



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Misc. Appeal No. 1776/2024

1. Abdul Rahim S/o Abdul Hakim, Aged About 46 Years, R/o Near Dhaula Kuan Masjid, Makrana, Distt. Nagaur (Raj.)
2. Khurshida W/o Mohd. Hanif Choudhary, Aged About 63 Years, Azam Ali Gali, Station Road, Makrana, Distt. Deedwana-Kuchaman (Raj.)

----Appellants

Versus

1. Firm M/s Khatri Marble Mines Makrana, Through Partner Khurshid Ahmed S/o Haji Mohd, Aged 68 Years, R/o Makrana, Distt. Didwana Kuchaman (Raj.).
2. State Of Rajasthan, Through Distt. Collector, Deedwana-Kuchaman.
3. Director, Mines And Geology Department, Udaipur.
4. Mining Engineer, Mines And Geology Department, Makrana.
5. Anwar Ahmed S/o Abdul Karim Gajdhar, R/o Near Chamanpura Meenara Masjid, Makrana, Distt. Didwana Kuchaman (Raj.)
6. Irshad Ali S/o Abdul Karim Gajdhar, R/o Near Ehle Hadis Masjid, Makrana, Distt. Didwana Kuchaman (Raj.)
7. Shahnaz Begum W/o Abdul Rahim Gajdhar, Through Her Lrs-
8. Shahrukh Khan S/o Abdul Rahim Gajdhar, R/o Near Ehle Hadis Masjid, Makrana, Distt. Didwana Kuchaman (Raj.)
9. Shahbaz Khan S/o Abdul Rahim Gajdhar, R/o Near Ehle Hadis Masjid, Makrana, Distt. Didwana Kuchaman (Raj.)
10. Mohd. Suhail S/o Abdul Rahim Gajdhar, R/o Near Ehle Hadis Masjid, Makrana, Distt. Didwana Kuchaman (Raj.)
11. Gulfashah D/o Abdul Rahim Gajdhar, R/o Near Ehle Hadis Masjid, Makrana, Distt. Didwana Kuchaman (Raj.)

----Respondents

For Appellant(s) : Mr. R. K. Thanvi, Sr. Adv. assisted by
Mr. D. L. R. Vyas

For Respondent(s) : Mr. Rajesh Joshi, Sr. Adv. assisted by
Mr. Chandraveer Singh

HON'BLE MR. JUSTICE MADAN GOPAL VYAS

Judgment

30/05/2024

The present civil misc. appeal under Order 43, Rule 1 read with Section 151 of CPC has been preferred by the defendants-appellants against the order dated 04.04.2024 passed by learned Additional District Judge, Makrana, District Nagaur (hereinafter



referred as the 'learned trial court') in Civil Misc. Case No.35/2024 whereby the learned trial court has granted ad-interim injunction order in favour of the plaintiff-respondent No.1 herein.

2. Brief facts of the case are that the plaintiff-respondent No.1 herein preferred a suit before the learned trial court seeking specific performance of contract and permanent injunction. It was stated in the suit that he is the licensee of mine No.147 situated at Gunawati Range ad measuring 126x200 ft.. It was further submitted that there is no demarcation of boundaries of the said mine and the defendants who have their mines adjacent to his mine are taking advantage of this situation and they are illegally excavating stones from the mine. Along with the suit an application under Order 39 Rule 1 & 2 CPC was preferred by the plaintiff-respondent No.1.

3. Learned trial court vide order dated 04.04.2024 passed ad-interim order in favour of the plaintiff-respondent No.1 whereby it was directed that till the demarcation of the boundary of mines No.147, 146, 136/1 & 136/2 is made by the Mines Department, the mines are restrained from carrying on mining activities in their respective mines.

4. Challenging the said ad-interim order dated 04.04.2024, learned counsel appearing for the appellant-defendant submits that in another suit preferred by the defendant-appellant, the learned trial court passed ad interim order dated 01.03.2024 whereby it was ordered that the defendants are restrained from interfering with the mining activity of the appellant with respect to mine No. 136/1 Gunawati Range, Makrana and the defendants in the said suit were also directed to not to cancel the quarry license



of the appellant. It is submitted that by way of passing impugned order dated 04.04.2024, the learned trial court has passed an ad-interim order over the ad-interim order whereby it was directed that the defendant-appellant shall not do mining activities in his mine bearing No.136/1, Gunawati Range, Makrana.

5. Learned counsel further submitted that pursuant to the ad-interim order dated 1.3.2024 passed by the learned trial court, the mining activities in Mine No.136/1 Gunawati Range, Makaran is going on. Hence, it is prayed that the present appeal may be allowed and impugned order may be quashed and set aside.

6. Per contra, learned counsel appearing for the respondents opposed the prayer made by learned counsel for the appellant and submits that the learned trial court has rightly passed the order impugned and no interference is called for.

7. Heard learned counsel for the parties and perused the material available on record.

8. Before proceeding further, it would be apt to quote both ad-interim orders dated 01.03.2024 & 04.04.2024 passed by learned trial Court in juxta position.

Order dated 01.03.2024	Order dated 04.04.2024
अतः अप्रार्थीगण को आगामी पेशी तक पाबंद किया जाता है कि वे प्रार्थीगण को उनके खान संख्या 136/1 गुणावती रेंज मकराना के स्वीकृतशुदा क्षेत्र में खनन कार्य करने से न रोकें तथा प्रार्थीगण के क्वेरी लाईसेंस को निरस्त न करें।	यदि तब तक किसी भी खानधारी को उस क्षेत्र में खनन कार्य करने की अनुमति दी गई तो वह उचित नहीं होगा इस संदर्भ में खनिज विभाग को पृथक से पत्र लिखा जाएं जिसके आधार पर खानों की वर्तमान स्थिति व उनके सीमांकन के दिशा निर्देश दिए जाएं तब तक खान संख्या 147, 146, 136/1 व 136/2 के खानधारी अपनी खानों में खनन कार्य ना करें।

9. A perusal of both the orders makes it clear that on one hand, vide ad-interim order dated 01.03.2024, the learned trial court granted permission to the present defendant-appellant to do





mining activities in his mine No.136/1, Gunawati Range, Makrana and restrained the Mining Department from canceling the quarry license. On the other hand, vide impugned order dated 04.04.2024, the learned trial court held that unless boundaries are demarcated, it would not be just and proper to allow any licensee to do mining activities. Learned trial Court further directed to write a letter to the Mining Department to do demarcation of the boundaries of the Mines and till the demarcation work is done, the licensee of mines No.147, 146, 136/1 & 136/2 were restrained from doing mining activities in the said mines.

10. In view of the above, it is clear that while passing the order impugned, the defendant-appellant has also been restrained from doing mining activities whereas the learned trial court itself vide ad-interim order dated 01.03.2024 granted permission to the defendant-appellant to do mining activities. Even the mining Department has been restrained from canceling his quarry license. Thus, it is clear that not only the learned trial court has passed contradictory order but also passed ad-interim order over the ad-interim order passed by itself.

11. Thus, this Court finds that the impugned order passed by the learned trial court is wholly without application of mind. The learned trial court cannot stay the effect and operation of its own ad-interim injunction order in another proceeding pending before it.

12. Consequently, the present civil misc. appeal is allowed. The impugned order dated 04.04.2024 passed by learned Additional District Judge, Makrana, District Nagaur in Civil Misc. Case No.35/2024 is quashed and set aside.



13. A perusal of the record transpires that in both the suits (1) preferred by the appellant (2) preferred by the respondent, the applications under Order 39 Rule 1 & 2 CPC bearing No.16/2024 and 35/2024 respectively are still pending and only ad-interim orders have been passed. Therefore, learned trial court is directed to decide both the applications finally on or before 16.7.2024.

14. Till then, status quo, as it exists today, with respect to the mines in question shall be maintained.

15. Stay petition also stands disposed of accordingly.

16. A copy of this order be sent to learned trial court by E-mail or Fax.

(MADAN GOPAL VYAS),J

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