



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04 .11.2016

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. PD (MD) No.1001 of 2016

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1.K.C.Jeyadhas

2.K.C.Monydhas

3.K.C.Jeyachandradhas

4.K.C.Mohandhas

5.B.I.Selvakumar

:Petitioners

Vs.

B.B.Kabeerdhas

:Respondent

Prayer: Civil Revision petition is filed under Article 227 of the Constitution of India, to call for the records pertaining to the impugned dock order of interim injunction in I.A.No.241 of 2016 in O.S.No.82 of 2016 dated 09.04.2016 on the file of the District Munsif, Kuzhithurai, Kanyakumari District and set aside the same.

For Petitioners : Mr.Issac Mohanlal,
Senior counsel for
Mr.T.Cibi Chakraborty

For Respondent : Mr.M.Vallinayagam,
Senior counsel for
Mr.S.C.Herold Singh

Orders reserved on : 18.10.2016

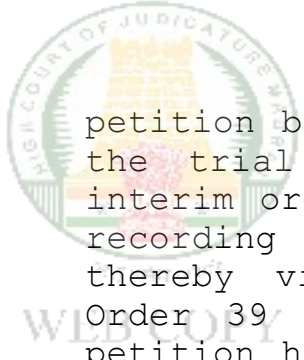
Order Pronounced on : 04.11.2016

ORDER

The civil revision petition arises against the order dated 09.04.2016 made in I.A.No.241 of 2016 in O.S.No.82 of 2016 on the file of the District Munsif, Kuzhithurai, Kanyakumari District.

2.According to the petitioners, the respondent herein, filed a suit in O.S.No.82 of 2016 for declaration and other reliefs. The respondent herein challenged the Supplementary Trust deed dated 28.01.2016 furnishing incorrect facts and claimed that he should be nominated as one of the Trustee in place of his Father K.C.Babudhas. In the aforesaid suit, the respondent herein, filed an application in I.A.No.241 of 2016 for interim injunction, restraining the 1st petitioner/1st defendant, his men, agents from addressed or acting as 'Trustee' of the Trust and thereby causing interference to the petitioner/plaintiff.

3.According to the petitioners, in the aforesaid application, exparte ad-interim injunction was granted by the trial Court without following the procedures as contemplated under Order 39 Rule 1 and 2 and Section 151 of C.P.C. Therefore, the petitioners/defendants have filed the present civil revision



petition before this Court, alleging various grounds stating that the trial Court exceeds his jurisdiction in granting exparte interim order without giving notice to the defendants and without recording the reasons for granting exparte ad-interim injunction, thereby violating the mandatory provisions contemplated under Order 39 Rule 3 of C.P.C. Hence, the present civil revision petition has been filed against the exparte ad-interim injunction granted by the trial Court under Article 227 of the Constitution of India.

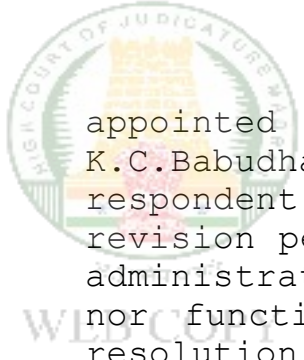
4. Per contra, the learned senior counsel for the respondent submitted that the grounds raised by the revision petitioners before this Court under Article 227 of Constitution of India are not maintainable and without availing the remedy under the provisions of the Act, filing the present civil revision petition is also not maintainable. The trial Court has considered the facts of the case and the reasons were recorded, while granting the interim order. Therefore, there is no violation of the provisions under Order 39 Rule 3 of C.P.C. If at all, the petitioners being aggrieved by the exparte ad-interim injunction, the petitioners can very well avail the remedy to file appropriate application before the concerned Court or before the appellate Court as per the provisions of the Act. Without resorting the said remedy, filing the present civil revision petition is not maintainable.

5. Heard Mr. Isaac Mohanlal, learned senior counsel for the petitioners and Mr. M. Vallinayagam, learned senior counsel for the respondent and perused the materials available on records.

6. The point for consideration in the civil revision petition is that whether the present Civil Revision Petition is maintainable under Article 227 of the Constitution of India, without exhausting the remedy available under the Act.

7. According to the learned senior counsel for the petitioners, the revision petitioners are the Managing Trustees of K.C. Chelliah Memorial Educational Trust. The said Trust was registered and the Trustees are the family members of Mr. K.C. Chelliah. The Trust owns and administers three schools viz., (i) Yettacode Higher Secondary School, (ii) Yettacode English Medium Nursery and Primary School and (iii) K.C. Chellaiah Memorial Tamil Medium Primary School in the District of Kanyakumari District.. The first petitioner is the present Correspondent of the said schools. According to the petitioners, the above said schools were established by his father viz., K.C. Chelliah in the year 1960, in the name and style as 'The New U.P.S. Yettacode. Thereafter, the school was upgraded and the name of the school has been changed as Yettacode Higher Secondary School with the approval of the Education Department.

<https://hccases.courtsofmadras.org/hccases/hccases>
 According to the learned senior counsel for the respondent viz., K.C. Babudhas has executed a registered Will in favour of his first wife Nirmala Kumari's son one Aruldhas. As per the registered Will, the Executive Committee



appointed Mr.Aruldhass as Trustee in the place of his father K.C.Babudhas, vide resolution dated 03.01.2016. While so, the respondent herein/plaintiff filed the present suit against the revision petitioners. The respondent/plaintiff has no role in the administration of the Trust as he was neither nominated as Trustee nor functioned as Trustee at any point of time. As per the resolution dated 03.01.2016, said Aruldhass started functioning as Trustee. Therefore, the said suit filed by the respondent/plaintiff is not maintainable against the public Trust and no jurisdiction to entertain the suit by the trial Court and the granting of exparte order is without jurisdiction.

8.The learned senior counsel for the petitioners strongly relied upon the decision of the Hon'ble Supreme Court reported in 1993(3) SCC 161 - *Shivkumar Chandha V. Municipal Corporation of Delhi*. He also relied upon the decision of the unreported decision of this Court dated 21.04.2016 made in *C.R.P.(PD) (MD) No.872 of 2016*, wherein, this Court has followed the above said decision of the Hon'ble Supreme Court. In the said decision this Court has held that the Court below has failed to inform its reasons as required by proviso to Order 39 Rule 3 of the Code of Civil Procedure, and set aside the order therein.

9.Per contra, the learned senior counsel for the respondent would submit that the Court below has perused the pleadings in the plaint as well the documents filed by the respondent/plaint and in view of the urgency and considering the prima facie made out by the respondent/plaintiff, the trial Court, by invoking exercise under Order 39 Rule 3 of C.P.C., has granted exparte ad-interim injunction against the revision petitioners/defendant and reasons have been recorded. Therefore, the allegations of the revision petitioners that no reasons were recorded by the Court below, while granting exparte ad-interim injunction is totally in correct.

10.Further, the learned senior counsel appearing for the respondent would submit that if the petitioners are aggrieved by the said order, the petitioners can very well invoke the provisions under the Act by filing appropriate application before the same Court or before the appellate Court. Without resorting the said remedy, the petitioners cannot file the present civil revision petition by invoking the powers under Article 227 of the Constitution of India, which is totally unwarranted and the same cannot be entertained by this Court. The counsel for the respondent has relied on the decision reported in (2001) 1 M.L.J.75 (S.C.) - *A.Venkatasubbiah Naidu V. S.Chellappa and others*, wherein, the Hon'ble Supreme Court has held in paragraph Nos.10,13,14,15 and 18, which read as follows:

"10.It cannot be contended that the power to pass interim ex parte orders of injunction does not emanate from the said Rule. In fact, the said rule is the repository of the power to grant orders of temporary injunction with or without notice, interim or



temporary, or till further orders or till the disposal of the suit. Hence, any order passed in exercise of the aforesaid powers in Rule 1 would be applicable as indicated in Order 43 Rule 1 of the Code. The choice is for the party affected by the order either to move the appellate court or to approach the same court which passed the ex parte order for any relief.

13. Learned Single Judge stated that the trial court ought not to have granted ex parte injunction beyond thirty days to be in force. The said observation is based on the language contained in Order 39 Rule 3-A of the Code which reads thus:

"Where an injunction has been granted without giving notice to the opposite-party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability."

The Rule does not say that the period of the injunction order should be restricted by the Court to thirty days at the first instance, but the Court should pass final order on it within thirty days from the day on which the injunction was granted. Hence, the order does not ipso facto become illegal merely because it was not restricted to a period of thirty days or less.

14. Nonetheless, we have to consider the consequence, if any, on account of the Court failing to pass the final orders within thirty days as enjoined by Rule 3-A.

15. The aforesaid Rule casts a three-pronged protection to the party against whom the ex parte injunction order was passed. First is the legal obligation that the Court shall make an endeavour to finally dispose of the application of injunction within the period of thirty days. Second is, the legal obligation that if for any valid reasons the Court could not finally dispose of the application within the aforesaid time the Court has to record the reasons thereof in writing.

18. Now what remains is the question whether the High Court should have entertained the petition under Article 227 of the Constitution when the party had two other alternative remedies. Though no hurdle can be put against the exercise of the constitutional powers of the High Court it is a well recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of such



remedies one or the other before he resorts to a constitutional remedy. Learned single judge need not have entertained the revision petition at all and the party affected by the interim ex parte order should have been directed to resort to one of the other remedies. Be that as it may, now it is idle to embark on that aspect as the High Court had chosen to entertain the revision petition."

11. In the decision of the Hon'ble Supreme Court reported in 1993(3) SCC 161 - *Shivkumar Chandha V. Municipal Corporation of Delhi*, the Hon'ble Apex Court has held in paragraphs 35 and 36 as follows:

"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 exparte order is not passed. But any such exparte order should be in force upto a 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



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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."

12. It is appropriate to extract Order 39 Rule 3(a) of C.P.C. 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 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."

13. Considering the above said decisions along with provision of Order 39 Rule 3(1) of C.P.C., in the present case, the revision petitioners have remedy to file an application before the same Court for vacating the temporary injunction against the ex parte ad-interim injunction order passed by the trial Court. However, the petitioners have not chosen to file any application before the trial Court. It is the duty cast upon the concerned Court to decide the same and pass final orders on the application, within a period of 30 days. In spite of the application being filed and the Court has not passed any orders as provided under Order 39 Rule 3(a) of C.P.C., the aggrieved parties shall have the right of appeal under the law notwithstanding the pendency of the application before the Court for vacating the temporary injunction.

<https://hcs.courts.gov.in/hcs/Services/>

14. Therefore, it is clear from the above said decisions as well as the proviso of Order 39 Rule 3(a) of C.P.C. the revision



petitioners have to file appropriate application or counter submissions in the said interlocutory application, to vacate the interim order passed by the Court below. Instead of adverting to the said procedure, the revision petitioners have filed the present application on the ground that exparte interim order has been granted without notice to the revision petitioners/defendants, which cannot be entertained at this stage.

15. Considering the above said decision along with the facts of the present case, the respondent herein has filed the suit and exparte ad-interim injunction was granted in favour of the respondent herein. The said order is passed without notice to the petitioners/defendants herein. The revision petitioners have raised various grounds in the present civil revision petition. The revision petitioners have remedy under the provisions of Act and to raise all the issues either before the same Court or by way of filing appeal before the appellate Court. Therefore, this Court cannot entertain the revision under Article 227 of the Constitution of India. However, I am inclined to pass the following order.

(i) Liberty is granted to the revision petitioners to file appropriate application/counter statement before the learned District Munsif, Kuzhithurai, within a period of one week from the date of receipt of a copy of this order.

(ii) On such application/counter statement made by the revision petitioners, within the stipulated time, one week time is granted to the respondent to file his reply before the Court below.

(iii) Thereafter, the learned District Munsif, Kuzhithurai is directed to dispose of the application in I.A.No.241 of 2016 in O.S.No.82 of 2016, within a period of three weeks, on merits and in accordance with law, without being influenced by any observation made in the revision petition.

(iv) Till then, the interim order already granted by this Court is continue.

16. In the result, the civil revision petition is disposed of with above observations and directions. No costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To
The District Munsif, Kuzhithurai.

+1cc to M/s.T.Cibi Chakraborty, Advocate in SR.66451

C.R.P. PD (MD) No.1001 of 2016
04.11.2016