

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1180 OF 2016**

1. Mineira Nacional Limitada,
A Sociedade Por Quotas constituted
under the Portuguese Law of
Sociedade Por Quotas and having its
office at Salgaocar Bhavan, Altinho,
Panaji, Goa.
2. Shri Arjun Anil Salgaocar, major of
age, businessman, son of late Anil
Salgaocar, having office at Salgaocar
Bhavan, Altinho, Panaji, Goa.
3. Shri Anil Vasudeva Salgaocar
(Deleted) Petitioners

Versus

1. Hardesh Ores Private Limited, A
Company registered under the
Companies Act, 1956, having its
registered office at Villa Flores da
Silva, Erasmo Carvalho Street,
Margao-Goa.
2. Regional Controller of Mines, Indian
Bureau of Mines, Ministry of Steel &
Mines, Government of India, having
its office at Fatorda, Margao, Goa.
3. The State of Goa, through the
Secretary (Mines), Secretariat,
Porvorim, Goa. Respondents

Shri Ashwin D. Bhole with Ms. Maria C. D'Costa Mashelkar and
Ms. Shradha Bhole, Advocates for the Petitioners.

Shri Rafiq Dada and Shri S.S. Kantak, Senior Advocates with
Shri Gurudatt Mallaya, Ms. Linette da Costa Rodrigues and Shri

Preetam Talaulikar, Advocates for the Respondent No. 1.

Shri Mahesh Amonkar, Central Government Standing Counsel for the Respondent No. 2.

Ms. Prachita R. Kalangutkar, Additional Government Advocate for the Respondent No. 3.

CORAM:- C. V. BHADANG, J.

RESERVED ON:- 16th February, 2017

PRONOUNCED ON:- 6th June, 2017

JUDGMENT:

Rule made returnable forthwith. The learned Counsel for the respondents, waive service. Heard finally by consent of parties.

2. The challenge in this petition is to the orders dated 13.01.2016 and 29.11.2016 passed by the learned Principal District Judge Panaji (PDJ, for short) in Civil Miscellaneous Application No. 119/2013 in Arbitration Application No. 36/2012. By the impugned orders, the learned PDJ has allowed application under Section 9 of the Arbitration and Conciliation Act, 1996 (Act, for short), filed by the first respondent-Hardesh Ores Private Ltd., directing the petitioners to prepare and present the mining plan with requisite certificates and progressive mine closure plan to the second respondent-Regional Controller of Mines.

3. Brief facts necessary for the disposal of the petition may be stated thus:

By an agreement dated 10.04.1986, the petitioner no. 1 appointed the first respondent (applicant in Arbitration Application No. 36/2012) as a sole and exclusive Raising contractor in respect of an iron ore mine known as Cuddegallivoril Soddo at Santana Village (the suit mine), held under title Concession No. 62 of 1951. Under an agreement of the even date, the petitioners entered into an agreement with Sociedade Fomento Industrial Private Limited (Fomento, for short). There have been successive agreements between the parties right from the year 1972 under which the first respondent has been exclusively extracting iron ore from the suit mine and supplying it to Fomento. Indisputably, the agreement dated 10.4.1986 is the last of agreement reached between the parties.

4. Indisputably, from 22.05.1987 when the Goa Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987 came into force, the suit mine which was granted as a concession was converted into a mining lease under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act, for short). As a result

of this, various statutory provisions including Mineral Concession Rules, 1960 (Rules of 1960, for short) and the Mineral Conservation and Development Rules, 1988 (Rules of 1988, for short), became applicable to the suit mine. Under the said provisions, preparation of a mining plan and a progressive mining closure plan and getting it approved became mandatory.

5. According to the first respondent, under the agreement of 1986, it was for the first respondent to comply with all the statutory rules and regulations for carrying out the mining operations. Accordingly, some where in the year 1988, the first respondent got the necessary plan prepared from a Registered Qualified Persons (RQPs, for short), which was signed by the petitioners without any demur. The plan was submitted to the second respondent and was eventually approved.

6. It appears that disputes and differences arose between the parties and by a letter dated 25.05.1992, the petitioners sought to terminate the agreement of the year 1986 on certain grounds. In pursuance of an arbitration clause in the agreement, a suit being Special Civil Suit No. 219/92 came to be filed by the first respondent, under section 20 of the

Arbitration Act, 1940 (Old Act, for short). The said suit was decreed in view of consent terms on 02.09.1995. Under the said consent decree, the parties agreed to refer the dispute to a sole Arbitrator, with liberty to the parties to approach the High Court under Section 41 of the old Act and for interim arrangement for working the suit mine after complying with all statutory provisions pending resolution of dispute before the arbitrator. The parties also agreed not to jeopardise the lease or the continued extraction of the ore by the first respondent.

7. It is not necessary to set the entire chronology for the present purpose suffice it to mention that till the year 2004, the various mining plans prepared by the first respondent were signed for and on behalf of the petitioners and were approved by the second respondent. On 30.07.2004, the petitioners again sought to terminate the agreement of the year 1986, which dispute was referred to a separate Arbitral Tribunal. By an agreement dated 02.12.2009, the parties agreed that the disputes pending before the two Tribunals be heard by an Arbitral Tribunal headed by Justice B.N. Srikrishna and they further agreed to be governed by the Arbitration and Conciliation Act, 1996. Indisputably, the learned Arbitrator has passed an award on 19.10.2015, which is subject matter of

challenge by the petitioners before the learned District Court. There is a delay in filing the appeal and the application for condonation of delay is pending. There is no stay operating to the Arbitral award.

8. Going back a little, the mining lease was due to expire on 22.11.2007 and as per the Rules of 1960, an application for renewal of the lease was to be filed on or before 22.11.2006. The first respondent got a mining plan prepared through the RQPs, which was handed over to the petitioners on 20.10.2006. On 04.11.2011 at the request of the petitioners, a joint meeting was held between the parties in which certain suggestions were made on behalf of the petitioners in respect of the mining plan. The first respondent incorporated the said changes. The plan so prepared and signed by the RQPs was handed over to the petitioners for submission to the second respondent. The present dispute essentially pertains to the non submission of the mining plan to the second respondent. Allegations and counter allegations are being made by the parties in this regard. It is alleged that the second respondent returned the mining plan to the petitioners to resubmit it through the RQPs, who had prepared the said plan. According to the first respondent, the RQPs found that there were certain

unauthorised changes/alterations made by or on behalf of the petitioners to the mining plan with an object to designate iron ore as mineral rejects. According to the first respondent, owing to such alterations, which are not in consonance with the situation at the loco, the second respondent did not accept the plans. It is claimed that it is the responsibility of the first respondent to comply with all statutory provisions. Further, the mining plan has to be accompanied with requisite certificates signed by the lessee i.e. the petitioners.

9. In such circumstances, the first respondent sought following reliefs before the learned District Judge:-

1) The Mining Plan presented to the respondent no. 2 vide Letter dated 26.2.2008 has been presented in accordance with the provisions of the Mineral Conservation and Development Rules, 1988 and all relevant and applicable laws that the plan be scrutinized and approved in accordance with law.

2) In the event it is held that the Certificates filed by the applicant with the respondent no. 2 alongwith the Mining Plan are required to be signed by the respondent no. 2, the applicant has further sought to direct the respondent no. 1 to sign the Requisite Certificates relating to the Mining Plan and the Progressive Mine Closure

Plan in the prescribed forms and hand over the same to the respondent no.2.

3) Pending the hearing and final disposal to direct the respondent no. 2 and 3 to maintain status quo in respect of the suit mine.

10. The petitioners (respondents before the learned District Judge) resisted the application. It was contended that the first respondent has committed breach of the agreement of the year 1986 and the same stands validly terminated. As such, the first respondent cannot claim any rights or reliefs on the basis of the said agreement. It was contended that it is the ultimate responsibility of the petitioners being lessee to prepare and submit the mining plan to the second respondent. It was contended that the first respondent in breach of the agreement and past practice directly submitted the plan to the second respondent. It was denied that the petitioners carried out any unauthorised change in the plan as claimed. It was contended that in fact, the plan prepared by the first respondent contained serious deviations from the previous plans with a view to get an edge in the pending arbitration proceedings.

11. The learned District Judge by a judgment and order dated 28.02.2013 allowed the application in the following terms:-

i) The applicant shall prepare a Plan incorporating the suggestions made by the respondent no.1 during the meeting held on 4.11.2006 (Annexure D) and submit the same to the respondent no.1.

ii) The respondent no.1 shall present the Mining Plan with the Requisite Certificates relating to the Mining Plan and Progressive Mine Closure Plan in the prescribed forms to the respondent no.2 within a period of one month from the receipt of the Plan.

iii) Subject to the decision of the Apex Court and/or the High Court and the decision of the Government and the statutory authority relating to mining matters, the respondent no.2 shall scrutinize the same and take the appropriate decision in accordance with the provisions of the mining Law, Rules and Regulations.

iv) This Order is subject to the Award of the Arbitrator and the decision of the Apex Court, High Court and the appropriate Government statutory authority in respect of the mining issue.

12. On 23.07.2013, the first respondent again approached the learned District Judge with an application purporting to be one under Order XXI, Rule 34 and Order XXXIX, Rule 2 A, read with Sections 141 and 151 of the Code of Civil Procedure, seeking following reliefs:-

A. That this Hon'ble Court be pleased to direct Respondent Nos. 1, 4 and 5 to comply with the Order dated 28.2.2013 under the supervision of this Hon'ble Court within such time as may be directed by this Hon'ble Court and in the event of failure by Respondent Nos. 1, 4 and 5 to so comply within the stipulated time, this Hon'ble Court be pleased to direct the Superintendent of this Hon'ble Court or any other fit and proper person that this Hon'ble Court may direct in that behalf, to sign the 25.3.2013 Plan and Certificates on behalf of Respondent No. 1 and to thereafter present the 25.3.2013 Plan and Certificates to Respondent No. 2, in compliance with the 28.2.2013 order.

B. That this Hon'ble Court be pleased to direct:
a) Respondent Nos. 1, 4 and 5 to disclose on oath the following, viz.

- i. The names and details of all the other Responsible Officers and*
- ii. The details of the properties of Respondent Nos. 1, 4 and 5 and of all the other Responsible Officers.*

b) Upon the disclosure being made as per directions being passed under Prayers (B)(a)(i) and (B)(a)(ii) above:

- i. To order and direct the attachment of all such disclosed properties of Respondent Nos. 1, 4, 5 and of all the other Responsible Officers and*
- ii. To sentence Respondent Nos. 4, 5 and all the other Responsible Officers to civil prison for a term prescribed by law or otherwise sentence them in such manner as this Hon'ble Court may deem fit.*

C. That such further and other orders be passed as this Hon'ble Court deems fit and proper in the circumstances of the case.

That application was registered as Civil Miscellaneous Application No. 119/2013.

13. The said application was opposed by the petitioners on various grounds.

14. By an order dated 13.01.2016, the learned District Judge allowed the application in the following terms:-

- (i) The applicant shall re-submit the plan to respondent no. 1 by incorporating the suggestions made during the meeting held on 04.11.2006*

within a period of 15 days from the date of the above order;

(ii) Respondent no. 1 shall present the mining plan so submitted by the applicant with all requisite certificates relating the mining plan and progressive mining closure plan in the prescribed forms to the office of respondent no. 2 within a period of 1 month thereafter;

(iii) In case of failure on the part of respondent no. 1 to present such plans with the requisite certificates to the office of respondent no. 2, such plans and certificates shall be submitted through the Superintendent of this Court to the office of respondent no. 2 within a period of 15 days thereafter;

(iv) Respondent no. 2 shall scrutinize the same and take appropriate decision in accordance with the provisions of Mining Laws, Rules and Regulations as early as possible.

15. The petitioner nos. 1 and 2 filed an application for review of the said order, being Review Application No. 5/2016, which was rejected on 30.04.2016. The petitioners challenged both the orders dated 13.01.2016 and dated 30.04.2016 before this Court in Writ Petition No. 559/2016. This Court by a judgment and order dated 03.10.2016 partly allowed the said

petition by consent of parties and remanded the matter back to the learned District Judge, for consideration on the issue of consideration of Rule 7 of the Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules, 2013 (Rules of 2013, for short). The learned District Judge by an order dated 28.11.2016 dismissed the application for review, which brings the petitioners to this Court.

16. I have heard Shri Bhole, the learned Counsel for the petitioners and Shri Rafiq Dada, the learned Senior Counsel for the first respondent. I have also heard Shri Amonkar, the learned Central Government Standing Counsel for the second respondent and Ms. Kalangutkar, the learned Additional Government Advocate for the third respondent. With the assistance of the learned Counsel for the parties, I have gone through the record.

17. It is submitted by the learned Counsel for the petitioners that an application under Order XXI, Rule 34 of CPC was not maintainable, as the said provisions are not attracted in this case. It is submitted that the first respondent has not complied with the provisions of Order XXI, Rule 34(2) of CPC. It is submitted that the learned Arbitrator in the meanwhile has

passed a final award in the matter on 19.10.2015 and as such, the first respondent cannot conceivably seek execution of the order passed under Section 9 of the Act, in as much as the interim relief so granted would merge in the final award. It is submitted that the interim order is in fact contrary to the final award passed and in such a case, the final award would prevail. The learned Counsel has referred to Rule 9 and Rule 11 of the Rules of 2013, in order to submit that it is the lessee who is entitled to submit the plan to the competent authority and is responsible to ensure that it is in consonance with the statutory requirements. It is submitted that non compliance in this regard even entails criminal liability. Reference in this regard is made to Rule 58 of Rules of 1988, which provide for penalty. It is submitted that there are rival claims of the parties as to whether the plans prepared by the first respondent confirm to the agreement and the statutory provisions. It is submitted that no enquiry is held in this regard. The learned Counsel has referred to Clauses 5, 6 and 10 the agreement of 1986 in order to submit that these clauses envisage sharing of the minerals, which is prohibited by law. The learned Counsel has pointed out that under Clause 5, the mineral of grade less than 56% Fe was to belong to the petitioners and the first respondent was only permitted to use such mineral (of a grade less than 56%Fe)

for repairs and/or construction of roads within the mining area or to make such use as is necessary in the execution of the agreement. The learned Counsel has referred to paras 19 and 23 of the order dated 28.11.2016 in order to submit that the learned District Judge was in error in holding that the contract is not one for sharing of the minerals. Reliance in this regard is placed on the decision of this Court in Appeal From Order No. 54/2012 (**Smt. Kunda M. Shetye Vs. Smt. Shaila S. Shetye and Others**) decided on 12.03.2015. It is submitted that Rule 5 of the Rules of 2013 prohibits use of the machinery of the Raising contractor in winning the mineral, in the absence of registration, as envisaged by the said Rule. It is submitted that the certificate dated 12.07.2016 (at page 293 of the compilation), cannot come to the aid of the first respondent in as much as the said certificate does not refer to the subject mine. It is submitted that the learned District Judge has adverted and tested the discrepancies in the plan. A reference in this regard is made to para 10 of the impugned judgment and order dated 13.01.2016.

18. On the contrary, Shri Dada, the learned Senior Counsel for the first respondent has supported the impugned order. The learned Counsel has taken me through various

paras of the order dated 28.02.2013 in order to submit that the learned District Judge has extensively considered the matter and has rightly come to the conclusion that it is for the statutory authority to determine the question whether the plan is in accordance with the statutory provisions and no such declaration can be granted by the Court. It is submitted that all that the first respondent wants is that the plan/s should be submitted to the statutory authority. The learned Senior Counsel has referred to paras 54, 56, 58, 60, 67, 71 and 72 of the impugned order. It is submitted that Section 9 of the Act envisages interim measures for protection and preservation of the subject matter of the arbitration proceedings and once, a *prima facie* case is established, the Court cannot be a helpless spectator. It is submitted that an application for enforcement of the earlier order passed by the learned District Judge was maintainable. It is submitted that Rule 22-B of the Rules of 1960 provides for the RQPs to prepare the plan. It is submitted that the affidavit of Shri Benedito Fernandes dated 22.07.2013 (page 114 of the compilation) has not been controverted by the petitioners. It is submitted that under Rule 13 of the Rules of 2013, there is no absolute bar, it only prohibits illegal mining. It is submitted that agreement of the year 1986 does not envisage sharing of minerals. The learned Senior Counsel has

referred to the certificate of registration dated 12.07.2016. It is submitted that the Rules of 2013 do not envisage registration of the contractor/s qua any particular establishment or mine. It is submitted that the petitioners stand indemnified, in the event, there is any breach and action is taken against the petitioners. It is submitted that powers of the Court under Section 9 of the Act are wide and can be resorted to in appropriate case, even where there is prospect of an arbitration. It is submitted that such powers can be exercised either before or during the arbitration proceedings, till the award is executed. It is submitted that under the agreement, the first respondent is entitled to mine till the remaining deposit of the iron ore in the said lease can be economically exploited. It is submitted that the first respondent has sought extension by exercising the option. It is submitted that the judgment of this Court in **Smt. Kunda M. Shetye** (supra) has been modified by the Supreme Court in Special Leave Petition Nos. 13370-13371/2015 dated 08.05.2015. On behalf of the first respondent, reliance is placed on the decision of the Supreme Court in **Arvind Constructions Co. Pvt. Ltd. Vs. Kalinga Mining Corporation & Others, (2007) 6 SCC 798** and **Adhunik Steels Ltd. Vs. Orissa Manganese and Minerals (P) Ltd., (2007) 7 SCC 125**. Lastly, reliance is

placed on the decision in the case of **Shalini Shyam Shetty & Another Vs. Rajendra Shankar Patil, (2010) 8 SCC 329**, in order to submit that this is not a case in which this Court should interfere under Article 227 of the Constitution of India.

19. In rejoinder, it is submitted by Shri Bhole, the learned Counsel for the petitioners that the petitioners have controverted the affidavit of the RQP Mr. Nandyal (page 126 of the compilation). It is submitted that as per the agreement, 7,00,000 Metric Tons of ore was to be mined, while the ore actually mined is much more than that. It is submitted that there cannot be any indemnity or immunity granted by the terms of the agreement in respect of criminal liability. It is submitted that the impugned orders exhibit jurisdictional error requiring interference.

20. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out. Here are the reasons. It may be significant to note that the original order passed by the learned District Judge is dated 28.02.2013, which was never challenged by the petitioners. Even in the present petition, the prayer clause does not show that the said order is subject matter of

challenge. By the subsequent application, the first respondent was only seeking execution of the earlier order dated 28.02.2013. The learned District Judge in that application has passed an order dated 13.01.2013, which is more or less on similar lines as the order dated 28.02.2013. Subsequently, on 28.11.2016, the learned District Judge refused to review the earlier order. These later two orders are challenged in this petition. All that the impugned orders require the petitioners to do, is to submit the plans to the second respondent. In my view, the learned District Judge is right in holding that it is for the statutory authority to examine the plans and to consider the question of their approval in accordance with law. The Court in an application seeking interim measures cannot threadbare consider the rival contentions as regards the plans being compliant with the statutory provisions or not. In the case of **Arvind Constructions** (supra), the Supreme Court has held that in an application seeking interim measures, well recognised principles for grant of injunction, under Order XXXIX of CPC would apply. In other words, a party seeking interim measures will have to demonstrate the existence of *prima facie* case, balance of convenience and irreparable loss in its favour. There is one more reason why the considerations will be limited to examine the aforesaid three ingredients. This

is because the Arbitrator has since passed a final award, which is sought to be challenged in an appeal before this Court. The rival contentions of the parties can be and will have to be examined in the said appeal.

21. Now let us briefly examine the case in the context of the established principles for grant of such relief. There is a consent decree passed in Special Civil Suit No. 19/92, which *inter alia* provides that the parties shall make interim arrangement, for the working of the suit mine pending resolution of dispute, by the learned Arbitrator. The parties have also agreed that all statutory requirements would be complied by them so as not to jeopardise the lease in favour of the first respondent or the continued extraction of the ore.

22. If, we were to consider subsequent developments, which are relevant, the learned Arbitrators have passed the award on 19.10.2015 *inter alia* holding that the agreement of the year 1986 is valid, binding and subsisting and stands duly renewed till 30.06.2016. The petitioners are directed to specifically perform the said agreement as per the terms recorded therein and have been restrained from directly or indirectly acting contrary to or in breach of the terms of the

agreement of the year 1986. The petitioners have also been restrained from directly or indirectly interfering with or obstructing the first respondent's continuing mining operations, working and functioning of the suit mine. Although, the petitioners have challenged the said award before the District Court, there is no stay operating to the said award (in as much as under the amended provisions of the Act, there is no automatic stay and further, the appeal is also not yet registered as there is a delay in filing the same). The cumulative effect of all these circumstances, lead to inescapable conclusion that the first respondent has a *prima facie* case for grant of interim measures as claimed. As noticed earlier, the initial order directing submission of plan is passed by the learned District Judge as far back as in the year 2013. The first respondent has got the plan prepared through a RQP as required by Rule 22-B of the Rules of 1960. Although, according to the petitioners, the affidavit of RQP, Mr. Nandyal has been controverted, there was no affidavit challenging the affidavit of Shri Benedito Fernandes. Be that as it may, as noted earlier, it is for the competent authority to examine the plan, in accordance with law, before considering the approval of the same.

23. The contention based on the inapplicability of the provisions of Order XXI, Rule 34 of CPC cannot be accepted for the reason that the application was also filed under Section XXXIX, Rule 2 A of CPC, for breach of the earlier order of 2013.

24. After the learned District Judge passed the impugned order on 13.01.2016, the petitioners have approached this Court *inter alia* on the ground that the challenge based on Rule 7 of the Rules of 2013 has not been considered by the learned District Judge. The matter was sent back for reconsideration insofar as the claim based on Rule 7 of the Rules of 2013 is concerned. The learned District Judge by the impugned order dated 28.11.2016, has *inter alia* held that the agreement of the year 1986 does not contemplate sharing of minerals and the agreement clearly shows that the first respondent was engaged as raising and transporting contractor and the first respondent has been registered as such with the third respondent. The learned District Judge has further noted that Rule 7 of 2013 Rules does not contain any absolute ban. It only bars operator without registration from operating the mine, under contracts where there is sharing of minerals.

25. Rule 5 of the Rules of 2013 provides for registration of the raising contractors, while Rule 6 provides for registration of transport contractors. Rule 5 which is relevant for the purpose reads thus:

“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.”

It can thus be seen that all raising contractors, by whatever name called, engaged in winning of mineral on behalf of leaseholder, are required to register themselves, with the Department, failing which the machinery of such contractor shall not be allowed to be used in any lease hold area. Under the provisions of the said Rules, such contractor is required to

provide such details as may be called for, to the satisfaction of the Director that the contractor is genuinely raising the mineral for the leaseholder.

26. Rule 7 on which heavy reliance is placed on behalf of the petitioners 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.”

A bare perusal of the aforesaid Rule would show that all contracts/agreements entered into between the leaseholders and the end-users or traders, raising contractors, transport contractors, which authorise sharing of minerals under such contract for transport, raising, processing or trading of mineral shall be void from the date of publication of the Rules. Similarly, the Rule also envisages that long term purchase

contract at fixed price shall come to an end from the date of the publication of the Rules. The said Rule fell for consideration before a learned Single Judge of this Court in the case of **Smt. Kunda Shetye** (supra). Paras 59 and 60 of the judgment dated 12.03.2015 are relevant for the purpose. This Court has *inter alia* held that the phrase “sharing of mineral” will have to be understood in the context of the underlying policy of the Rules, which would 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 (Emphasis supplied). This Court further held that the Rules envisage that the mining shall be carried out by the lessee and the authorised contractors so that there is transparency and accountability. It was ultimately held that “sharing of minerals” means sharing of the “privilege to mine” (see para 60 of the judgment). It can thus be seen that all that this Court has held is that there cannot be anybody else between the Government and the lessee, except the ones who are registered. *Prima facie*, in this case, the first respondent has produced certificate dated 12.07.2016. *Prima facie*, Rule 5 of the Rules of 2013 does not envisage registration qua a particular mine. Apart from this, the question whether a particular agreement provides for or contemplates sharing of

minerals, would depend upon the facts and circumstances of each case. In the present case, as noticed earlier, the ore of a grade less than 56% Fe was to belong to the petitioners and the first respondent was permitted to use the same for repairs and/or construction of roads within the mining area or to make such use as is necessary for the execution of the agreement. In my considered view, *prima facie*, it cannot be accepted that the agreement is one of sharing of minerals or sharing of privilege to mine. The learned District Judge in my considered view is justified in holding that the agreement does not contemplate sharing of the minerals. Thus, the contention based on Rule 7 of the Rules of 2013, to my mind cannot be accepted.

27. I would now briefly consider the contentions raised on behalf of the petitioners on the subsequent events, i.e. the Arbitrators passing a final award. The Arbitrators have passed a final award on 19.10.2015 and the findings recorded therein are briefly noted earlier. In this regard, it would be significant to note that under Section 9 of the Act, the Court can grant interim measures either before or during the Arbitral proceedings or at any time after making of the Arbitral award, but before it is enforced in accordance with Section 36 of the Act. The award is yet to be executed. It is worth noticing that

the initial order was passed by the learned District Judge under Section 9 of the Act in 2013, much before the conclusion of the Arbitral proceedings. Even in the final order, the learned Arbitrators have *inter alia* held that the agreement is subsisting and stands renewed till 30.06.2016 and the petitioners have been directed to specifically perform the said agreement and thus, the interim order cannot be said to be contrary to the final order. At the cost of repetition, it needs to be mentioned that all that the impugned order directs is the submission of the plan before the competent authority. Thus, the passing of the final award in my considered view, cannot derogate from the impugned order as passed.

28. Clause 2 of the agreement (page 300 of the compilation), would *prima facie* show that the agreement which was to come into force on 01.07.1986, was to remain in force initially for a period of six years. It further stipulates that the agreement shall stand renewed for further period of six years at the option of the first respondent, provided the first respondent is willing to discharge the obligation under the agreement until the remaining deposit of the iron ore in the suit mine can be economically exploited. *Prima facie*, at this stage, it is nobodys case that the remaining deposit of the iron ore in the suit mine

cannot be economically exploited.

29. I have carefully gone through the impugned orders passed and I do not find that they suffer from any infirmity. It is now well settled that the discretionary power under Article 227 of the Constitution of India, is to be sparingly exercised when there is a patent error or perversity in the impugned order resulting into manifest injustice. I do not find that within the available parameters there is any scope for interference.

In the result, the petition is dismissed. Rule is discharged with no order as to costs. Needless to mention that the observations herein are essentially of a *prima facie* nature and the learned District Judge shall not be influenced by the same while deciding the appeal challenging the award, if eventually, the delay is condoned and the appeal is registered.

It is further made clear that the second respondent shall independently consider the question of approval of the plan in accordance with the applicable statutory provisions and shall not be influenced by the observations made herein.

C. V. BHADANG, J.

EV

JUDGMENT CONTINUED:

30. The learned Counsel for the petitioners submits that the interim relief already operating may be continued in order to enable the petitioners to take appropriate steps as they may be advised.

The learned Counsel for the respondent no. 1 opposes the same.

31. Considering the fact that the interim relief was operating during the pendency of the petition, the same may be continued for a period of six weeks from today.

C. V. BHADANG, J.

EV