

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.4352 of 2017

ORDER:

This civil revision petition under Article 227 of the Constitution arises out of the order dated 10.08.2017 passed by the learned XV Additional District and Sessions Judge-cum-II Additional Metropolitan Sessions Judge-cum-Judge, II Additional Family Court, Kukatpally at Miyapur, Ranga Reddy District, in I.A.No.849 of 2017 in S.O.P.No.555 of 2017. The first and eleventh respondents in the said I.A. filed this revision petition. By the said order, the trial Court granted an ad interim injunction restraining the respondents in the I.A. from interfering with the management of the petitioner association in any way, i.e., maintaining the common facilities like petitioner association office, common roads, club house, swimming pool, both bore-well as well as HMWS water, collecting of monthly maintenance charges from the members etc. till 30.08.2017. This order of interim injunction was granted without notice to the respondents.

By order dated 30.08.2017, this Court granted interim suspension of the order under revision being of the opinion that it was passed in contravention of the procedure prescribed under the proviso to Order 39 Rule 3 CPC.

Sri M.V.S.Suresh Kumar, learned senior counsel appearing for Sri M.V.Pratap Kumar, learned counsel for the revision petitioners, would rely upon the judgment of the Supreme Court in Shiv Kumar Chadha v. Municipal Corporation of Delhi¹ and that of this Court in Bacharaj

¹ (1993) 3 SCC 161

Singhvi v. Hastimal Kothari², Sunway Opus International (P) Limited v. Sri Raghava Constructions Limited³ and Gautam Chand Chordia v. Majida Hasany⁴, in support of his contention that the trial Court erred in not recording reasons for granting the *ex parte* ad interim injunction. Learned senior counsel would point out that the copy of the order furnished to the petitioners herein upon their copy application reads differently from the docket order bearing the same date filed by the first respondent in the revision, the petitioner in the subject I.A. Perusal of the order bears out this fact.

However, learned senior counsel would further point out that even the docket order dated 10.08.2017 filed by the first respondent in the revision does not set out proper reasons for grant of the *ex parte* ad interim injunction.

The said order reads as under:

'Heard learned counsel for petitioners. Perused the documents. After considering the documents, the petitioner has made out a prima facie case and if ad-interim injunction is not granted, the purpose of filing the suit will be defeated. Therefore, issue ad-interim injunction restraining the respondents from interfering with the management of the petitioner association by the presently duly elected body in any way ...'

In terms of the law laid down in the judgments referred to supra, the trial Court necessarily had to set out the reasons underlying its opinion that the object of granting the injunction would be defeated by delay. Mere observations to the effect that the petitioner had made out a *prima facie* case and that the purpose of the suit would be defeated if an ad interim injunction was not granted, would not be sufficient compliance in terms of the aforestated requirement.

² 1981 (1) APLJ (HC) 309

³ 2017 (2) ALD 201 (DB)

⁴ 2017 (4) ALD 172

Therefore, even if the docket order dated 10.08.2017 produced by the first respondent, the petitioner in the subject I.A., is taken into account, this Court finds that the trial Court did not comply with the requirement of the proviso to Order 39 Rule 3 CPC. That apart, when a copy application was made for furnishing a copy of the order dated 10.08.2017 passed in the subject I.A., the trial Court ought to have furnished the proper order and not the incomplete one which was actually furnished to the petitioners in this revision.

The order under revision is accordingly set aside and the civil revision petition is disposed of directing the trial Court to advance the hearing of the subject I.A., which is stated to have been adjourned to 22.09.2017, to 19.09.2017. The trial Court shall endeavour to complete the hearing of the said I.A. and pass appropriate orders thereon, preferably before the advent of Dasara Vacation. The petitioners in this revision shall file their counter and documents, if any, in the subject I.A. well before 19.09.2017, so that further adjournment on the ground of completion of pleadings is obviated.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

Date: 13.09.2017

Note:
Furnish C.C. by tomorrow.
(B/o)
GJ