

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
CIVIL REVISION PETITION Nos.571 & 560 OF 2017

COMMON ORDER:

These two Civil Revision Petitions are filed against the common order, dated 16.09.2016, passed in C.M.A.Nos.43 of 2015 and 46 of 2015 on the file of the Principal District Judge, Chittoor wherein the order of the learned Additional Senior Civil Judge, Chittoor partly allowing I.A.No.252 of 2015 in O.S.No.188 of 2015 granting temporary injunction in favour of the plaintiff to continue quarry operations in respect of two properties only, was set aside.

2. Since both the Civil Revision Petitions are filed by the petitioner/plaintiff and since the order under challenge is a common order, they are being disposed of by way of this common order.

3. The facts in issue are as under:-

The petitioner/plaintiff claims to be an authorized agent of the respondent/defendant to do quarry work in the plaint schedule property. He claims authorization basing on two documents, dated 23.07.2014 and 28.01.2015, executed by the respondent. It is said that basing on the permission given by the respondent in the form of affidavit/authorization, he has been duly carrying on the quarry operations and also in possession of the plaint schedule property. It is stated that the petitioner used to take permits in the name of the respondent as he is the original leaseholder by paying cess to the Government. The averments in the plaint show that originally, one Sri M.Thyagarajulu Naidu and Smt T.G.Silpa entered into a

transfer deed with the respondent under the transfer deed, dated 25.03.2007, holding the quarry lease for black granite over three extents of quarries. After obtaining the transfer proceedings from the Mines and Geologies Department, the respondent was unable to carry out the quarry operations in the suit premises. Hence, he entered into a share holder agreement with one Jakalam Murali and the petitioner herein on 07.12.2011. However, due to some misunderstandings, the share holder agreement was cancelled on 26.04.2014. While things stood thus, the said Murali filed O.S.No.4 of 2014 on the file of the Additional Senior Civil Judge, Chittoor by creating a false General Power of Attorney (G.P.A.) said to have been executed by the respondent and the same was dismissed on 22.08.2014. He also filed another suit against the respondent, questioning the cancellation of G.P.A. in O.S.No.510 of 2014 on the file of the Additional Senior Civil Judge, Chittoor, which is pending consideration. It is stated that on 23.07.2014, the respondent herein executed an affidavit for authorization in favour of the petitioner to permit him to operate the quarry works in item Nos.1 and 2 of the plaint schedule property. It is said that again on 28.01.2015, the respondent also executed an affidavit giving authorization to the petitioner, duly attested by the advocate notary, to do quarry work in the plaint schedule three quarries up to May, 2017.

The above suit came to be filed when a third person stepped into the plaint schedule property basing on the authorization given by the respondent, which is the subject matter of dispute in the suit. It is stated that on 15.04.2015, some unknown persons from Chittoor came to the suit schedule property stating that they were

deputed by the respondent to see the quarry operations, with an intention, that they want to carry out the quarry operations in the plaint schedule property as per the oral directions of the respondent. As the respondent gave evasive answers, the petitioner filed the present suit seeking permanent injunction.

By an order, dated 29.10.2015, in I.A.No.252 of 2015 in O.S.No.188 of 2015, the trial Court, after considering the documentary evidence, which were marked as Exs.P-1 to P-17 and R-1 to R-14, allowed the I.A. in part granting temporary injunction in favour of the petitioner to continue quarry operations in Sy.No.885/P (two hectares) and Sy.No.885 (two hectares) until the expiry of the lease period. However, the respondent was granted liberty to seek vacation of temporary injunction if the petitioner commits default in payment of VAT and CST to the concerned departments and other amounts payable to the respondent. No injunction was granted in respect of Sy.No.885 (one hectare). Challenging the same, the petitioner filed C.M.A.No.46 of 2015 and the respondent filed C.M.A.No.43 of 2015 before the Court of the Principal District Judge, Chittoor. After considering the material available on record, the learned District Judge dismissed C.M.A.No.46 of 2015 and allowed C.M.A.No.43 of 2015. Challenging the same, the petitioner filed the present Civil Revision Petitions.

4. The main ground raised by the learned counsel for the petitioner is that the lower appellate Court erred in upholding the affidavit, authorizing the petitioner to carry out quarry operations till May, 2017, as forged. It is submitted that there is no basis for

the lower appellate Court to hold that the said document is a forged one. Learned counsel for the petitioner mainly contends that on 23.07.2014, the respondent executed an affidavit authorizing/permitting the petitioner to operate quarry works in item Nos.1 and 2 of the petition schedule property and thereafter, again on 28.01.2015, executed an affidavit, authorizing him to do quarry operations till May, 2017, with certain conditions. It is his case that he is regularly depositing the amounts in the name of the respondent through Axis Bank, Chittoor and placed on record the statement of account to show that money was being sent to the respondent, which according to him, supports the plea that the affidavit executed in the month of January, 2015 cannot be treated as a forged one. He further submits that since the respondent could not get along with Jakalam Murali, he permitted the petitioner to carry out the quarry operations which is clear from the contents of the suit filed by Murali *vide* O.S.No.510 of 2014. Having regard to the above and since the balance of convenience is in favour of the petitioner, it is urged that the lower appellate Court erred in dismissing C.M.A.No.46 of 2015.

5. *Per contra*, learned counsel for the respondent would submit that the reasoning given by the lower appellate Court, rejecting the request of the petitioner, warrants no interference. He submits that suit itself is not maintainable in view of the arbitration clause in the agreement. It is urged that the petitioner suppressed the fact of the arbitration clause in the joint venture agreement and filed the suit only with a *mala fide* intention. Insofar as the document, dated 28.01.2015, is concerned, learned counsel for the respondent would submit that when the document, dated

23.07.2014, itself was cancelled on 30.07.2014, the question of authorizing the petitioner to carry out the quarry operations till May, 2017 by executing an affidavit on 28.01.2015 appears to be improbable. In any event, he submits that the main suit itself lose its life in May, 2017 since the claim of the petitioner is only to carry out quarry operations till May, 2017 only.

6. The points that arise for consideration in these Civil Revision Petitions are:

“Whether the document, which is executed on 28.01.2015 and produced on record as Ex.P-9, is genuine and whether the petitioner can continue with the quarry operations pursuant to Ex.P-8?”

7. **POINTS:-** Without going into the maintainability of the suit, it would be appropriate to decide the contentions raised with regard to Exs.P-8 and P-9. Ex.P-8 is a notarized affidavit, dated 23.07.2014, executed by the respondent authorizing the petitioner to submit permit application, collect permits and submit despatch particulars, if any, in respect of two quarries i.e., for Sy.No.885 (two hectares) and Sy.No.885/P (two hectares). Ex.P-9 is another affidavit of authorization, dated 28.01.2015, executed by the respondent in favour of the petitioner authorizing him to carry out quarry operation in Sy.No.885 (two hectares), Sy.No.885 (one hectare) and Sy.No.885/P (two hectares). A reading of Ex.P-8 would show that it authorizes the petitioner to submit permit application, collect permits and submit despatch particulars, if any, in respect of quarry lease for Sy.No.885 (two hectares) and Sy.No.885/P (two hectares). It further states that the respondent

can sign all the documents in connection with these documents. A reading of the said affidavit show that the authorization was given to the petitioner to a limited extent i.e, submitting applications on behalf of the respondent in respect of two quarries and also to submit despatch particulars, if any, in respect of the listed quarry leases. It does not, in any way, authorizes the petitioner to carry out quarry operations nor does it authorizes the petitioner to sign on the applications. Ex.P-9 authorizes the petitioner herein to engage machines and labour with his own investments to carry out the quarry operations in the above listed quarry leases without allowing any third parties to operate quarry works in the schedule land. It also authorizes the petitioner to carry out the quarry operations till May, 2017. A plain reading of the said affidavit reveals that the authorization was said to have been given by the respondent to the petitioner to carry out quarry operations. However, the respondent disputes the very execution of the said document. It is to be noted that the affidavit, dated 23.07.2014, came to be cancelled on 30.07.2014. The said fact is not disputed by the learned counsel for the petitioner. That being the position, a doubt arises as to whether the respondent could have again executed an affidavit on 28.01.2015 authorizing the petitioner to carry out quarry operations. Apart from that, Ex.R-14 - report of the Truth Labs, Chennai, states that on comparison of the disputed signatures of the respondent in Ex.P-9 with that of his admitted signatures, found not to be that of the respondent. Of course, it would be too pre-mature to give a final finding on that aspect, but *prima facie*, the relevancy of the said document cannot be brushed aside. When the theory of forgery was to put forth by

the respondent, nothing prevented the petitioner from producing the affidavit of the vendor by name M.Kannaiah Chetty to show that he has sold the stamp paper to the respondent on 28.01.2015. In the absence of the same, a doubt arises as to whether the said document is genuine or not, more so, when the respondent has acknowledged earlier affidavit, dated 23.07.2014. Even if the said document is taken to be true, *prima facie*, it does not confer any rights on the petitioner to carry out quarry operations for his own benefit. It only authorizes the petitioner to engage men and machinery, maintain accounts and deposit the benefits derived into the account of the respondent. Therefore, it does not confer any legal right on the petitioner under these documents over the said three quarries. It was an authorization executed on Rs.100/- non-judicial stamp paper. Though learned counsel for the petitioner tried to contend that the plea of maintainability of the suit raised by the respondent was never raised before the trial Court, but a reading of the order passed by the trial Court in I.A.No.252 of 2015 would clearly show that such a plea was taken and answered. In paragraph No.23 of the said order, the terms and conditions of the joint venture agreement were considered. However, the trial Court, while holding that the petitioner committed mistake by coming directly to the civil Court without referring the dispute to the arbitration, did not go into the aspect of maintainability of the suit. The said aspect also came up for consideration before the appellate Court wherein at paragraph No.22, the appellate Court categorically held that the petitioner intentionally suppressed the existence of the joint venture agreement while filing the suit. It is urged that if the existence of

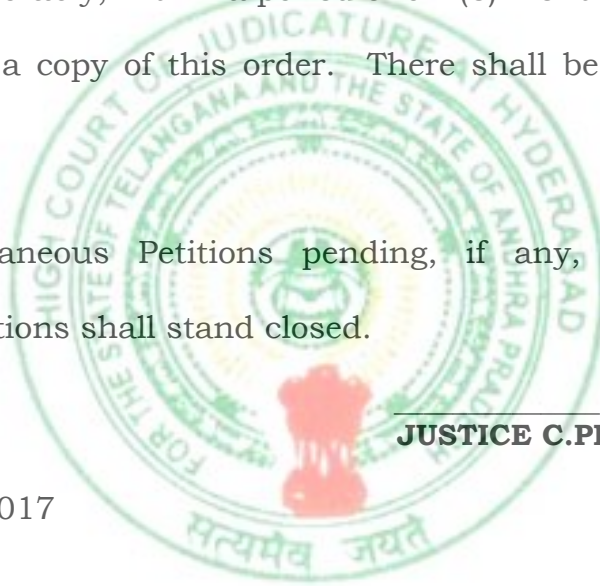
the agreement and the arbitration clause contained therein were brought to the notice of the Court, probably, the Court would not have entertained the same. In view of the findings on Exs.P-8 and P-9, this Court is of the view that the order under challenge warrants no interference.

8. Accordingly, both the Civil Revision Petitions are dismissed. Having regard to the nature of the dispute involved, the trial Court is directed to dispose of O.S.No.188 of 2015 on the file of the Additional Senior Civil Judge, Chittoor as expeditiously as possible, preferably, within a period of six (6) months from the date of receipt of a copy of this order. There shall be no order as to costs.

9. Miscellaneous Petitions pending, if any, in these Civil Revision Petitions shall stand closed.

JUSTICE C.PRAVEEN KUMAR

Date:26.04.2017
AMD



THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR



CIVIL REVISION PETITION Nos.571 & 560 OF 2017

DATE:26.04.2017

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