

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2248 of 2015

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ORDER:

This revision under Article 227 of the Constitution of India by the 1st respondent/petitioner/1st defendant is directed against the orders dated 16.03.2015 of the learned Principal District Judge, Ranga Reddy at L.B. Nagar, Hyderabad passed in CMA.no.25 of 2014 filed by the plaintiff.

2. I have heard the submissions of the learned counsel for the revision petitioner/1st defendant ('the 1st defendant', for brevity) and the learned counsel for the 1st respondent/plaintiff ('the plaintiff', for brevity). The other respondents 2 and 3 herein, who are the defendants 2 and 3, are stated to be not necessary parties. I have perused the material record.

3. The facts, which are necessary to be stated as a preface to this order, in brief, are as follows: "The sole plaintiff brought the suit OS no.281 of 2013 against the defendants for a perpetual injunction claiming *inter alia* that she had purchased the plaint schedule property by virtue of a registered sale deed and that she is in peaceful possession and enjoyment of the same and that on account of the interference by the defendants as stated in the plaint she is constrained to file the suit. In the said suit, the plaintiff had also filed an interlocutory application in IA no.1239 of 2013 for grant of temporary injunction on 21.11.2013. The trial Court had granted *ad interim ex parte* injunction in that application. The 1st defendant had filed an application in IA no. 56 of 2014 for vacating the said *ex parte* order of injunction stating that the plaintiff had deliberately failed to comply with the mandatory requirement of Rule 3 of Order XXXIX of the Code as the plaintiff had failed to supply the copies of the pleadings and the set of documents filed by the plaintiff along with the plaint and the application for temporary injunction. The plaintiff resisted the application filed by the 1st defendant *inter alia* contending that she had sent the copies of the documents and had complied with the provision of Order XXXIX Rule 3 of the Code. The trial Court agreed with the contentions of the 1st defendant and by orders dated 14.02.2014 allowed the application and vacated the said *ex parte ad interim orders* of injunction. The learned Principal District Judge had allowed the

Civil Miscellaneous appeal filed by the plaintiff and restored the *ex parte ad interim* orders of injunction. Therefore, the aggrieved 1st defendant has filed this revision before this Court.

4. It is apt to first refer to *infra*, the relevant provision of law.

Order XXXIX Rule 3. Before granting injunction, Court to direct notice to opposite party— The Court shall in all case, 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.

4.1 Both the learned counsel fairly conceded that the provision of law is mandatory. It is profitable to refer to the decision in **Shiv Kumar Chadha v. Municipal Corporation of Delhi**^[1], wherein the Supreme Court while examining the question whether the provisions of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 are mandatory or directory in nature had held as follows:

‘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 at all. This principle was approved and accepted in well-known cases of *Toylor 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.....’

4.2 As per the undisputed and settled legal position, 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 XXXIX of the Code, before passing an order of injunction; Further, 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 opposite party. And, on due compliance of the said direction, an affidavit of service of notice should be filed as provided by proviso to Rule 3 of Order XXXIX aforesaid.

4.3 Reverting to the facts of the instant case, the specific contention of the 1st defendant is that the plaintiff having obtained *ex parte ad interim injunction* had deliberately failed to comply with the mandatory requirement of Rule 3 of Order XXXIX of the Code and that the plaintiff had failed to either send by registered post with acknowledgment due or supply the copies of the pleadings, the set of documents filed by the plaintiff along with the plaint and the application for temporary injunction. Per contra, the case of the plaintiff is that she had duly sent the copies of the documents and had complied with the provision of Order XXXIX Rule 3 of the Code. Now, it is significant to note that the 1st defendant had produced before the

trial Court, the postal cover (unopened), which was sent by the plaintiff and received by her to show that a mere look and a feel of the unopened postal cover, which is barely thin, establishes the fact that it does not contain the copies of the pleadings of the plaintiff and the copies of the documents, which are filed with the plaint and which are sufficiently good in number and bulky in terms of mass and that therefore, it is evident that the plaintiff had failed to send the copies of the pleadings and also the documents filed with the plaint and that there was no due compliance of Rule 3 of Order XXXIX of the Code. It is also contended before the Courts below that such postal cover sent by the plaintiff and received by the 1st defendant was preserved by her unopened only to file the same into Court to show to the Court, the conduct of the plaintiff and the non compliance of the mandatory provision of the Rule by her. Indeed the trial Court having examined the contentions of the parties and also the unopened cover filed by the 1st defendant before it had held that there was no compliance of the said Rule. Order XXXIX Rule 3 of the Code enjoins upon the applicant for injunction to deliver to the opposite party or to send to him by registered post immediately after the order granting ex-parte injunction has been made, a copy of the application for injunction together with other relevant documents as mentioned therein on which applicant relies and file on the date on which such injunction is granted or on the date immediately following that date an affidavit that such copies as aforesaid were so delivered or sent. As noted, in Shiv Shankar Chadha (supra) it was held that the compliance of this provision is mandatory. However, the Court below mistook that the trial Court had considered only the value of the postal stamps affixed to the postal cover, though it is not so, and had further observed in the impugned order that the trial Court should have considered the aspect as to why the 1st defendant had only come before it with a complaint when the other defendants had not made similar complaints. The learned counsel for the 1st defendant would submit that the other defendants had not complained as the plaintiff had perhaps sent the copies of documents to them and that the said aspect is not relevant in so far as the 1st defendant's complaint as the 1st defendant had produced before the trial Court the postal cover received by her to substantiate her contention. The trial Court, which had the opportunity not only to examine the contentions of the parties but also the advantage of examining the (unopened) postal cover produced by the 1st defendant before it, came to a conclusion that the plaintiff had failed to send the copies of the pleadings and documents to the 1st defendant as the documents filed are many and the volume/mass of the same is such that it is not possible to send

the same in the cover produced before it. As a sequel to the said finding the trial Court had held that the plaintiff had failed to duly comply with the provision of Rule 3 of Order XXXIX and had accordingly vacated the *ad interim ex parte injunction order* granted by it without going into the merits of the matter. Viewed thus, this Court finds that the Court below is not justified in interfering with the order of the trial Court and in allowing the appeal of the plaintiff.

5. In the result the Civil Revision Petition is allowed and the order impugned is set aside and as a sequel the CMA.no.25 of 2014 on the file of the Court of the learned Principal District Judge, Ranga Reddy at L.B. Nagar, Hyderabad is dismissed and the order of the trial Court in IA no. 56 of 2014 in IA no.1239 of 2013 in OS no.281 of 2013 is restored. Since no opinion is expressed on the merits of the matter it is open to the parties to make a request to the trial Court to hear and dispose of the above said IA no.1239 of 2013 on merits and in strict accordance with the procedure established by law. There shall be no order as to costs.

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

**M.
SEETHARAMA MURTI, J**

24.06.2016
Vjl

^[1] (1993) 3 SCC 161