

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE U. DURGA PRASAD RAO

C.M.A. Nos. 1262 and 1264 of 2017

COMMON JUDGMENT:- (ORAL)
(Per Hon' ble Sri Justice Suresh Kumar Kait)

Inasmuch as the question of fact and law and the parties in the two appeals are one and the same, these matters are taken up together for disposal by this common judgment.

While C.M.A.No. 1262 of 2017 is filed against the order dated 09.11.2017 in I.A.No. 1034 of 2017 in O.S.No. 1257 of 2017, C.M.A.No. 1264 of 2017 arises out of the order dated 09.11.2017 in I.A.No. 1035 of 2017 in O.S.No. 1257 of 2017 passed by XIV Additional District and Sessions Judge, Ranga Reddy District, at L.B.Nagar, whereby the petitions filed by the respondent under Order XXXIX Rules 1 and 2 CPC, were allowed granting *ad-interim* injunction against the appellants restraining them from alienating the petition Schedule "A" to Schedule "C" property to the third parties.

It is not in dispute that the cause of action for the suit arose in the month of October, 2015 and the aforesaid interlocutory applications have been filed in the year 2017. It is also not in dispute that the trial Court, without issuing notice to the appellants, has passed the impugned orders.

The learned senior counsel appearing on behalf of the appellants, has relied upon a decision rendered by this Court

in C.M.A.No. 459 of 2017, vide judgment dated 23.06.2017 in the case of M/s.Mahaveer Infoway Limited v. M/s.Tech Minfy Info Solutions LLP, wherein it is held as under:

“From the case law discussed above, it is evident that an appeal lies against an *ex parte* ad interim injunction order, if the order does not satisfy the mandatory requirement of giving reasons in terms of the proviso to Rule 3 of Order XXXIX CPC.

Re Point No.(ii)

A perusal of the docket order of the Court below shows that it is bereft of any reasons whatsoever. While we agree with the learned Senior Counsel for respondent Nos.1 and 2 that there is no requirement of literal reproduction of the language of the proviso to Rule 3 of Order XXXIX CPC for granting *ex parte* interim injunction order, a reading of the order as a whole must, however, indicate proper application of mind by the Court below and its satisfaction that the nature of the relief claimed by the party is such that by giving notice to the adversary party, the purpose of filing the application will be defeated. A careful reading of the judgment of the Court below in its entirety does not show that such application of mind has been reflected therein. Nowhere in the order, the Court below has even remotely indicated that issue of notice without granting an *ex parte* interim injunction would make the application *fait accompli* and cause prejudice to the interests of respondent Nos.1 and 2. We, therefore, reject the submission of the learned counsel for respondent Nos.1 and 2 that the reasons for dispensing with for granting *ex parte* interim order are discernable from a reading of the order.

In *Shiv Kumar Chadha* (1 supra), a three Judge Bench of the Supreme Court went into the legislative history of Order XXXIX CPC and observed that before the proviso to Rule 3 of Order XXXIX CPC was introduced by 1976 amendment, the Code as a rule provided for issuance of notice before granting interim order of injunction and that the proviso enabled the Court to grant an *ex parte* interim injunction, provided, it is satisfied that the object of granting injunction would be defeated by delay and the

Court must record reasons in that regard. It has further held that having regard to this background, the requirement of recording reasons for grant of *ex parte* injunction, cannot be held to be a mere formality and that 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 or Rule 3, the procedure prescribed under the proviso has been followed. That the party which 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. In the case on hand, in the absence of any reasons recorded by the Court below for granting *ad-interim* injunction, the order under appeal does not conform to the principles laid down by the Apex Court in *Shiv Kumar Chadha* (1 supra). We, therefore, hold that absence of reasons justifying the granting of *ad-interim* injunction before issuing notice vitiates the order under appeal.”

In the light of the above legal position, this Court, without going into merits of the case and without issuing notice to the respondent, grants liberty to the appellants to file counter affidavits to the aforesaid applications. On receipt of counter affidavits, the trial Court is directed to consider the same and pass final orders on the aforesaid applications, within a period of four weeks from the date of receipt of counter affidavits.

With the above observation, these Civil Miscellaneous Appeals are disposed of. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending,
shall stand disposed of as infructuous.

08.12.2017

SURESH KUMAR KAIT, J

bcj

U.DURGA PRASAD RAO, J

