



Arb.Appeal.(MD)No.62 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 06.11.2025

Pronounced on : 17.12.2025

CORAM:

THE HONOURABLE MS.JUSTICE R.POORNIMA

Arb.Appeal.(MD)No.62 of 2025
and
C.M.P.(MD)No.14747 of 2025

- 1.Purushotam
- 2.R.Siranjeevi
- 3.Sri Venkateswara Blue Metals

Reg. No. Fr/periyakulam/103/2020,
Registered Office at :-
Settukadu, 18th Canal, Silamalai Post – 625528,
Bodinayakanur Taluk,
Theni District. Appellants/ Respondents 1 to 3

Vs.

1. Antony Joseph
2. Seethal Paul
3. Paul Sebastine
4. Rahul R.S., ... Respondents 1 to 4/Petitioners
5. Sibin Sebastine ... 5th Respondent/ 4th Respondent



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WEB COURT
PRAYER: Arbitration Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996, to set aside the order dated 30.07.2025 made in Arb.O.P.No.41 of 2025 on the file of Principal District Court, Theni and allow this Arbitration Appeal.

For Appellants : Mr.S.R.Rajagopal,
Senior Counsel
for Mr.D.Senthil

For Respondents : Mr.Alias M.Cherian – for R1 & R4
ex parte – R2, R3 & R5

JUDGMENT

The appellants have filed the Arbitration Appeal against the order dated 30.07.2025 passed in Arb.O.P.No.41 of 2025 by the Principal District Judge, Theni.

2. The Respondents 1 to 4 filed an Arbitration Petition in Arb.O.P.No.41 of 2025 under Section 9 of The Arbitration and Conciliation Act, 1996, on the file of the Principal District Judge, Theni. In an order dated 30.07.2025, the Principal District Judge has passed an interim order that the partnership property shall remain secured under lock and key, and further restrained both parties from making any



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attempt, directly or indirectly to alter or change the existing nature of the quarry or to interfere with the property in any manner prejudicial to the rights of either party or the subject matter of the proceedings. Against which the present Arbitration Appeal filed by the appellants/respondents 1 to 3 with the following among other grounds :

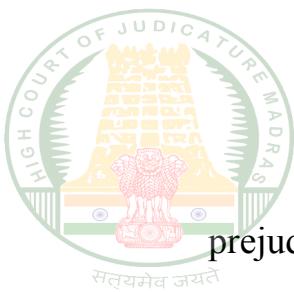
- a) That the Court below failed to consider that the Respondents initiated the proceedings for arbitration between the parties regarding the business transactions and in which order of the Court below maintains the premises under lock is unsustainable and the same is liable to be set aside.
- b) That the order of the Court below without any application and without any order and without any adverse remarks as against the Appellants by the competent Authorities passed an order under lock of the premises is unsustainable and the same is liable to be set aside.
- c) That the Court below failed to consider that Competent Authorities under the Mines and Minerals Act inspected the unit regularly and they have not issued any complaints against the Appellants and hence, the order of the Court below is liable to be set aside.
- d) That the main petition itself is not maintainable



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3. The learned counsel for the appellants during argument submitted that the Tribunal erred in exercising discretion under Section 9 of the Arbitration and Conciliation Act, 1996, in the absence of any clear demonstration by the Respondents 1 to 3/petitioners of a manifest intention to initiate arbitration proceedings. It is a settled principle that a party seeking interim relief under Section 9 must exhibit a *bona fide* and unequivocal intention to commence arbitration. The Courts have consistently held that failure to pursue arbitration within a reasonable time after obtaining interim relief renders such relief vulnerable to challenge. Moreover, the impugned order does not record any discussion or acknowledgement of the respondents' intention to arbitrate, which further undermines the validity of the relief granted.

4. It is further contended that the Tribunal failed to appreciate that Section 9 relief is ancillary to arbitration and cannot be treated as an independent remedy. Granting interim protection without ensuring compliance with the statutory requirement of initiating arbitration proceedings within a reasonable time defeats the legislative intent and amounts to misuse of the process of Law. The absence of such a safeguard in the impugned order has resulted in an inequitable situation



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prejudicial to the appellants.

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5. The learned counsel for the appellant further contended that the tribunal did not appreciate that the issuance of a Section 21 notice after the impugned order cannot retrospectively cure the defect of the absence of manifest intention to arbitrate at the time of filing the Section 9 application. The statutory requirement under Section 9 is that such intention must exist and be demonstrated contemporaneously with the application for interim relief.

6. The appellant relied on the Memorandum of Understanding dated 01.03.2024 executed between the appellants and respondents contain an arbitration clause, under clause (hh) at page 58 of the compilation, which reads as follows :

(hh) That the assets and liabilities of the said newly constituted Partnership Firm shall be divided and distributed in accordance with the terms and conditions recited in the newly constituted Partnership firm in the event of dissolution or termination and if any disputes arise at that while, that shall be resolved and settled through the process of arbitration and conciliation in accordance with the law of the land."



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7. Pursuant to the said Memorandum of Understanding, the third appellant, being a registered partnership firm, amended its Partnership Deed on 16.04.2024, incorporating the respondents as partners. Under the amended deed, the first and second appellants and the respondents agreed to share profits in the ratio of 50:50. Subsequently, the respondents, as applicants, who are carrying on competitive business, had preferred an Interlocutory Application in I.A.No.1 of 2025 seeking appointment of an Advocate Commissioner to inspect the properties described in the schedule of properties and also filed Arbitration O.P. No.41 of 2025 seeking an injunction restraining appellants 1 to 3 from conducting any quarrying operations including extracting of minerals from the petition 'A' schedule property and from operating the crusher unit situated in the petition 'B' schedule property.

8. He further argued that the Tribunal without appreciating that the clause in Partnership Deed does not provide for dissolution or termination of the partnership and that the present dispute does not arise from dissolution or termination but pertains to operational aspects of the partnership business. Therefore, invoking Section 9 jurisdiction without satisfying the precondition stipulated in the arbitration clause and



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issuance of notice under Section 21, amounts to misapplication of law and renders the impugned order unsustainable.

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9. He relied upon the following judgments reported in

(i) ***Cholamandalam Investment and Finance Company Limited Vs. Harkhabhai Amarshibhai Vaghadiya*** dated 16.02.2022 in Arb. Appeal. No.40 of 2022 on the file of this Court.

(ii) ***In Sundaram Finance Ltd., Vs. NEPC India Ltd.***, reported in **1999 (2) SCC 479.**

Hence, prayed to allow the appeal and set aside the impugned order.

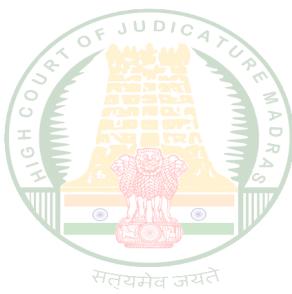
10. The learned counsel for the respondents in response to the argument advanced by the appellants contended that the appellants were conducting a quarry and crusher unit under a partnership. They invited the respondents to join as partners in their business. Accordingly, a Memorandum of Understanding dated 01.03.2024 was executed. As per the MOU, the respondents are required to contribute Rs.1,00,00,000/- (Rupees One Crore only) to the appellants for the 50% share. The parties have executed and registered a reconstituted deed of partnership dated 16.04.2024. As agreed, the respondents have also paid a sum of



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Rs.1,00,00,000/- to the appellants by bank transfer. Thereafter for installing machinery in the quarry, the respondents have paid an additional amount of Rs.30,00,000/- in cash to the appellants. As per the reconstituted deed of partnership, both parties have 50:50 shares. The business is to be run by the 4th respondent as the Managing Partner. But after receipt of the money, the appellants are not permitting the respondents to participate in the business, not paying any profit from the business and the respondents are totally kept away from the business.

11. He further contended that he came to know that the minerals are extracted from the quarry beyond the permitted limit, manner and quantity, in violation of the approved mining plan in the quarrying permit. Such illegally extracted minerals are sold without a pass being issued by the Mining and Geology Department. Such illegal extraction and sale are not accounted for anywhere in the firm and prohibited explosives are used for such illegal extraction against the conditions in the explosive license. Since the above acts are punishable offences with fine and imprisonment and with huge penalty may also be booked for such illegal acts and penalty.



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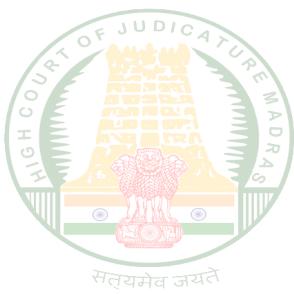
WEB CO 12. The respondents counsel further contended that the appellants are not disputing the reconstituted partnership deed dated 16.04.2024 and as per Clause 20 (b) of the reconstituted partnership deed contains a clause for referring all disputes between the parties for arbitration proceedings. Section 9 of the Act permits a party to approach a District Court for interim measures of protection, preservation, interim custody, sale of any goods etc., which is the subject matter of the Arbitral dispute and further states that Section 9 of the Act states that a petition can be filed at 3 stages:- 1) Before commencement of the arbitration proceedings. 2) During the arbitration proceedings. 3) After the arbitration proceedings.

13. He further contended that Section 21 of the Act defines that commencement of the arbitration proceedings is by issuing a notice by any of the parties, raising an arbitration dispute and appointing an arbitrator. Admittedly, the interim application filed by the respondents comes in the first category, since the respondents filed the petition before the District Court before commencement of the arbitration proceedings. The Court below appointed two Advocate Commissioners to conduct a local inspection in the subject property of quarry and crusher, after giving



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WEB COURT notice to the opposite side/appellants. When the Advocate Commissioner and the officers of the Mining and Geology Department and learned counsel for the respondents/petitioners reached the property for inspection, they were obstructed by the opposite side. This fact is illustrated in the interim report of the Advocate Commissioner by stating the above. Therefore, the Court directed the Advocate Commissioner to conduct a local inspection and file a report. The appellants/respondents gave consent that they are willing to an amicable settlement and seek time for the same. He further stated that the arbitral proceeding is to be commenced within a period of 90 days from the date of the order. However, the inspection could not be conducted as it was obstructed by the appellants. On 28.08.2025, the District Court passed a detailed order directing the advocate commissioner to conduct the inspection, granting police protection, and permission to break open the door. Therefore, the arbitral proceedings shall be commenced within 90 days from the date of that order. Accordingly, the respondents commenced the arbitral proceedings by issuing a notice dated 23.10.2025 by registered post and the same was received by the appellants on 06.11.2025 Hence, the grounds for appeal have no merit and they prayed to dismiss the appeal.

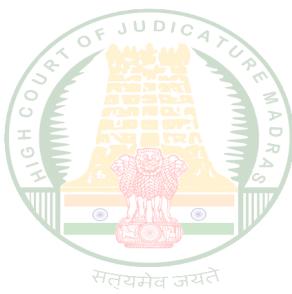


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14. Heard the learned counsel on either side and perused the material available on records.

WEB CO₁

15. There is no dispute about the fact that the appellants and respondents are partners under the reconstituted partnership deed dated 16.04.2024, which is a registered one. It is also not disputed that the respondents have made their contribution towards a 50% share. The respondents contend that the appellants have excluded them from their participation in the business and have denied them access to the partnership property. They further argued that the appellants excavated the quarry in excess of the permitted extent and transported huge quantities of minerals thereby exposing the firm and apprehending that the respondents, being a partner would be liable under the provisions of the Mines and Minerals Act, GST Law, and other Taxation Statutes. The appellants/respondents also further alleged that huge quantities of explosive substances are being used in the quarry beyond the permissible limit. The appellants further stated that unless the existing status of operation is immediately recorded, the rights and interests of the partners would be irreparably prejudiced.



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16. In view of the disputes, the respondents/petitioners filed an application under Order 26 Rule 9 of CPC before the District Court, Theni seeking appointment of an Advocate Commissioner to conduct an inspection in the petition, A to C schedule properties and to file a report.

17. Section 9 of the Arbitration and Conciliation Act deals with interim measures as follows:

“[(1)] A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any



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party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

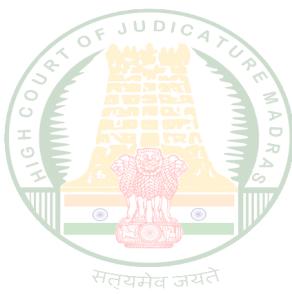
(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.] ”

18. Under section 9 of the above Act, any party to a valid arbitration agreement is entitled to seek interim measures to prevent apprehended violation and to protect the subject matter of the property in dispute.



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WEB CO¹⁹ 19. The trial Court after considering the petition and the counter and upon being after satisfied that prima facie material were available in the case and to secure and protect the passed an order on 17.07.2025, impleading the Director, Mines and Minerals and Controller of Explosive as 5th and 6th respondents and also appointed two Advocate Commissioners and directed them to conduct local inspection in the subject property including the quarry and crusher unit after giving due notice to the opposite party to prevent irreparable loss.

20. The Advocate Commissioner filed an interim report on 22.07.2025 stating that notice had been issued to the parties the date of inspection was fixed on 29.07.2025 and all necessary arrangements had been made to inspect the property. However, on the date of inspection when the Advocate Commissioner, respondents along with the other officials went to the subject matter of the property for inspection it was found that the property was fenced on all sides, and that the entrance gate was locked. Despite the intimation given by the Advocate Commissioner, the appellant informed that they would send a person to open the premises, made them wait for two hours ultimately refused to open the same. Therefore, the Advocate Commissioner filed an interim report by



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stating that the gates had been locked by the respondents with the intention of preventing inspection of the property and that as a result, the inspection could not be conducted. The advocate Commissioner, therefore sought police protection to break open the suit property. Therefore the matter was posted for consideration on 30.07.2025. On that day, appellant/respondent appeared but did not file their counter and sought an adjournment.

21. The learned trial Judge passed an order directing both parties to maintain the property in its present condition with the lock and key remaining as they were during the inspection under the custody of the respondents. Neither party, either directly or indirectly attempt to alter, change the existing nature of the quarry or interfere with the property in any manner, to prejudice the rights of either party. The matter was posted the matter for filing a counter on 07.08.2025.

22. This Appeal is filed against the said interim order passed by the Principal District Judge, Theni, dated 30.07.2025 in Ar.O.P.No. 41 of 2025. Originally the respondents approached the Court alleging that he was not being permitted to participate in the partnership business,



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and that the appellants was conducting the quarry in violation of law
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WEB CO₁ which the learn District Judge appointed an Advocate Commissioner to inspect the property and ascertain whether any damage or violation had been committed as alleged. The appellants has neither disclosed the dispute between the parties nor specifically denied the allegations but has filed the present appeal challenging the order of the trial Judge that the property be kept under lock and key. The appellants deliberately prevented the Court-appointed Commissioners from inspecting the property for obvious reasons. The appellants now contend that there was no manifest intention on the part of the respondents to initiate arbitration, and that the trial Court without satisfying itself regarding the absence of manifest intention erroneously entertained the application. He further stated that the respondents cannot invoke arbitration as there is no arbitration clause stipulating that disputes between the parties shall be referred to arbitration, at best, the respondents could only seek arbitration at the time of dissolution of the partnership.

23. Clause 20(b) of the Partnership deed dated 16.04.2024 clearly stipulates as follows :

***“(20) RIGHT TO SUE THE PARTNERSHIP FIRM
'M/S. SRI VENKATESWARA BLUE METALS:-***



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(b) That all disputes and questions in respect of this Partnership Firm, M/S.SRI VENKATESWARA BLUE METALS or this deed arising between the partners or between any one of them or their legal heirs, legal representatives and whether during this partnership or after this partnership shall be referred to the Arbitrator to be appointed with unanimous and mutual consent and concurrence of all the partners in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and relevant amendments of the Act then in force.”

24. The above clause clearly stipulates that all disputes and questions in respect of the partnership arising between the parties during the subsistence of partnership, or thereafter shall be referred to an arbitrator. However, the appellants have deliberately avoided referring to this clause and instead relied upon another clause to contend that the petition itself is not maintainable and the parties have no right to refer the disputes before arbitration.

25. Further, the respondents in paragraph No.44 of the affidavit filed before the trial Court has clearly stated that a serious dispute has arisen between the partners of the firm with respect to its management that the same are required to be resolved through arbitration



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and the respondents/petitioners have taken steps to commence the arbitration proceedings in accordance with law.

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26. In paragraph No.45, it is clearly stated that the subject matter of the partnership property would be damaged or destroyed by the respondents 1 and 2. The respondents 1 and 2 are totally mismanaging the property and business of the firm, they are illegally extracting a huge amount of minerals and without accounting for the same, sale is conducted. Huge income is generated by illegal mining, its sale and funds are misappropriated. The said Act would invite legal and penal actions from various departments and authorities. In such events, the petitioners being the partners of the 3rd respondent firm would be equally liable for the penal action and penalty. Hence, it is highly necessary that the subject matter of the dispute and its property are to be preserved by restraining the respondents 1 to 3 from conducting the quarry.

27. Therefore, it cannot be said that there is no manifest intention to enter into arbitral proceedings. The respondents have clearly demonstrated a manifest intention to initiate arbitral proceedings and filed the interim measures petitions before the commencement of the



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arbitration proceedings.

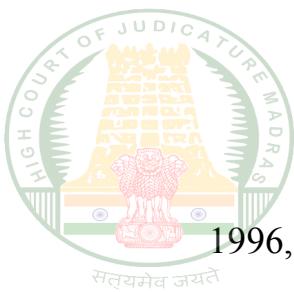
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28. The judgments relied upon by the parties are distinguishable as the facts and circumstances of those cases are entirely different. Accordingly, this Court is of the opinion that the order passed by the Tribunal is proper and does not warrant any interference.

29. Further, the Court did not grant any immediate relief as prayed for in the petition. Only in order to ascertain the present position, the Court appointed an Advocate Commissioner, however, the appellants/respondents did not cooperate with the said process. Thereafter, upon notice, the Court directed the parties to keep the premises locked and sealed and ordered them to maintain the status quo. This Court does not find any illegality in the order.

30. As per section Section 21 of the Act defines that arbitral proceedings commence on the date on which a request for the dispute to be referred to arbitration is made by the respondents.

31. Section 9 (2) of the Arbitration and Conciliation Act,

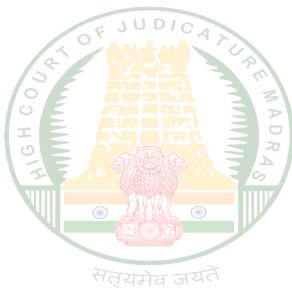


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1996, clearly stipulates that where a Court grants any interim measures of protection under subsection (1) before the commencement of arbitral proceedings, arbitral proceedings shall be commenced within a period of 90 days from the date of such order or within such further time as the Court may determine.

32. In this case, the learned judge passed an order on 28.08.2025 and specifically directed the parties to commence the arbitral proceedings within 90 days from the date of such order. The respondent issued notice on 23.10.2025, within the period prescribed by the learned judge in the order, it cannot be said that the notice was issued after a lapse of 90 days.

33. This Court observed that the learned counsel appearing for the appellants appeared before the trial Court on 11.09.2025 and undertook to render their fullest assistance and also willing for an amicable settlement. Therefore, at present as per the counsel, the commissioner already inspected the property and the matter is pending for consideration before the arbitration.



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34. In view of the foregoing discussion, the Arbitration Appeal is liable to be dismissed.

35. In the result, this Arbitration Appeal is dismissed and the order dated 30.07.2025 passed in Arb.O.P.No.41 of 2025 on the file of Principal District Court, Theni, is hereby confirmed. No costs. Consequently, the connected Miscellaneous Petition is closed.

17.12.2025

Index : Yes / No
NCC : Yes / No

RM

To

1. The Principal District Court,
Theni.

Copy to

1. The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.

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R.POORNIMA, J.

RM

Judgment in

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22/22