and it will become more of a liability than source of revenue. Therefore an interim arrangement needs to be arrived at, by which mine is allowed to be operated by a method beneficial to both Majority and plaintiff.

67. Lease of the mine has come up for renewal. The amount of fees runs into several crores. The amount will have to be generated, as it is nobody's case that the Firm has this amount in its account. This amount will have to be generated by raising finance. It is a matter of common commercial sense that such huge amount cannot be raised from market if Majority has no right to mining. There is therefore no use contending that the Majority can renew the lease, but should not carry out activity of mining. Such course of action is practically not possible and will result in financial disaster for the Firm.

68. On the other hand if the mining operations are started by the Majority, the rights of plaintiff can be secured in various ways. Majority can be put under condition that the mine is not encumbered. Direction can be given to indemnify the plaintiff

in case the defendants - Damodar Mangalji Group make any claim for damages, though it is pointed out by Majority that their claim will now be time barred. Plaintiff's share of profit can be kept aside and accounts could be directed to be kept. In this way the plaintiff will also earn revenue, which neither the Majority nor plaintiff are currently earning. If care is taken that the property of the Firm is not lost and the business is run under restrictions and plaintiff's share is kept aside then, that is in my opinion, the most equitable arrangement pending the hearing of the suit. Defendant Nos.6, 7 and 8 - Damodar Mangalji Group cannot be permitted to hijack the Firm and twist the Court process to their benefit by pressurizing the Majority for restoration to their agreements.

69. It was argued by Mr. Lotlikar that the Majority had not been candid to the Court and they are not disclosing how they will raise the finances. It was rightly pointed out by Mr. Katak that, considering the fact that the plaintiff backed by defendants Nos.6, 7 and 8 - Damodar Mangalji Group, they will use this information to sabotage the efforts by Majority. In any case under the Rules of 2013, the Majority will have to make full disclosure to the authorities and there cannot be any agreements same as the ones with Damodar Mangalji Group, without there being registrations etc. The mining now being regulated, there is no need to force the Majority to disclose here and how they would raise the finance. In any case now

the mining will have to be carried out in regulated manner. The Appeal from Order No.8 of 2015 therefore deserves to be allowed.

69. In the circumstances, both the appeals from order are disposed of by the following order.

70. The Appeal from Order No.54 of 2012 is dismissed. No costs.

71. The Appeal from Order No.8 of 2015 is disposed of by quashing and setting aside the order dated 2 February 2015 passed by the learned Civil Judge, Sr. Divn., Bicholim and modifying the order passed on 25 June 2012 by the learned Civil Judge as under :-

(i) The appellants are permitted to renew the mining lease of the Firm and operate the affairs of the Firm and the mine on the following conditions:

(a) The appellants will not create any third party rights in respect of the mine nor create any encumbrances, while raising the finances.

(b) The appellants will not enter into any agreements, in breach of relevant

provisions of law applicable to the mining activities in the State of Goa.

(c) The appellants shall audit their accounts through a certified auditor and tender the same in the Trial Court every quarter.

(d) The appellants shall also deposit the share of the respondent No.1 - plaintiff of 34% of the profits in the Trial Court, once the mining operations begin.

(e) The appellants shall issue an indemnity bond in favour of the respondent No.1 - plaintiff indemnifying her from any possible claim of damages from defendant Nos.6, 7 and 8 - Damodar Mangalji Group.

(ii) No costs.

72. Mr.Lotlikar, seeks stay of the direction permitting the appellants in Appeal from Order No.8 of 2015 - Majority to start the mining activity. The counsel for the appellants and defendant No.5 oppose the request.

73. Considering the facts and circumstances, I am inclined to grant six weeks time to the respondent No.1 plaintiff, however, since it will take around two weeks to get the copy of this order, it is directed that the order passed in Appeal from Order No.8 of 2015 permitting the appellants - Majority to carry out the mining activity, is stayed for a period of eight weeks from today.

(NITIN M. JAMDAR, J.)