

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Miscellaneous Appeal No.404 of 2015

JUDGMENT:

This appeal under Order 43 Rule 1 of the Code of Civil Procedure ('the Code', for short) by the defendant is directed against the order dated 17.04.2015 granted by the II Additional Chief Judge, City Civil Court, Hyderabad in I.A.No.688 of 2015 in O.S.No.237 of 2015 filed by the plaintiff/respondent herein.

2. The parties in this appeal are hereinafter referred to as 'the appellant/defendant' and 'the respondent/plaintiff', for convenience and clarity.

3. I have heard the submissions of the learned counsel for the appellant/defendant and the learned senior counsel for the respondent/plaintiff. I have perused the material record.

4. The introductory facts, in brief, are as follows:

The plaintiff, who is the respondent herein, brought a suit against the defendant/appellant for declaring the report dated 01.01.2015 prepared by the defendant's committee as null and void and restrain the defendant from allotting the work of construction of private railway siding for the proposed 3.0 MTPA integrated steel plant at Nagarnar, Chattisgarh State to any other bidder illegally and for costs. In the pleadings, the plaintiff had inter alia urged that the defendant had issued a tender notification dated 26.03.2014 inviting tenders from eligible contractors for the above said work and that the plaintiff had submitted its bid with all the required documents and that some other bidders had also submitted their bids and that the bidders have to first qualify in the technical eligibility criteria and thereafter, in the price bid criteria and that the technical bid was opened on 12.05.2014 and that certain objections were raised for the defendant's technical eligibility criteria, which

is the first requirement to qualify, and that the plaintiff had clarified the mistake in regard to a date which is a typographical error in a TDS certificate and that a team appointed by the defendant gave a report dated 01.01.2015 against the true facts and the interests of the plaintiff and that the defendant had taken a decision to disqualify the technical bid of the plaintiff and that therefore, the plaintiff is constrained to file the suit questioning the afore stated report, which is an apparent falsehood. In the said suit, the plaintiff had also filed the aforementioned interlocutory application for grant of a temporary injunction restraining the defendant from allotting the above said work to any other bidder during the pendency of the suit. Without giving notice of the application to the defendant, the learned Additional Chief Judge of the trial Court had passed *ex parte* ad interim order of injunction in the above said Interlocutory Application. Aggrieved of the said orders, the defendant had preferred this Civil Miscellaneous Appeal.

5. The learned counsel for the appellant/defendant would contend as follows: 'The *ex parte* ad interim injunction order granted by the trial Court is illegal, void and *non est* in the eye of law. The learned Judge of the trial Court did not follow the settled legal position while granting the *ex parte* order of interim injunction. The trial Court ought to have directed a notice to the appellant/defendant before granting injunction as the case is not a case, where the object of granting injunction would be defeated by delay. The trial Court did not record any reasons, much less valid reasons, for its opinion that the object of granting injunction would be defeated by delay. Simply by stating that the record and documents filed are perused and by observing that the record discloses that in spite of plaintiff furnishing all the required documents for submitting its tender to the defendant, the defendant on untenable grounds had disqualified the technical bid of the plaintiff with an intention to allot the tender to some third party, the trial Court had further observed that under the circumstances, notice under Order 39 Rule 3 CPC is dispensed with and that interim injunction is granted restraining the respondent from allotting the schedule work to any other bidders. What are the documents that were filed and what are the details of the documents are

also not stated in the impugned order. The trial Court did not apply its mind is evident from the fact that though there is a reference to a writ petition, which was earlier filed and withdrawn, the trial court did not insist upon filing of a copy of the order in the said writ petition for its perusal before granting the order and that the trial court ignored the plaint averments which disclose that the defendant in the writ proceedings had contended that the defendants have not yet rejected the technical bid of the plaintiff and that the defendant is yet to take a decision and that therefore, the writ petition has become untenable as premature. Thus, in the impugned order the Court below had made an incorrect statement of fact and erroneously granted an order.'

6. On the other hand, the learned senior counsel for the respondent/plaintiff would contend as follows: 'The civil miscellaneous appeal assailing the *ex parte* ad interim order of injunction is not maintainable. There are no extraordinary circumstances or special circumstances in this case and therefore, the aggrieved defendant ought not to have preferred an appeal against an ad interim injunction order and ought to have applied to the trial Court under Order 39 Rule 4 of the Code to vary or set aside the order of interim injunction instead of preferring an appeal. The order of the Court below, which is impugned, though is a brief order, is a reasoned order and that the Court below had expressed its opinion for dispensing with the urgent notice and granting *ex parte* ad interim injunction. The trial Court had also directed in the orders compliance of order 39 Rule 3 (a) of the Code. Since no extraordinary or special circumstances exist and as the order cannot be said to be perverse or an unreasoned order and as this is not one of the exceptional or the rarest of rare cases, the appeal itself is not maintainable. The only course open to the appellant/ defendant is to approach the trial Court by filing an application under Order 39 Rule 4 for vacating or modifying/varying the orders, which are impugned.' A preliminary objection as to the maintainability of this miscellaneous appeal was raised and it was urged that this instant appeal is liable to be dismissed for the reason that the instant appeal was filed by the defendant against a copy of warrant of injunction/notice issued under Form 8 (of appendix 'F' of the CPC)

but, not against the interim order of *ex parte* injunction. In support of the contention, it was pointed out that along with the memorandum of this miscellaneous appeal, a copy of the warrant of injunction/notice under Form '8' served on the defendant is only filed, but, not a certified copy of the order passed by the court below.

7. I have bestowed my attention to the facts and I have noted the submissions. The preliminary point which requires consideration is in regard to the maintainability of the civil miscellaneous appeal as admittedly the certified copy or a copy of the order dated 17.04.2015 of the court below where under *ex parte* ad interim injunction was granted is not filed with the memorandum of appeal but, only a notice under Form '8' obviously served on the defendant was filed. It is to be noted that the certified copy of the impugned order was filed subsequently in this proceeding on 22.06.2015 along with a memo. Be that as it may, a reading of the memorandum of grounds of appeal filed under Order 43 Rule 1 of the Code would show that the appeal is presented only against the order dated 17.04.2015 of the trial court though the certified copy was filed on 22.06.2015, but not on the day the appeal was presented. Since the memorandum of appeal on a plain perusal discloses that the order assailed is the order dated 17.04.2015 and a certified copy of the said order was filed later into Court, the contention that the appeal is not presented against the impugned order cannot be countenanced. Therefore, the preliminary objection as to the maintainability of the appeal is accordingly overruled.

7.1 The next question that falls for consideration in this appeal is – 'whether the appeal against an ad interim injunction granted under Order 39 Rule 1 of the Code is maintainable?' The other question is – 'whether the order impugned is bereft of reasons and is contrary to the mandatory provision of Rule 3 of Order 39 of the Code?'

7.2 In the well considered view of this Court, the first question is no longer *res integra*. In the decision in **Bacharaj Singhvi v. Hastimal Kothari**^[1], a

Division Bench of this Court entertained the appeal against the order granting ad interim injunction under Order 39 Rule 1 of the Code. In the said cited decision, the order granted by the trial Court was as follows:

“Heard Shri Bankatlal Mandhana, Advocate. Perused the affidavit allegations. In view of the allegations I think urgent orders have to be passed. Interim injunction and notice by 13-6-1980. Complainant affidavit under O.39 R.3 (b) CPC has to be filed on 15-4-1980. Call on 15-4-1980.”

Having regard to the facts of the case and the provisions of law under Order 39 Rules 1 to 3 and the earlier decisions, this Court had held as follows:

“In view of this decision and also in the light of the earlier discussion, we are of the opinion that the order of the lower Court is not sustainable as it has not given any reasons. The order merely refers to the perusal of the allegations in the affidavit, which gave rise to the thought that urgent orders have to be passed. This, in our view, is not a sufficient compliance of Rule 3 of Order 39 C.P.C. The Rule requires the Court to record reasons for concluding that urgent orders are necessary before an *ex parte* injunction is issued. Mere perusal of the allegations in the affidavit and thinking that the issue of *ex parte* injunction is necessary in no way satisfies the mandatory requirement. The order needs to disclose on the face of it that the Court has applied its mind and having been convinced, has issued the *ex parte* interim injunction.”

In the decision in **Valluru Hemalatha v. Settipalli Panduranga Rao**^[2], the appeal against an order was preferred before this Court in AAO Nos. 2253 and 2254 of 2000 assailing the following order of the trial Court:

“Heard the learned counsel for petitioner and perused the documents filed with plaint and with memo. Issue urgent notices to the respondents and in the meanwhile, status quo to be maintained by the respondents. Post on 8-8-2000.”

It was contended before this court that the appeals before this Court are not maintainable. Having regard to the facts of that case and the legal position, this Court had held as follows:

“It is now well settled by a series of pronouncements of the Supreme Court as well as various High Courts that when a court grants an *ex parte* ad interim injunction dispensing with the requirement of notice under Rule 3 of Order 39 CPC, the Court granting such injunction order has to record its reasons for dispensing with the notice and if no reasons are recorded, such an order is unsustainable.”

“In the facts and circumstances of the case, we are convinced that in the absence of any reasons recorded by the Court below for

dispensing with the notice as required under Rule 3 of Order 39 CPC while granting the impugned order under appeals, the impugned orders are liable to be set aside on this ground alone. Accordingly, the orders dated 24-7-2000 passed by the Court below in IA Nos.704 and 705 of 2000 in O.S.No.295 of 2000 are set aside. Consequently, the matter is remitted to the Court below and the Court below shall pass appropriate orders in IA Nos.704 and 705 of 2000 on merits, after hearing the contesting respondents.”

In the decision in **Syed Shameer Makandar and others v. Syed Ahmed and others**^[3], a cryptic order was passed on 19.5.1999 by the trial Court directing the parties to maintain *status quo* as on that date. Such an order was passed while ordering notice on the petition for temporary injunction filed by the respondents/plaintiffs. In this cited case, the order, which was cryptic, is as follows:

“19-5-1999: Orders pronounced.

Perused the affidavit of the petitioner. Also perused the plaint. In the plaint the Government and Madanapalle Municipality are also defendants. Also perused the documents enclosed to the plaint.

Issue urgent notice to the respondents 1 to 5 through Court and RP by 31-5-1999.

In the meanwhile parties are directed to maintain status quo as on today.

Batta shall be paid within 3 days from today.”

That order was assailed before this Court on the ground that it is bereft of reasons and is contrary to the mandatory provisions of Rule 3 of Order 39 of the Code. This Court having allowed the CMA had set aside the order of the trial Court and directed to dispose of the petition for temporary injunction on merits after hearing both the parties as expeditiously as possible.

Further, in the decision in **Innovative Pharma Surgicals v. Pigeon Medical Devices (P) Ltd., Hyderabad**^[4], a Division Bench of this Court considered a similar question as to whether the appeal against an ad interim injunction granted under Order 39, Rule 1 of the Code is maintainable and Order 43, Rule 1 (r) CPC is applicable. In this cited case, a Division Bench of this Court had referred to the ratio in the decision in A.Venkatasubbaiah Naidu v. S.Chellappan [AIR 2000 SC 3032], as follows:

“16. Similarly, the Supreme Court had an occasion to deal with the subject and decide as to whether an appeal against an ad interim injunction is maintainable, in a judgment reported in [A.](#)

[Venkatasubbaiah Naidu v. S. Chellappan](#), in which the Supreme Court has held affirmatively. It is necessary to extract paragraph 19 of the said judgment:

"Under the normal circumstances the aggrieved party can prefer an appeal only against an order passed under Rules 1, 2, 2A, 4 or 10 of Order 39 of the Code in terms of Order 43, Rule 1 of the Code. He cannot approach the appellate or revisional Court during the pendency of the application for grant or vacation of temporary injunction. In such circumstances the party who does not get justice due to the inaction of the Court in following the mandate of law must have a remedy. So we are of the view that in a case where the mandate of Order 39, Rule 3A of the Code is flouted, the aggrieved party shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force. In such appeal, if preferred, the appellate Court shall be obliged to entertain the appeal and further to take note of the omission of the subordinate Court in complying with the provisions of Rule 3A. In appropriate cases the appellate Court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry in his ACRs. Failure to decide the application or vacate the ex-parte temporary injunction shall, for the purposes of the appeal, be deemed to be the final order passed on the application for temporary injunction, on the date of expiry of thirty days mentioned in the Rule."

Having referred to the above ratio, a Division Bench of this Court had further held as follows:

17. From a reading of the said judgment, it appears to our mind that it is only an extraordinary circumstance under which the aggrieved person can prefer an appeal against an ad interim injunction order. But, as a matter of course, the aggrieved person cannot approach the appellate or revisional Court during the pendency of the application for grant or vacation of temporary injunction. It was a case where an application to vacate an ad interim injunction was filed and as the said application to vacate the same, was not disposed of within the stipulated time under the provisions of Order 39, Rule 3A C.P.C., the parties therein approached the Appellate Court and in that context, the Supreme Court has held that an appeal is maintainable. But, however, it impliedly cautioned that in the normal course, the aggrieved party cannot approach the appellate or revisional Court during the pendency of the application for grant or vacation of temporary injunction. It is only when there is an inaction on the part of the Courts in following the mandate provisions, then only the aggrieved party can approach the Appellate Court.

18. So, it is clear that though an appeal is maintainable, such an appeal should be filed only in an extraordinary circumstance under which the party is able to explain as to why he prefers an appeal in the High Court instead of choosing to file a petition to vacate the ad interim injunction. Even in case of appeal against an ad interim injunction, the appellate Court will not be bound to apply its mind

to all the contentions, which the Original Court is bound to consider on the case shown by the party affected by ad interim order.

Further, in paragraph (22) of the judgment, it was held as follows:

22. In view of the divergence of judicial opinion, it may be necessary for this Court to examine carefully the principles upon which the different views mentioned above purport to be based and attempted as to the appeal against an ad interim injunction order. However, we are relieved from embarking on such enquiry in the instant case, as we are satisfied that as a matter of course, no appeal lies against an ad interim injunction order, except under any extraordinary circumstances as to the non-compliance of mandatory provisions or the rarest of the rare circumstances where the order is perverse or bias or lack of jurisdiction.

7.3 Keeping in view the settled legal position adverted to supra, this Court has to now deal with the factual aspect of this case for answering the two questions. It is necessary to refer first to the *ex parte ad interim* injunction order, which was granted by the trial Court. The said impugned order is as follows:

“Heard the learned counsel for the petitioner who has argued that the petitioner company engaged in the business of EPC contracts by executing railway siding projects including laying and linking of railway tracks and construction of bridges, etc and in view of the respondent issuing tender notice dated 26-3-2014 inviting tenders from eligible contractors for construction of private railway siding at Nagarnar of Chattisgarh State, the petitioner has submitted the bid along with relevant documents required by the respondent and in spite of the petitioner submitting all the information to its surprise, the respondent raised objections for which the petitioner clarified and the respondent found discrepancy of the date in respect of one of the TDS certificates and even if some discrepancy is there, the petitioner should not be found fault with and the respondent has visited premises of M/s.Jaypee Cement Corporation Limited with which the petitioner executed the work and came to know that the petitioner has completed the work and accordingly a certificate was issued and in spite of it the respondent has taken a decision to disqualify the bid of the petitioner and hence the petitioner filed the suit seeking the relief of declaration to declare the report of the respondent’s team dated 01-01-2015 is null and void and also this petition seeking the relief of temporary injunction restraining the respondent from allotting the schedule work to any other bidder during the pendency of the suit.

Perused the record and the documents filed by the petitioner and accordingly, it shows that inspite of the petitioner furnishing all the required documents for submitting its tender to the respondent, the respondent on untenable grounds has disqualified the technical bid of the petitioner with an intention to allot the tender to some third party and hence, under the circumstances notice under Order 39 Rule 3 CPC is dispensed with and interim injunction granted restraining the

respondent from allotting the schedule work to any other bidders. The petitioner shall comply Order 39 Rule 3(a) CPC. Notice to respondents by 30-04-2015.”

7.4 Now, it is apt to refer to Order 39 Rule 3 of the Code, which reads as follows:

Before granting injunction, court to direct notice to opposite party.-

The court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:

Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant—

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the Order granting the injunction has been made, a copy of the application for injunction together with—

(i) a copy of the affidavit filed in support of the application;

(ii) a copy of the plaint; and

(iii) copies of documents on which the applicant relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or Sent.

7.5 In the present context it is also necessary to refer to infra the precedential guidance in the three judge bench decision of the Supreme Court in **Shiv Kumar Chadha and others. v. Municipal Corporation of Delhi and others**^[5].

32. Power to grant injunction is an extra -ordinary power vested in the Court be exercised taking into consideration the facts and circumstances of a particular case. The Courts have to be more cautious when the said power is being exercised without notice or hearing the party who is to be affected by the order so passed. That is why Rule 3 of Order 39 of the Code requires that in all cases the Court shall, before grant of an injunction, direct notice of the application to be given to the opposite party, except where it appears that object of granting injunction itself would be defeated by delay. By the Civil Procedure Code (Amendment) Act, 1976, a proviso has been added to the said rule saying that "where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay...".

33. It has come to our notice that in spite of the aforesaid statutory requirement, the Courts have been passing orders of injunction before issuance of notices or hearing the parties against whom such orders are to operate without recording the reasons for passing such orders. It is said that if the reasons for grant of injunction are mentioned, a

grievance can be made by the other side that Court has prejudged the issues involved in the suit. According to as, this is a misconception about the nature and the scope of interim orders. It need not be pointed out that any opinion expressed in connection with an interlocutory application has no bearing and shall not affect any party, at the stage of the final adjudication. Apart from that now in view of the proviso to Rule 3 aforesaid, there is no scope for any argument. When the statute itself requires reasons to be recorded, the Court cannot ignore that requirement by saying that if reasons are recorded, it may amount to expressing an opinion in favour of the plaintiff before hearing the defendant.

34. The imperative nature of the proviso has to be judged in the context of Rule 3 of Order 39 the Code. Before the proviso aforesaid was introduced, Rule 3 said "the Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party". The proviso was introduced to provide a condition, where Court proposes to grant an injunction without giving notice of the application to the opposite party, being of the opinion that the object of granting injunction itself shall be defeated by delay. The condition so introduced is that the Court "shall record the reasons" why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex parte injunction, cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule 3, the procedure prescribed under the proviso has been followed. The party who invokes the jurisdiction of the Court for grant of an order of restraint against a party, without affording an opportunity to him of being heard, must satisfy the Court about the gravity of the situation and Court has to consider briefly these factors in the ex parte order. We are quite conscious of the fact that there are other statutes which contain similar provisions requiring the Court or the authority concerned to record reasons before exercising power vested in them. In respect of some of such provisions it has been held that they are required to be complied with but non-compliance thereof will not vitiate the order so passed. But same cannot be said in respect of the proviso to Rule 3 of Order 39. The Parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side, under exceptional circumstances. Such ex parte orders have far reaching effect, as such a condition has been imposed that Court must record reasons before passing such order. If it is held that the compliance of the proviso aforesaid is optional and not obligatory, then the introduction of the proviso by the Parliament shall be a futile exercise and part of Rule 3 will be a surplusage for all practical purpose. Proviso to Rule 3 of Order 39 of the Code, attracts the principle, that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not all. This principle was approved and accepted in well-known cases of *Taylor v. Taylor* (1875) 1 Ch.D. 426, *Nazir Ahmed v. Emperor*. this Court has also expressed the same view in respect of procedural requirement of the Bombay Tenancy and Agricultural Lands Act in the case of *Ramchandra Keshav Adke v. Govind Joti Chavare*: [1975]3SCR839.

35. As such whenever a Court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an ex parte order is not passed. But any such ex parte order should be in force up to particular date before which the plaintiff should be required to serve the notice on the defendant concerned. In the Supreme Court Practice 1993, Vol.1, at page 514, reference has been made to the views of the English Courts saying:

Ex parte injunctions are for cases of real urgency where there has been a true impossibility of giving notice of motion....

An ex parte injunction should generally be until a certain day, usually the next motion day....

36. Accordingly we direct that the application for interim injunction should be considered and disposed of in the following manner:

(i) The Court should first direct the plaintiff to serve a copy of the application with a copy of the plaint along with relevant documents on the counsel for the Corporation or any competent authority of the Corporation and the order should be passed only after hearing the parties.

(ii) If the circumstances of a case so warrant and where the Court is of the opinion, that the object of granting the injunction would be defeated by delay, the Court should record reasons for its opinion as required by proviso to Rule 3 of Order 39 of the Code, before passing an order for injunction. The Court must direct that such order shall operate only for a period of two weeks, during which notice along with copy of the application, plaint and relevant documents should be served on the competent authority or the counsel for the Corporation. Affidavit of service of notice should be filed as provided by proviso to Rule 3 of Order 39 aforesaid. If the Corporation has entered appearance, any such ex parte order of injunction should be extended only after hearing the counsel for the Corporation.

(iii) While passing an ex parte order of injunction the Court shall direct the plaintiff to give an undertaking that he will not make any further construction upon the premises till the application for injunction is finally heard and disposed of.

(emphasis by underscoring is supplied by this court)

As rightly urged, power to grant an injunction is an extraordinary power vested in the court and the same must be exercised having regard to the facts and circumstances of a particular case and it is also no doubt true that the courts have power to grant *ex parte* ad interim injunction in exceptional cases where it appears that the object of granting injunction would be defeated by the delay. The law is also well settled that recording of reasons is mandatory and an order granting *ex parte* ad interim injunction without recording

reasons is void. The order of the Court below does not show any reasons, which are recorded having regard to the facts of the case. A reading of the impugned order as extracted above discloses that the Court below has not recorded any reasons, much less valid reasons, for dispensing with the requirement of notice under Rule 3 of Order 39 of the Code and did not even state that it appears that the object of granting injunction would be defeated by the delay, if notice is directed to be served on the opposite party. A mere statement in the impugned order that the record and documents filed are perused and the further observation that the record discloses that in spite of plaintiff furnishing all the required documents for submitting its tender to the defendant, the defendant on untenable grounds had disqualified the technical bid of the petitioner with an intention to allot the tender to some third party, and the further bare observation in the impugned order that under the circumstances, notice under Order 39 Rule 3 CPC is dispensed with, without recording the opinion supported by reasons that the object of granting injunction would be defeated by delay is not sufficient compliance of the mandatory provision of law, in view of the settled legal position. The learned counsel for the appellant/defendant would contend that though it is the case of the plaintiff that the defendant has not yet rejected the technical bid of the plaintiff and the defendant has yet to take a decision and that the plaintiff is questioning only a report of a team of the defendant, the trial court had erroneously observed that the defendant had disqualified the technical bid of the defendant on untenable grounds and that therefore, it is evident from the impugned order that the trial court did not apply its mind before granting the ad interim ex parte order. As contemplated under Rule 3, before granting temporary injunction, the Court has to record its reasons which are peculiar to the facts of the case for coming to the conclusion that the object of granting interim injunction would be defeated by such delay. The said Rule requires the Court to record reasons for concluding that urgent orders are necessary before *ex parte* interim injunction is issued. The order has to disclose on the face of it that the Court has applied its mind and that having been convinced has issued *ex parte* interim injunction, it is not so in the present case. As per the precedential guidance, whenever a court considers it necessary in the facts

and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an *ex parte* order is not passed. The party, who invokes the jurisdiction of the Court for grant of an order of restraint against a party, without affording an opportunity to him of being heard, must satisfy the Court about the gravity of the situation and Court has to consider briefly these factors in the *ex parte* order. In the impugned order there is neither a mention nor a consideration of the relevant factors. Therefore, this Court is of the well considered view that the appeal is maintainable and that the order of the Court below is not sustainable and is liable to be set aside as it is bereft of any reasons much less valid reasons and as the mandatory requirement of the provision of Rule 3 of Order 39 is not complied with while passing the impugned orders.

7.6 In **Morgan Stanley Mutual Fund v. Kartick Das**^[6], the Hon'ble Supreme Court had held as follows:

“As a principle, ex parte injunction could be granted only under exceptional circumstances. The factor which should weigh with the court in the grant of ex parte injunction are:--

- (a) whether irreparable or serious mischief will ensure to the plaintiff;**
- (b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;**
- (c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;**
- (d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;**
- (e) the court would expect a party applying for ex parte injunction to show utmost goodfaith in making the application.**
- (f) Even if granted, the ex parte injunction would be for a limited period of time.**
- (g) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court.”**

A plain reading of the ratio in the above decision would show that the trial court did not follow the precedential guidance in the above precedent and further granted the order without limiting it to a limited period of time. Be that as it may.

7.7 In the well considered view of this Court the decision in **Mysore State Road Transport Corporation v. Mirja Khasim Ali Beg and another**^[7]

does not help the cause of the plaintiff/respondent any further as the relevant clauses/provisions of law when construed with reference to the context support the case of the appellant/defendant as the impugned order lays bare that there was no compliance much less substantial compliance of the mandatory provision of Order XXXIX of the Code.

7.8 There is one more additional factor, which needs a passing reference in this appeal preferred against the *ex parte* ad interim injunction order. It is trite that this court, which is an appellate court, will not be bound to apply its mind to all the contentions which the original court is bound to consider on the case shown by the party affected by the interim order. Suffice to state that after obtaining the impugned order the learned counsel appearing in the suit for the plaintiff had filed a memo dated 30.04.2015 before the trial court stating that the petitioner/plaintiff is not pressing the relief (ii). The said relief (ii) claimed in the suit is as under:

Restrain the defendant from allotting the work for construction of private railway siding for the proposed 3.0 MTPA integrated steel plant at Nagarnar, Chattisgarh to another bidder illegally and for other reliefs.

Thus, the plaintiff had not pressed the suit in regard to the main relief related to the relief of temporary injunction. Though the said memo was signed by the said counsel and not by the plaintiff, the plaintiff had also filed an interlocutory application on the same day before the trial court for amendment of the plaint for insertion of certain paragraphs in the plaint and also to insert the following prayer as prayer (ii) in the suit.

“To grant consequential injunction directing the defendant to open the financial bid of the petitioner pursuant to the tender notification dated 26.03.2014.”

Thus, the plaintiff had got filed a memo withdrawing the relief (ii) as originally claimed in the suit and had further filed an application for amendment of the plaint for inserting a new prayer (ii) in the suit as before mentioned. The trial court had not recorded the memo and had not vacated the order of injunction

granted by the impugned order in spite of the above subsequent events, as rightly contended by the learned counsel for the defendant. Be it noted that the learned senior counsel for the plaintiff had submitted that the plaintiff may take steps to withdraw the said memo. In reply, the learned counsel for the defendant would submit that till date no such steps were taken by the plaintiff and that on equities also the order impugned is liable to be vacated. This Court finds acceptable merit in this contention as till date the plaintiff has not taken any steps for withdrawal of the memo and the application filed for substitution of prayer (ii) prayed for in the plaint is also pending consideration before the trial Court.

8. Viewed thus, this court finds that the impugned order deserves to be set aside subject to the directions, *infra*.

9. In the result, the civil miscellaneous appeal is allowed and the impugned order is set aside. Nevertheless, the trial Court is directed to dispose of the interlocutory application as expeditiously as possible and preferably within one month from the date of the receipt of a copy of this order, however, in accordance with the procedure established by law without being influenced by any observations made in this order. No costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M.SEETHARAMA MURTI, J

25-06-2015

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[\[1\]](#) 1980 (Vol. II) ALT 472

[\[2\]](#) 2001(2) ALD 270 (DB)

[\[3\]](#) 1999(6) ALD 343

[\[4\]](#) (2004) 3 ALD 228

[\[5\]](#) (1999) 3 SCC 161

[\[6\]](#) (1994) 4 SCC 225

[\[7\]](#) AIR 1977 SC 747