

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.02.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (PD) No.249 of 2017

Tamil Nadu Minerals Ltd.,
Rep. By its Managing Director,
No.31, Kamarajar Salai,
Chepauk, Chennai – 600 005

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Petitioner

Versus

M/s.Janani Minerals (P) Ltd.,
Rep. By its Director, Mr.B.Karthikeyan
No.84, 3rd Cross, Pon Nagar,
Trichy – 620 001.



Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decree dated 06.10.2016 passed by the learned VII Assistant City Civil Judge, Chennai in I.A. No.11043 of 2015 in O.S. No.6261 of 2011

For Petitioner : Mr.A.R.L.Sundaresan,
Learned Senior Counsel
for Mr.T.R.Sathiya Mohan

For Respondent : Mr.T.K.S.Gandhi

ORDER

The respondent herein, as Plaintiff, has filed the suit in O.S.No.6261 of 2011

<http://www.judis.nic.in> for declaration, permanent and mandatory injunction against the

defendant/petitioner herein. Pending suit, I.A. No.11043 of 2016 has been filed by the respondent/plaintiff before the Court below to issue Sub-peona to the District Forest Officer, Villupuram Division to produce the relevant records pertaining to the suit schedule property and tender evidence in this regard. The said application was allowed by the Court below. Challenging the aforesaid order, the petitioner herein is before this Court by filing the present Civil Revision Petition.

2. According to the learned Senior counsel for the petitioner, the said application seeking to issue sub-peona to the Forest Officials is not maintainable inasmuch as the suit itself was filed only for declaration to declare that the suspension order dated 07.11.2011 issued by the petitioner/defendant is void and would not bind the respondent/plaintiff herein. The suspension order was by the defendant/petitioner herein issued only for the purpose of non submission of the "Development work plan". Therefore, the present application filed by the respondent is unsustainable. Further the said application has been filed after completion of recording of evidence on the side of the petitioner, that too after four years, which is nothing but an abuse of process of law and therefore the order of the Court below is liable to be set aside.

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3. Per contra, the learned counsel appearing for the respondent would submit that the present application has been filed, before the Court below to substantiate the plaint averments. The Court below, on perusing the relevant documents pertaining to the suit schedule property thought it fit that the present application will enable the Court below to arrive at a fair and just decision of the dispute pending

before it. Accordingly permission was also granted for taking sub-peona to the Forest Department officials. The evidence that may be tendered by the Forest department is vital and necessary in the aforesaid suit. Therefore, the order passed is perfectly valid in law.

4. Having regard to the aforesaid facts and the submissions made by the learned counsel on either side, it has to be examined as to whether the Court below is justified in entertaining the application filed by the petitioner/respondent herein to issue notice to District Forest Officer, Villupuram Division to produce certain records in respect of the suit property.

5. According to the learned Senior counsel petitioner, the suit itself has been filed challenging the suspension order issued by the petitioner, while so, the order directing the Forest Department to produce certain records is not legally sustainable. Further, the application to issue sub-peona has been filed belatedly, after nearly four years and that too after completion of cross examination of DW1 on 29.06.2016. Further, the relief sought in the said suit has nothing to do with the tendering of evidence by the Forest officials. In order to prove the plaint averments, the plaintiff/respondent has to lead evidence and to mark documentary evidence in his possession and not to call for the records maintained by the Forest officials, belatedly.

6. Admittedly, the suit was filed for declaration and consequential injunction.

<http://www.judis.nic.in> In a suit of this nature, it is for the plaintiff/respondent herein to substantiate the plaint averments by tendering evidence and by marking documents in his or her

possession. In such view of the matter, the order passed by the Court below at the instance of the petitioner issuing sub-peona to the Forest officials to produce certain documentary evidence in support of the claim of the plaintiff is unsustainable.

Further, such an application has been filed by the petitioner belatedly after completion of evidence and therefore, the court below ought not to have directed the Forest officials to produce the records. However, it is open to the petitioner to file an appropriate application for examination of the officials, if necessary.

7. With the above observation, the order passed by the Court below is set aside. The Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition, if any is also closed. In the light of the above, the trial Court is directed to dispose of the said suit as expeditiously as possible, preferably on or before 30.07.2018.

21.02.2018

Index : Yes/No

Internet : Yes / No

Speaking/Non Speaking

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To

The VII Assistant City Civil Judge, Chennai

D.KRISHNAKUMAR, J.

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