

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.446 of 2017

ORDER:

Heard.

2. The present revision is filed under Article 227 of the Constitution of India assailing the order and decree dated 06.01.2017, passed in I.A.No.505 of 2016 in I.A.No.321 of 2016 in O.S.No.59 of 2016 on the file of the Junior Civil Judge, Sathyavedu, wherein the petition filed under Order 39 Rule 3 under Section 151 of CPC seeking to vacate the order in interim injunction granted in I.A.No.321 of 2016 in O.S.No.59 of 2016 was allowed.

3. The facts in issue are as under:

It is stated that the plaintiff filed a suit for permanent injunction vide O.S.No.59 of 2016. Along with the said suit, the plaintiff filed an interlocutory application seeking temporary/ ad-interim injunction in his favour. On 01.09.2016, the Court below after perusing the records, granted ad-interim injunction in favour of the plaintiff till 15.09.2016 and directed him to comply with Order 39 Rule 3 of CPC and to issue notice to the respondents. On 15.09.2016, Sri R.Gopinath, advocate filed vakalath for respondent Nos.2 and 3 therein and the interim injunction was extended till 26.09.2016. Subsequently, the interim order granted was extended from time to time and on 30.12.2016, injunction order was further extended till 03.01.2017. Meanwhile, the defendants filed petition under Order 39 Rule 3 and Section 151 of CPC seeking to vacate the order of interim injunction granted in I.A.No.321

of 2016 in O.S.No.59 of 2016 on the ground that the plaintiff failed to comply with Order 39 Rule 3 of CPC and that the plaintiff sent only copy of petition along with supporting affidavit and failed to send other documents viz. application for injunction, copy of plaint, etc. The plaintiff later filed affidavit stating that he complied with order 39 rule 3 (a) and also affixed postal receipts to the affidavit. The Court below, after perusing the record and after hearing both sides, allowed I.A.No.505 of 2016 vacating the interim injunction granted by the Court below on 01.09.2016. Aggrieved thereby, the plaintiff preferred the present revision.

4. A perusal of the docket proceedings placed before the Court would show that pursuant to the interim injunction granted on 01.09.2016, the matter came up on 15.09.2016 and thereafter, it was adjourned from time to time for filing counter extending the interim injunction. It is to be noted that on 15.09.2016 itself notices were served on the defendants and the advocate filed vakalath for the defendants. The record shows that counter came to be filed in the month of December, 2016 vide I.A.No.505 of 2016 stating that the plaintiff failed to comply with Order 39 Rule 3.

5. Order 39 Rule 3 of CPC reads as under:

“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.

3(A). Court to dispose of application for injunction within thirty days: 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."

6. Learned counsel for the petitioner admits that he has complied with Order 39 Rule 3, in part. The counsel for the petitioner further submits that notices sent through Court were served at the first instance only amounts to compliance of Order 39 Rule 3 of CPC. Since the main I.A. filed for temporary injunction is still pending consideration, this Court is of the view that it would be appropriate to decide the matter on merits instead of deciding it on technicalities.

7. It may be true under Order 39 Rule 3 of CPC, delivery of certain documents is mandatory, but since notices sent by the Court were served at the first instance itself and the petitioner claims to have complied with Order 39 Rule 3 of CPC in part, this Court is of the view that it would be just and proper if the matter is decided on merits.

8. In view of the above, the C.R.P. is allowed setting aside the order under challenge and consequently the trial Court is directed to dispose of I.A. No.321 of 2016, within a period of two months from the date of receipt of a copy of the order. Till such time, *status-quo* as on today to be maintained with regard to the property in dispute. No costs.

9. As a sequel thereto, Miscellaneous Petitions, if any, pending, shall stand closed.

10.02.2017
vnb



JUSTICE C. PRAVEEN KUMAR