Timblo Mineral Private Limited Vs Hardesh Ores Private Limited, Sociedade De Fomento Industrial Private Limited and Shri Ramakant Rajaram Painguinkar

Court: Bombay High Court (Goa Bench)

Date of Decision: Sept. 5, 2003

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3 Specific Relief Act, 1963 â€" Section 38(3)

Hon'ble Judges: R.J. Kochar, J

Bench: Single Bench

Advocate: V.A. Bobde, M.S. Sonak and Pooja Bharne, for the Appellant; B.R. Zaiwalla and Sudesh Usgaokar, for respondent No. 1, M.S. Usgaokar and Sudesh Usgaokar, for respondent No. 2, A.N.S. Nadkarni, General, N.A. Takekar and D. Lawande, for the Respondent

Final Decision: Allowed

Judgement

R.J. Kochar, J.
Appeal is admitted and by consent of the parties, heard finally.

2. The appellants are the original plaintiffs, who are aggrieved by the impugned Order passed by the learned Trial Court on 2nd August, 2003,

vacating the ex-parte injunction order and refusing to confirm the same in their favour in the application for temporary injunction under Order 39

Rules 1, 2 and 3 of the Civil Procedure Code, which thereby stood dismissed.

3. Considering the volume of the paper book, I thought it proper to hear the Appeal From Order finally instead of hearing the same for interim

orders, to avoid wasting of valuable time of the Court, as generally in such contentious litigation both the sides do take the Court through the entire

proceedings. I have, therefore, heard the learned counsel on both the sides extensively and both have taken me through the voluminous documents

and have indeed made exhaustive submissions to the best of their ability. Both the sides have also cited an umpteen number of judgments to

buttress their respective view points in the matter. Both the sides have made their submissions as if I would be deciding the whole suit finally.

4. Parties would be described by me as the plaintiffs and the defendants in the original proceedings, for the sake of convenience.

5. The facts and the controversy between the parties can be briefly narrated as below and to the extent of relevance, to decide the issue of grant of

temporary injunction to the plaintiffs during the pendency of the suit and until its final disposal. I have, therefore, thought it proper not to delve deep

in the mine of the parties to excavate the irrelevant iron ore of facts as done on both the sides and, in particular, the defendant no.1.

There is no dispute that the defendant no.3 is the owner of the mine. There is also no dispute that the plaintiffs no.1 have a written contract with the

defendant no.3 signed on 16th June, 2003, to carry out the work of raising and extracting the ore from the suit mine of the defendant no.3. There is

also no dispute that earlier there was a written contract for the same purpose of raising and extracting the ore from the suit mine between the

defendant no.1 and the defendant no.3 and an agreement to sell the raised ore between the defendant no.2 and the defendant no.3. The first of

such Agreements was entered into between the parties on 17th December, 1984 and it was initially for a period of nine years to be renewed for

another span of nine years duration or such lesser period. The option to renew was left to the defendant no.1, on the same terms and conditions.

This Agreement was to expire on 16th December, 1993, as per its Clause 1. The Agreement stipulated several other terms and conditions

including a stipulation that:

The First Party solemnly declared that at the commencement of this Agreement there does not exist any contract with anyone else for raising and

transporting ore from the said Mining Concession and agrees that during the tenure of this agreement it will not appoint any other contractor for

raising and/or transporting ore from the said Mining Concession and the Second Party shall be the sole and the only contractor for raising,

transporting and weighing ore from the said Mining Concession during the period of this agreement.

This Clause should be read with Clause 1, which is as under:-

1. This Agreement shall come into force on the 17th day of December, 1984 and shall remain in force for a period of 9 (nine) years upto 16th

December 1993, with option to the Second Party to renew the same for further any number of such periods of equal or less duration on the same

terms and conditions.

6. There is also no serious dispute that the defendant no.1 has not specifically exercised its option to renew the Agreement for nine years from

December, 1993, or for any duration. There is also no serious dispute that thereafter both the parties carried on and continued the work annually

upto 31st December, 2002 and thereafter monthly upto 31st May, 2003, with a small variation or rise in the amount of royalty payable by the

defendant no.1.

7. Shri Vinod Bobde, the learned Senior Counsel for the plaintiffs and Shri A.N.S. Nadkarni, the learned Advocate General for the private party,

defendant no.3, both have assailed the impugned Order with equal vehemence. Both have severely criticised the approach of the Trial Court in

deciding the temporary injunction application. According to them, there was no specific written renewal of the 1984 Agreement for nine years and

thereafter for nine years again. Both have submitted that the defendant no.1 never exercised in writing and expressly the option to renew the 1984

Agreement though the working arrangement continued annually and monthly. Shri Nadkarni pointed out that the vouchers were prepared by the

defendant no.1 and he mentioned whatever he wanted and that his client signed the same as he was in dire need of money for the treatment of his

son who was suffering from the dreaded disease of cancer. He submitted that no inference of renewal of a written contract can be drawn from

such weak and fortuitous circumstances and that there was nothing on record to get an express exercise of the option to renew the 1984

Agreement upto 2011 as contended.

8. Shri Bobde, the learned Senior Counsel further criticised the Order of the Trial Court for holding that the defendant no.1 was in ""lawful

possession"" of the mine, as in fact he was only allowed to enter the mine for the purpose of raising the ore and, in fact, defendant no.3, the owner,

had never given to the defendant no. exclusive possession of the mine, but a licence to carry out the term of the Agreement. His entry cannot be

called his possession of the mine says Shri Nadkarni. He further submits that his client was lawfully justified in entering into a fresh agreement with

the plaintiff no.1 and that there was no bar under the 1984 Agreement which stood expired in 1993 and what arrangement continued between

them was not an Agreement, but an ad-hoc arrangement annual and monthly. The bar under Clause 15 had come to an end in 1993 itself. Shri

Nadkarni further submitted that the status of the defendant no.1 was that of a Contractor under the Agreement and, therefore, the Contractor

cannot prevent the Principal from doing the activity himself. The right of such a Contractor at the most can be to file a suit for damages and nothing

more for breach of the Agreement as alleged. Both the learned counsel have relied on the following authorities in support of their submissions:-

1. Associated Hotels of India Ltd. Vs. R.N. Kapoor, ,

2. The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc., ,

3. Chikkam Koreswara Rao Vs. Chikkam SubbaRao and Others, ,

4. The State of West Bengal Vs. Shebaits of Iswar Sri Saradia Thakurani and Others, ,

5. American Dyanamid Co. vs. Ethicon Ltd. 1975 (1) All ER 504,

6. Industrial Supplies Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, ,

7. Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, ,

8. Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana

and Another, , and

9. Geetabala Manohar Naik Parulekar vs. Salgaocar Mining Industries Ltd. & Ors. (Appeal From Order No. 40 of 1993 decided on 30th

September, 1996).

There are a few vouchers or receipts for payments made by defendant no.1 to the defendant no.3 and there is some other correspondence

between the parties on the basis of which the learned Senior Counsel, Shri Zaiwalla, has very vehemently submitted that we should infer from these

facts and the letters that by implication the agreement was renewed for the second term of nine years upto December, 2002 and thereafter upto

December 2011. According to the learned counsel, these are the established circumstances to draw an inference of renewal of the First Agreement

for the subsequent two terms of nine years each, upto 2011 and, therefore, according to him, the defendant no. 3 had no right to enter into any

agreement with the plaintiff no.1 for the purpose of raising ore from the suit mine. Shri Zaiwalla, therefore, justified the act of his client to obstruct

the entry of the plaintiffs on the suit mine, which was in the ""lawful possession"" of the defendant no.1 under the impliedly extended or renewed

Agreement. He has, therefore, vehemently justified all the actions taken by the defendant no.1 to prevent the entry of the plaintiff no.1 in the suit

mine under the garb of the Agreement dated 16th June, 2003, with the defendant no.3. He pointed out from the vouchers signed by the defendant

no.3 and other documents that by implication the Agreement of 1984 stood implicitly renewed for the third term of nine years, upto 2011 and,

therefore, according to him, the alleged Agreement between the plaintiff no.1 and the defendant no.3 is in breach of the ""existing"" Agreement. He

has, therefore, vehemently supported the impugned Order passed by the Trial Court. The learned counsel has cited the following authorities,

including extracts from the learned Authors Pollock and Mulla on Indian Contract and Specific Relief Acts and Lord Denning ""The Closing

Chapter"":-

1. Kishori Lal Vs. Mst. Chaltibai, ,

2. Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others, ,

3. Gardner vs. Blaxill & Anr. (1960) 2 All ER 457,

4. London Borough of Hounslow v. Twickenham Garden Developments Ltd. (1970)3 All ER 326,

5. R. Kempraj Vs. Barton Son and Co., ,

6. Panjuman Hassomal Advani Vs. Harpal Singh Abnashi Singh Sawhney and Others, ,

7. Ram Bilas Ojha and Others Vs. Bishwa Muni and Others, ,

8. Wander Ltd. & Anr. vs. Antox India P. Ltd. 1990 (Supp) SC 727,

9. Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others, ,

10. Pullock & Mulla on Indian Contract and Specific Relief Acts, Twelfth Edition, 1, pg. 23,

11. The Closing Chapter, by the Rt. Hon. Lord Denning, pg. 258.

9. Shri Usgaokar, learned Senior Counsel appearing for the respondent no.2/defendant no.2, has briefly submitted that the suit itself was not

maintainable and, therefore, there was no case for interim relief to be granted to the plaintiffs. According to learned Senior Counsel, if the suit itself

is not maintainable, there is no question of granting any interim orders to the plaintiffs. He has relied on a Judgment of the Supreme Court in

support of the said proposition of law in the case of Cotton Corporation of India Limited Vs. United Industrial Bank Limited and Others, . He

further submits that since there was no relief against the defendant no.3, it was a case of mis-joinder of a party. The defendant no.3 ought not to

have been joined in the suit and there was no cause of action which arose for the plaintiffs against the defendant no.3 to have filed the present suit

against the defendant no.3. He relied on Section 38(3) of the Specific Relief Act, 1963, to buttress his aforesaid submission. Shri Usgaokar further

tried to submit that the Agreements entered into by the defendant no.1 and the defendant no.2 with the defendant no.3 were composite agreements

and were mutually interdependent. Shri Usgaokar pointed out that the Agreement between the defendant no.3 and the defendant no.1 was for

raising and extracting of the iron ore from the mine owned by the defendant no.3 and thereafter the defendant no.2 stepped on scene as the

defendant no.3 had entered into another Agreement with the defendant no.2 for sale of the said iron ore extracted by the defendant no.1 from the

mine of the defendant no.3. Shri Usgaokar, therefore, termed both these agreements as composite agreements or transactions. He also submits

that the defendant no. 1 and the defendant no.2 are sister concerns. He admits the position that the Managing Director of the defendant no.2 is the

main decision-taking authority for both the sister concerns. He submits that the renewal of the Agreements was annual, but it coincided with the

expiry of the nine years in each span of the Agreement. According to Shri Usgaokar, therefore, a legitimate inference can be drawn that the said

composite Agreements were renewed from 1993 upto 2002 and thereafter from 2002 to 2011. The annual renewal of the Agreements thus

completes the period of nine years in each case, submits the learned Senior Counsel. Shri Usgaokar further submitted that by a letter dated 5th

April, 1999 (page 255), the defendant no.3 requested the Managing Director of defendant no.2 to discuss the future extraction of ore contract.

According to the learned Senior Counsel this, itself, reflects that the contract was renewed and was continued. Shri Usgaokar questioned the bona

fides of the plaintiffs in approaching the Court by not pointing out certain facts in respect of the Agreement between the plaintiffs and the defendant

no.3 for raising of the iron ore from the mine. Shri Usgaokar has also relied on a letter dated 16th April, 2003 (page 201) to show that the contract

was renewed from lst January, 1994 to 31st December, 2002. I may deal with the submissions of Shri Usgaokar at this stage itself, as I do not find

any substance in his submissions and the same can be disposed of here itself. As far as the question of maintainability of the suit is concerned, the

same will be tried by the learned Judge of the Trial Court. It is however, pertinent to note that the issue of maintainability of the suit was not at all

pressed before the Trial Court, but both the parties proceeded on the basis that the suit was maintainable and, therefore, the issue of interim relief

was considered by the learned trial Judge. It is, therefore, too late for the learned Senior Counsel to argue that the suit itself was not maintainable.

The question of renewal of the agreement is being dealt with by me at a later point of time. Merely because the dates and years of the continuation

of the Agreement every year coincide with the expiry of nine years, it cannot be accepted that there was renewal of the 1984 Agreement for a

period of nine years from 1993 to 2002 and thereafter, for another duration of nine years. It is clear from the documents that every year the parties

were continuing the transactions on ad-hoc basis. There is no merit in the submission of Shri Usgaokar that the defendant no.3 had written a letter

on 5th April, 1999 to the defendant no.2 for discussion of the future extraction of ore contract to suggest that there was a renewal of the existing

Agreement. This letter is very clear that the defendant no.3 sought appointment with the Managing Director of defendant no.2, who was the main

person functioning for defendant nos.1 and 2 and the defendant no.3 wanted to discuss the future contract. If there was a so-called renewal of the

Agreement from 1993 to 2002, in that case there was no question of defendant no.3 seeking an appointment with the defendant no.2 for

discussion of the contract and, further, in that case, the Managing Director would have promptly said that there is no question of discussion in

respect of the renewal of the contract. I, therefore, do not find an iota of substance or merit in the submissions of Shri Usgaokar.

NOW I WILL DEAL WITH THE POINTS RAISED BY THE LEARNED COUNSEL FOR THE PLAINTIFFS AND THE DEFENDANT

NOS.1 AND 3.

10. I have considered the whole matter and the material before me. I have also considered the submissions of the learned counsel on both the

sides. I have carefully gone through the impugned Order passed by the learned Judge of the Trial Court refusing finally to grant temporary

injunction to the plaintiffs against the actions of the defendant no.1 in obstructing the plaintiffs in their work on the mines under their subsisting

written contract dated 16th June, 2003 and in terminating the Manager and other staff of the defendant no.3 in the mine. The facts which have

floated on the surface finally are that the 1984 Agreement has not been expressly and specifically renewed by and between the parties as

admittedly the defendant no.1 had never exercised his option under Clause 1 of the Agreement in writing to communicate to the defendant no.3 to

renew the Agreement for the further period of nine years from 1993 to 2002. After the expiry of the first span of nine years, the year-to-year ad-

hoc arrangement appears to have continued. There is no documentary evidence that the defendant no.1 exercised his option to renew the

Agreement for a fresh period of nine years. A written contract or Agreement has to be renewed as provided in the Agreement in writing, expressly

and specifically. Continuation of the work for the subsequent period on the basis of oral understanding cannot be a substitute for an express written

contract of renewal. Alleged oral renewal of the said Agreement is certainly not contemplated by the parties to the written Agreement. Neither

payment vouchers for the subsequent period, nor any other planted letters to create evidence of the so-called renewal of the Agreement can take

place of a written express Agreement. From the said vouchers and the letters it clearly appears that the defendant no.1 is attempting to create

record of renewal of the Agreement retrospectively. The reading of this material is clear to infer that the defendant no.1 is trying to take advantage

of the precarious spot in which the defendant no.3 is caught on account of his son, who is a cancer patient and the defendant no.3 signed some

payment vouchers wherein the defendant no.1 acting smartly grafted a deliberate language of renewal of the Agreement for the second term and

the third term of nine years each. This does not appear to be a normal behaviour in any genuine transaction between the parties. Besides, neither

these vouchers, nor the letters pertain to the period prior to the expiry of the Agreement or soon thereafter. Any genuine and prudent businessman

would place on record his intention to either renew or not to renew the Agreement. It is, therefore, very difficult for this Court to hold that there

was an oral renewal of the written Agreement of 1984 after its expiry in 1993. What was continued was ad-hoc working arrangement between the

parties. The defendant no.1 would have to step in the witness box and swear on oath that the parties had orally renewed the 1984 written

Agreement. The trial is yet to begin and, therefore, no firm conclusion, nor even inference can be drawn at this interlocutory stage that the 1984

Agreement was renewed for the two next spans of nine years each upto December 2011. Such inference would be hazardous for this Court to

venture in the absence of any cogent material. The vouchers and the letters addressed by the defendant no.1 cannot make me infer that there was a

genuine and bonafide transaction of renewal of the 1984 Agreement between the defendant no.1 and the defendant no.3. This material appears to

be motivated and created for the purpose of future use in case of need and that is what the defendant no.1 is presently doing. These documents

cannot be circumstances to infer even remotely that the 1984 Agreement was renewed in terms of its Clause 1. I, therefore, hold that there is no

subsisting Agreement between the parties as contemplated in Clause 1 of the 1984 Agreement which stood expired in December, 1993. It is also

pertinent to note that the so-called documents on the basis of which the whole structure of renewal is tried to be put up pertain to the period from

27th April, 2002, 14th June, 2002, 10th December, 2002 and 16th April, 2003. These vouchers alone talk of ""'renewal"" of the Agreement. It is

further more pertinent to note that the Credit Note dated 31st March, 1999, which was signed by the defendant no.3 on 16th April, 2003, does

not talk of renewal. This clearly indicates that the so-called renewal theory was a very clever afterthought of the defendant no.1 to take deceitful

advantage of the situation in which the defendant no.3 was caught. As late as on 5th December, 2002, for the first time the defendant no.1 wrote a

letter to exercise its option to renew the 1984 Agreement. Had there been any contemporary evidence of renewal, even a letter from the defendant

no.1 to the defendant no.3 intending to exercise the option to renew the 1984 Agreement, soon before or after the expiry of the Agreement, that

would have certainly made a great difference. Presently, we only have a verbally strong submission in support of a very weak inference to be

drawn in favour of the defendant no.1 on the basis of the circumstances that there are some vouchers and letters of a much subsequent period of

December 2002 or so. At this stage, they cannot be treated or elevated to the stage of an express written agreement of renewal inspite of the

accepted fact that a loose working ad-hoc arrangement between the parties continued year after year. Even this annual continuation of the

arrangement militates against the case of the defendant no.1 that there was implicit or implied renewal of the 1984 Agreement for the spans of nine

years each upto 2011. Had there been so, there was no necessity of annual working arrangement between the parties and such ad-hoc working

arrangement does not create any substantive right to be legally enforced by the defendant no.1 against the defendant no.3. The loud contention of

the defendant no.1 that the 1984 Agreement was renewed for two terms of nine years each, upto 2011 falls to the ground and is demolished by

their own Agreement dated 2nd March, 1999, which is a raising contract termed as ""Agreement-cum-Memorandum of Understanding"" (page 88),

to be in force upto 22nd February, 2000. If the 1984 Agreement was renewed for two terms of nine years each, i.e. upto 2002 and 2011, in that

case it was not at all necessary to enter into the Agreement dated 2nd March, 1999, upto 22nd February, 2000, as the renewed agreement was

already subsisting during that period. This agreement clearly falsifies the case of the defendant no.1 and defendant no.2 that the 1984 Agreement

was renewed and was in force upto 2011. They have tried to mislead the Court, to say the least. This is a very strong circumstance which militates

against their theory of renewal of the Agreement upto 2011.

11. As against the aforesaid case of circumstantial inference of renewal of agreement upto 2011, we have a subsisting written agreement signed

and executed by the plaintiffs and the defendant no.3 creating substantive contractual rights in favour of the plaintiffs and obligations between the

parties. The said subsisting written agreement is not only not in dispute, but that itself is under challenge. This Agreement is executed by the

defendant no.3 in favour of the plaintiffs not during the subsistence of the 1984 Agreement, which stood expired in 1993 and there is no subsisting

Agreement between the defendant no.1 and the defendant no.3 on the date when the present Agreement dated 16th June, 2003, was signed in

favour of the plaintiffs.

12. We, therefore, have two clear positions which have emerged in this matter at the stage of consideration of grant of temporary injunctions under

Order 39 Rules 1, 2 and 3 of the Civil Procedure Code. We have to choose between the two. One is an inference of renewal of the 1984

Agreement for nine years period each, twice upto 2011, on the basis of a vague and weak plea of oral renewal supported by vouchers and letters

of much subsequent period of 2002 or so and the contents of the vouchers are not normal and in the ordinary course of the business such vouchers

would not contain other matter, except a mere receipt of the amount and the purpose for payment. These so-called documents will have to be

tested to prove the contents except the payment part thereof which has been admitted by the defendant no.3. At this stage, these documents do

not create any substantive contractual rights and obligations in favour of the defendant no.1. It is only a matter of inference of a subsisting contract

and not an express valid written contract between the defendant no.1 and the defendant no.3. As against this, we have a crystallized contractual

right in favour of the plaintiffs in the form of a valid written subsisting contract dated 16th June, 2003, which cannot be ignored. The oral and

inferential circumstances cannot take the place of the valid written Agreements between the defendant no.3 and the plaintiffs. At least at this stage,

we must accept the rights of the plaintiffs and the defendant no.3 arising from the subsisting Agreement dated 16th June, 2003 in preference to the

inferential oral renewal of the 1984 Agreement, said to be subsisting upto 2011, for which we have no legal and cogent basis.

13. The learned Trial Court has not considered the matter properly and in correct perspective and, therefore it reached an erroneous conclusion to

cause serious injury to the contractual rights of the plaintiffs and defendant no.3. The learned trial Judge has failed to consider two simple factors to

decide a strong prima facie case and the balance of convenience. There was no option before him except to decide the rights of the parties

founded in the written Agreement. Instead, he ventured into the process of excavating the so-called oral Agreement to renew the written

Agreement of 1984 on the basis of the so-called vouchers and letters of a much subsequent period. It was not at all necessary and relevant at this

stage for the learned Judge to have drawn himself in the uncalled for controversy as to who is the owner, or who is the occupier. These issues

would, perhaps, arise at the final stage of the trial. Even on that issue, the learned Judge has erred in holding that the defendant no.1 was the owner

of the mine, which conclusion is contrary to the 1984 Agreement. There cannot be any dispute that the defendant no.3 is the lawful owner of the

mine and he is in jural and lawful possession of the mine and the right of the defendant no.1 was only that of a licensee to carry out the terms of the

contract to raise the ore from the mine and leave after the duration of the contract. If he were to be the owner, there was no question of any

contract to raise the ore from the mine under the Agreement. On account of legal fiction he cannot become the real owner of the mine in lawful

possession. The learned Judge has, therefore, erred in holding that the plaintiffs miserably failed to prove their prima facie case. Indeed, they have a

very strong and sound prima facie case in their favour and even the balance of convenience based on the written subsisting agreement is in their

favour. The defendant nos.1 and 2 have no right to cause obstruction in their working, much less any right to terminate the staff of the defendant

no.3.

14. I have already mentioned earlier that the learned counsel on both the sides have cited umpteen number of rulings enlisted hereinabove as if I

was hearing the suit finally. I have decided the Appeal From Order which was only on interlocutory order, on the basis of the material placed

before me. From the peculiar facts and circumstances it was not necessary for me to discuss all these rulings only to burden the Judgment. I have

tried to spin the facts to come to a logical conclusion at this prima facie stage of the matter.

15. The impugned Order, therefore, is quashed and set aside. Interim order in terms of Clause (A) as reproduced hereunder is granted:-

A) Pass an order restraining the Defendants No.1 and 2, their agents, servants, workers, labourers or any other persons etc. acting through

and/or on behalf of them from entering into the suit mine (i.e. Chiraband E Vall Mine) and obstructing or interfering with the applicants/plaintiffs

performance of contracts/agreements dated 16.06.2003 and from in any manner obstructing, interfering or stopping the applicants/plaintiffs or their

contractors, agents, servants, employees, workers, labourers and machineries equipments/tools, etc. from entering into and going out of the suit

mine and from in any manner interfering, obstructing or stopping the applicants/plaintiffs, their contractors, agents, servants, employees, workers,

labourers, etc. from doing the work of extraction, raising, processing, handling, transportation of ore, etc. and from selling the ore extracted

therefrom (suit mine) or from carrying out any mining operations and any activities incidental, ancillary and connected thereto or from obstructing,

interfering into the possession of the applicants/plaintiffs over the suit mine.

16. In view of the above Order passed by me the Cross-objections filed by the defendant no.3 are allowed.

17. The Appeal From Order is allowed with costs to be paid by the defendant no.1, quantified at Rs.25,000/- (rupees twenty five thousand only)

to the defendant no.3.