

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.7234 of 2018

**(Mr. Yelmannchilli Shrinivasrao Prasadrao and another .vs. M/s Ganpati
Agency and ors.)**

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders or directions
 and Registrar's orders

Court's or Judge's orders.

Mr. R.R. Vyas, Advocate for Petitioners
 Mr. V.S. Kukday, Advocate for Respondent No.1.
 Mr. S.B. Bissa, AGP for Respondent Nos 2 to 4.

CORAM : Manish Pitale, J.
DATED : March 18, 2019.

By this writ petition, the petitioners (original defendants) have challenged concurrent orders passed by two Courts below granting and confirming order of temporary injunction in favour of respondent no.1 (original plaintiff).

2. The respondent no.1 filed the suit for declaration and permanent injunction against the petitioners and others in respect of a lease of Sand Depot that exists in favour of respondent no.1. It is the case of the respondent no.1 that the petitioners herein have been illegally excavating and selling sand from the said Sand Depot. In the suit, an application for temporary injunction was moved on behalf of the respondent no.1. On the basis of material on record, the Court of Civil Judge, Senior Division, Gadchiroli (trial Court) found that *prima facie* case was made out on behalf of the respondent no.1 and thereby granted the application for temporary injunction, restraining the petitioners from selling and transporting sand from sand

depot situated in Survey Nos. 337, 338 and 100, details of which are stated in the plaint. An appeal filed against the said order by the petitioners stood dismissed by the impugned judgment and order dated 11.09.2018. Both the Courts below found that the original agreement in respect of the Sand Depot had been executed by the Collector in favour of the respondent no.1 and that the said respondent was well within its right to take action against the petitioners.

3. On behalf of the petitioners, much emphasis was placed on a document styled as authorisation letter dated 21.06.2017, to contend that on the strength of the same, the petitioners were entitled to excavate and sell sand and that the respondent no.1 had no right to interfere with the same. It was further emphasised that a receipt was placed on record showing that on various dates certain sums of money amounting to Rs.1,10,00,000/- were received by respondent no.1 from the petitioners and that, therefore, there was sufficient material to show that the respondent no.1 was not entitled for an order of temporary injunction.

4. Without going into much details about the manner in which the impugned order was passed by the two Courts below, a perusal of the said authority letter shows that at best for the petitioners, authority was granted by the respondent no.1 to undertake certain routine activities for taking stock of sand, selling the same, maintaining record about the same etc. The only reason why the petitioners claim that they had absolute

rights given by the respondent no.1 by way of the said document was the receipt showing that certain cash amounts were received by the respondent no.1. The veracity of the said receipt and the genuineness of the claim of the petitioners about handing over of such huge cash amounts is a matter of trial and, therefore, only a perusal of the authority letter would be relevant in the present case. This Court is of the opinion that *prima facie* the said authority letter does not convey an impression that the petitioners herein had absolute right in respect of the Sand Depot in question. The two Courts below have correctly appreciated the material on record and, therefore, it cannot be said that any error has been committed by grant of temporary injunction in favour of respondent no.1.

5. In view of the above, this writ petition is found without any merit and it is dismissed. It is made clear that this Court has not expressed any opinion on the merits of the claims of the rival parties and interpretation of documents on record, which shall be subject matter of trial before the trial Court. Considering the fact that this is a suit filed under the provisions of the Specific Relief Act, it would be appropriate that the trial Court makes an endeavour to dispose of the suit expeditiously and preferably within a period of six months from today.

JUDGE