

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

CIVIL MISCELLANEOUS APPEAL No.648 of 2018

JUDGMENT: (ORAL)

(Per Suresh Kumar Kait, J)

Vide the present appeal, appellant has challenged order dated 17.05.2018 passed in I.A.No.83 of 2018 in O.S.No.45 of 2018, whereby the application filed by the 1st respondent herein under Order 39 Rules 1 and 2 read with Section 151 CPC to grant ad-interim injunction restraining the appellant herein from interfering with the possession and enjoyment of the 1st respondent herein, has been allowed.

Shri S. Niranjan Reddy, learned senior counsel appearing on behalf of the appellant, has drawn our attention to Order 39 Rule 3 CPC, which reads thus:

“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 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.”

A perusal of the order under challenge would make it clear that the trial Court did not deal with both the qualifications mentioned under Order 39 Rule 3 CPC, however, listed the matter for reply of the appellant herein.

In that view of the matter, without interfering with the order under challenge, we hereby direct the trial court to take the reply/memo to be filed by the appellant herein on file and decide the application filed by the appellant under Order 39 Rules 1 and 2 read with Section 151 CPC within a period of three weeks from the date of filing such reply/memo, after giving opportunity to both sides.

Appeal is accordingly disposed of. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the appeal stand closed.



SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

July 03, 2018
MRR