

HON'BLE SRI JUSTICE A.V.SESHA SAI
CIVIL REVISION PETITION No.625 of 2015

ORDER:

Plaintiff in O.S.No.9 of 2015 on the file of Court of III Additional District Judge, Karimnagar, is the petitioner in the present revision filed under Article 227 of the Constitution of India. In the present revision, challenge is to the docket order, dated 10.02.2015, passed by the said Court in I.A.No.103 of 2015.

Heard Sri C.Ramesh Sagar, learned counsel for the petitioner, and Sri B.Chandrasen Reddy, learned counsel for the respondents.

The petitioner instituted O.S.No.9 of 2015 against the respondents herein for perpetual injunction in respect of the suit schedule property. Along with the said suit, the petitioner filed I.A.No.103 of 2015, under the provisions of Order 39 Rules 1 and 2 of the Code of Civil Procedure, seeking temporary injunction to restrain the respondents from interfering with the possession and enjoyment in respect of the suit schedule property. In the said application, the learned III Additional District Judge, Karimnagar granted injunction on 30.01.2015 and directed to comply with Rule 3 of Order 39 of the Code of Civil Procedure while directing the matter to be listed on 10.02.2015. On 10.02.2015, the learned Judge dismissed the injunction application on the ground of non-compliance of the proviso to Rule 3 of Order 39 of the Code of Civil Procedure. Assailing the said order passed by the learned Judge, the present revision has been filed.

It is contended by the learned counsel for the petitioner that the order passed by the Court below vacating the injunction is erroneous, contrary to law and is opposed to Order 39 Rule 3 of

the Code of Civil Procedure. It is further submitted that the learned Judge failed to appreciate that Order 39 Rule 3 of the Code of Civil Procedure is not mandatory. It is also submitted that respondent Nos.1 and 2 are the sons of the petitioner and they have knowledge about the nature of claim laid by the petitioner.

On the contrary, it is contended by the learned counsel for the respondents that there is no material irregularity nor there is any infirmity in the order passed by the Court below and, as such, the present revision under Article 227 of the Constitution of India is not maintainable. It is further submitted that the provisions of Rule 3 of Order 39 of the Code of Civil Procedure are mandatory. It is also submitted that respondent Nos.1 and 2 have already filed counter in I.A.No.103 of 2013 on 12.03.2015 and the said I.A. stands posted to 09.04.2015. In support of his submissions and contentions, learned counsel for the respondents takes the support of the judgment of this Court in **Nikesh v. Smt Malathi Bai**^[1].

In the above background, now the issue that emerges for consideration of this Court is whether the order passed by the Court below, which is impugned in the present revision, is in accordance with law or whether the same requires any correction by the Court under Article 227 of the Constitution of India.

The information available before this Court manifestly discloses that the petitioner herein instituted O.S.No. 9 of 2015 on the file of Court of III Additional District Judge, Karimnagar for the relief of perpetual injunction in respect of the suit schedule property. The Court below, while granting ex parte injunction on 30.01.2015 and while directing the matter to be posted on 10.02.2015, directed the petitioner – plaintiff to comply with the provisions of Rule 3 of Order 39 of the Code of Civil Procedure.

At this juncture, it would be appropriate to refer to Order 39

Rule 3 of the Code of Civil Procedure which reads as under:

3.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.

According to the above provision of law, it is mandatory on the part of the plaintiff – petitioner herein 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 a copy of the affidavit filed in support of the application; a copy of the plaint; copies of documents on which the applicant relies; and 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.

The impact or effect of the above provision of law fell for consideration before this Court in the case of **Nikesh**

(1 supra), wherein this Court held as under:

“In this case, the documents were sent by registered post. However, the petitioner herein did not open the cover. That was produced before the Court. The learned Munsif, himself opened the cover and found no documents. There were only suit summons. Notice was also not there. Copy of the injunction order was also not found. However, the learned Munsif took into consideration the memo filed on 10.08.1988 in I.A.No.484 of 1988, in which the petitioner herein admitted that, they have received copies of affidavit, petition etc. In my opinion this is not a strict compliance of proviso to Rule 3 of Order 39 CPC. All the documents mentioned in the proviso should either be served personally or by registered post. The registered cover did not contain all these documents. Certainly there is no compliance with the mandatory provisions.”

(emphasis supplied)

As per the principle laid down in the above referred judgment, compliance of Order 39 Rule 3 of the Code of Civil Procedure is mandatory. In the instant case, admittedly the plaintiff – petitioner did not comply with the said mandatory provision of law which compelled the Court below to pass the impugned order vacating the injunction order. In the considered opinion of this Court, the said order does not warrant any interference of this Court as there is no illegality nor any jurisdictional error in the order under challenge. On the other hand, the same is in accordance with the law laid down by this Court in the above referred judgment. In these circumstances, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the petitioner herein has not made out a case, warranting any interference of this Court under Article 227 of the Constitution of India. It is also settled proposition of law that, unless the order impugned suffers from patent perversity and jurisdictional error, invocation of jurisdiction of this Court under Article 227 of the Constitution of India is impermissible.

For the aforesaid reasons, and having regard to the ratio laid down in the above referred judgment, revision petition is

dismissed. However, the Court below shall dispose of the I.A.No.103 of 2015 within a period of two months from the date of receipt of a copy of this order.

Miscellaneous Petitions pending, if any, shall also stand disposed of.

A.V.SESHA SAI,J

Date: 18.03.2015
usd

[\[1\]](#) 1996(4) ALT 483