

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.8999 of 2017 (O&M)
Date of Decision : 03.08.2018

Hari Chand

...Petitioner

VERSUS

Panchayat Mohalla Soodan

...Respondent

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Viren Jain, Advocate for the petitioner.

Mr. Shailender Mohan, Advocate for the respondent.

B.S. WALIA, JUDGE

1. Challenge in this revision petition is to order dated 07.07.2017 (Annexure P-3) and order dated 06.11.2017 (Annexure P-8) passed by the learned Civil Judge (Junior Division), Ludhiana in Civil Suit No.CS-2633 of 2007 titled as “Panchayat Mohalla Soodan Vs. Hari Chand” dismissing application dated 18.07.2017 (Annexure P-4) filed by the defendant-petitioner to vacate the ex parte interim injunction order dated 07.07.2017 (Annexure P-3) on account of non compliance with the mandatory provisions of Order 39 Rule 3 CPC. Prayer is for setting aside the impugned order and for vacating the ex parte interim injunction order dated 07.07.2017 for non compliance of Order 39 Rule 3 CPC by allowing the application (Annexure P-4).

2. Brief facts of the case leading to the filing of the present petition are that civil suit titled as “Panchayat Mohalla Soodan Vs. Hari Chand” was filed by

the respondent/plaintiff claiming possession of suit property as also injunction

restraining the petitioner/defendant, his agents, attorneys, associates from making any change in any manner in the suit property. Along with the suit, the respondent/plaintiff filed an application under Order 39 Rule 1 & 2 CPC read with Section 151 CPC for the grant of ad interim injunction for restraining the petitioner/defendant, his agents, attorneys, associates from raising any construction and making any change in the suit property in any manner during the pendency of the suit.

3. The aforesaid suit along with application under Order 39 Rule 1 & 2 CPC read with Section 151 CPC came up for hearing before the learned Civil Judge (Junior Division), Ludhiana on 07.07.2017 on which date the learned Civil Judge passed an ex parte ad interim injunction/order of status quo. Operative part of the order dated 07.07.2017 is reproduced as under:

“From the documents placed on record, a prima facie case is made out in favour of plaintiff and in case relief of ex parte interim injunction is not granted, the purpose of filing suit will be defeated. So at this stage, parties to the suit are directed to maintain status quo with regard to possession otherwise in due course of law, subject to compliance of order 39 Rule 3 CPC within 24 hours and subject to the service of the defendant till 10.08.2017 and in case plaintiff fails to get the service effected upon the defendant, the ex parte order of status quo shall stand vacated automatically.”

4. The petitioner/defendant filed an application dated 18.07.2017 (Annexure P-4) for vacating the ex parte interim injunction granted in favour of the respondent/plaintiff as also initiation of proceedings against the respondent/plaintiff under Section 340 Cr.PC on the ground that ex parte injunction was granted before issuing notice to the defendant and requiring

compliance with the provisions of Order 39 Rule 3 CPC within 24 hours and further it was categorically mentioned that in case of failure of compliance, the *ex parte* stay order granted in favour of the respondent/plaintiff would stand vacated automatically. Grievance is also that order dated 07.07.2017 (Annexure P-3) was bereft of any reasons whatsoever for the grant of *ex parte* injunction which was otherwise mandatorily required to be given in terms of Order 39 Rule 3 CPC. It was further alleged in the application that the envelope which was dispatched by the respondent/plaintiff allegedly in compliance of order dated 07.07.2017 dispatched by the petitioner/defendant through counsel weighed merely 15 grams each, that one of the envelopes was opened by the petitioner/defendant and was found containing merely a copy of the application for interim injunction whereas the other envelope was retained intact and placed before the learned Lower Court along with application for vacating *ex parte* injunction order dated 07.07.2017 for non compliance of Order 39 Rule 3 CPC. It was further averred that on inspection it transpired that the plaint itself ran into 10 pages while the documents filed along with the plaint comprised of 13 pages but neither copy of the plaint nor affidavit of compliance nor documents were served by way of the aforesaid registered postal articles in compliance with the provisions of Order 39 Rule 3 CPC. It was further alleged that to mislead and deceive the Court, the respondent/plaintiff dishonestly filed a false affidavit of compliance before the learned trial Court claiming to have dispatched a copy of the plaint, affidavit and documents by way of registered cover whereas neither of them were served by the respondent/plaintiff.

In the aforementioned background, prayer before the learned trial Court was not only to vacate the *ex parte* interim injunction but also to proceed against the respondent/plaintiff under Section 340 Cr.PC for knowingly having filed a false affidavit. In response to the application (Annexure P-4), the

respondent/plaintiff did not deny having sent the aforesaid registered covers or their weight nor was there any specific denial that copy of the plaint, affidavit and the documents attached to the plaint were not sent in the registered covers nor filing of affidavit in the Court was denied.

5. Grievance of the petitioner is that application (Annexure P-4) was dismissed by the learned trial Court on the ground that ex parte injunction could not be vacated for non compliance of the provisions of Order 39 Rule 3 CPC, however, for filing a false affidavit, the Court registered the application (Annexure P-4) as a criminal miscellaneous application so as to proceed further under Section 340 Cr.PC vide order dated 06.11.2017 (Annexure P-8). Orders dated 07.07.2017 (Annexure P-3) and 06.11.2017 (Annexure P-8) inasmuch as pertain to passing of an ex parte injunction order and refusing to vacate the same have been challenged, *inter alia*, on the ground that provisions of Order 39 Rule 3 CPC were mandatory and non compliance thereof entail consequences contemplated in the order dated 07.07.2017 itself, the learned Civil Judge had totally misconstrued the provisions of Order 39 Rule 3 CPC and the power to vacate ex parte injunction order for non compliance was inherent with the court and stemmed out of the provisions of Order 39 Rule 3 CPC. Reliance was placed upon the decision of the Hon'ble Delhi High Court in cases titled as '**Ved Parkash Sharma vs. Lachmi Chand Sharma**' 2000(3) Civil Court Cases 485, '**Shambu Dutt Dogra vs. Shakti Dogra and Ors.**' 2012(193) DLT 539, '**M/s Marble Udyog Ltd. Vs. M/s P&O India Agency Pvt. Ltd.**' 1995(3) AD Delhi 812, '**Ashwani Pan Products Pvt. Ltd. (M/S) Vs. M/s Krishan Traders**' 2012(188) DLT 432 in support of the plea that compliance of Rule 3 of Order 39 CPC was mandatory and when the plaintiff did not send complete set of paper books and the documents to the defendants, it amounted to non-compliance of the said mandatory provisions and

in such a situation, the ex parte injunction order was liable to be suspended. It is further contended that it is settled law that ex parte injunction order which was bereft of reasons was a nullity suffering from a grave jurisdictional error, therefore, liable to be set aside under the revisional jurisdiction under Article 227 of the Constitution of India.

6. Per contra, learned counsel for the respondent reiterated the reasoning given by the learned trial Court for not vacating the ex parte interim injunction.

7 I have considered the submissions of learned counsel for the parties.

8. Admittedly, ex parte injunction order was granted in favour of the respondent/plaintiff before issuing notice to the petitioner/defendant. The impugned order dated 7.7.2017 required compliance with the provisions of Order 39 Rule 3 CPC within 24 hours and subject to the service of the defendant till 10.8.2017 and in case the respondent/plaintiff failed to effect service of the notice upon the petitioner-defendant, the ex parte order of status quo was to stand vacated automatically.

9. Order 39 Rule 3 and 4 CPC which have a bearing on the outcome of the case are reproduced as under:

“3. 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.”

4. Order for injunction may be discharged, varied or set aside.- Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order.”

object of granting injunction would be defeated by delay. In fact perusal of the order reveals that the learned trial Court merely recorded that in case relief of ex parte interim injunction was not granted, the purpose of filing the suit would be defeated. However, the reasons for its opinion that the object of granting the injunction would be defeated by delay have not been recorded. The least that was expected of the learned Civil Judge was to record the reasons for coming to the conclusion that the object of granting injunction would be defeated by delay and the purpose of filing the suit would be defeated. The order also required compliance with the provisions of Order 39 Rule 3 CPC within 24 hours. Proviso to Order 39 Rule 3 CPC requires the applicant-

(a) to deliver to the opposite party, or to send to him the 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 of which the applicant relies, and;

(b) to file, on the day on which such injunction is granted or on the day of immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.

11. Hon'ble the Supreme Court in **A. Venkataubbiah Naidu versus S. Chellappan AIR 2000 7 SCC 695** held that if a party in whose favour an order is passed ex parte fails to comply with the duties which such party is required to perform, as per the proviso then non-compliance with such requisites on the part of such party cannot be allowed to go without consequences and that such party cannot be allowed to take advantage of such an order. Relevant extract of the

decision in **A. Venkataubbiah Naidu's** case (supra) is reproduced as under:

“What would be the position if a court which passed the order granting interim ex parte injunction did not record reasons thereof or did not require the applicant to perform the duties enumerated in clauses (a) & (b) of Rule 3 of Order 39. In our view such an Order can be deemed to contain such requirements at least by implication even if they are not stated in so many words. But if a party, in whose favour an order was passed ex parte, fails to comply with the duties which he has to perform as required by the proviso quoted above, he must take the risk. Non-compliance with such requisites on his part cannot be allowed to go without any consequence and to enable him to have only the advantage of it. The consequence of the party (who secured the order) for not complying with the duties he is required to perform is that he cannot be allowed to take advantage of such order if the order is not obeyed by the other party. A disobedient beneficiary of an order cannot be heard to complain against any disobedience alleged against another party.”

12. The Hon'ble Delhi High Court in case titled as **AGI Logistics INC & anr. Versus Sher Jang Bhadhur & anr. 2009 SCC online Del 2927** by relying upon the decision of Hon'ble the Supreme Court in **A. Venkataubbiah Naidu's** case (supra), held that provisions of Order 39 Rule 3 CPC are mandatory and that there was a logic behind insisting that the plaintiff who obtained an ex parte ad interim injunction order should at the earliest point in time, deliver to the party against whom such injunction had been granted all the documents on the basis of which such injunction was granted so as to enable the opposite party to know what the case against it is and to enable such party to approach the Court at the earliest point in time to seek, if necessary, a variation of the interim order. The Hon'ble Delhi High Court also held that if the court were to take a lenient view and not insist on strict compliance with the mandatory requirement of Order 39 Rule 3 CPC, then it would be possible for majority of the plaintiffs to continue to enjoy an ad interim ex parte stay in their favour for any length of time and plead genuine mistake by their counsel for non-compliance. Accordingly, in view of the plaintiff

Rule 3 CPC, interim order passed in his favour was vacated. Relevant extract of the decision in **AGI Logistics's** case (supra) is reproduced as under:

“5. It is stated in the application that a copy of the Court notice was delivered to Defendant No. 4 on 26th July, 2009 by speed post. The cover in which the said notice was dispatched, has been placed on record. It has a postal receipt affixed to it showing that the weight of the envelope at the time of dispatch was 25 gms. and the postage paid was Rs. 24/-. It is obvious that the entire papers i.e. the plaint, affidavits, applications and documents were not sent by post by the Counsel for the Plaintiffs to the Applicants/Defendants.

8. Counsel for the Plaintiffs does not dispute that the complete set of the papers were delivered to the Counsel for the Defendants/applicants only on 4th August, 2009 in this Court when notice was first issued in this application.

9. There can be no manner of doubt that in the face of the above admissions by the Counsel for the Plaintiffs that the requirement of Order XXXIX Rule 3, CPC was not complied with.

x x x x x x x x x

10. It is plain that the Plaintiffs, after obtaining an ex parte ad interim injunction against the Defendants, failed to deliver to the Applicants/Defendants or to send them by registered post within one week, a copy of the application for ad interim 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 the documents on which the Plaintiffs rely upon. The statutory requirement is unambiguous. Every document filed by the Plaintiffs themselves, on the basis of which they obtained an ad interim ex parte injunction, has to necessarily be ‘delivered’ to the Defendant. The word ‘deliver’ would necessarily mean actual physical delivery on the Defendant. The only alternative mode that the provision envisages is dispatch by registered post, immediately after the order granting injunction has been made. The dispatch by registered post as again would be of the entire set of documents as set out under Clause (a) to the proviso to Order XXXIX Rule 3, CPC. There can be no escape from complying with this provision.

11. The learned Counsel for the Plaintiffs repeatedly urged that this was a bona fide mistake by associate Counsel in the office of the learned Counsel for the Plaintiffs and that they should not be penalized for non-compliance with the above provision. He submits that the intention of the Plaintiffs was not to disobey the requirement of law as the entire process fee was filed as soon as the Court granted the ex parte ad interim injunction.

12. The mandatory nature of the requirement of the provision has been emphasized by the Supreme Court in A. Venkatasubbiah Naidu v. S. Chellappan, (2000) 7 SCC 695 : AIR 2000 SC 3032 and this Court in Himalaya Drug v. SBL Ltd., 1996 III AD (Delhi) 853. There is a logic behind insisting that a Plaintiff who obtain an ex parte ad interim injunction order should, at the earliest point in time, deliver to the party against whom such injunction has been granted, all the documents on the basis of which such injunction

was granted. This is to enable the opposite party to know what the case against it is and to approach the Court at the earliest point in time to seek, if necessary, a variation of the interim order.

14. If the Court were to take a lenient view and not insist on strict compliance with the mandatory requirement of Order XXIX Rule 3, then it would be possible for most Plaintiffs to continue to enjoy an ad interim ex parte stay in their favour for any length of time and plead genuine mistake by their Counsel for non-compliance. Numerous suits accompanied by applications seeking urgent ex parte reliefs are filed in our Courts every day. The Court, on a perusal of the documents filed before it, forms a prima facie view for grant of ex parte ad interim injunction against the opposite party, even in the absence of the opposite party. The Court at that stage has no means of knowing what the version of the opposite party is. The Court, therefore, makes such interim order both time-bound and conditional. The condition is that there must be compliance with Order XXXIX Rule 3, CPC within the time specified by the Court. Although Order XXXIX Rule 3(b), CPC requires the filing of an affidavit of compliance “on the day on which such injunction is granted or on the day immediately following that day”, this Court has been granting a longer time accounting for the fact that the certified copy of the order passed by the Court may not be available on the same day or even on the next date. However, there is no question of the Plaintiff not being required to comply with the mandatory requirement of Order XXXIX Rule 3, CPC within the time granted by the Court. In the considered view of this Court, a strict compliance with the mandatory requirement of this provision must be insisted and any laxity shown to parties might well defeat the very purpose for which such provision has been inserted.

15. The filing of process fee in this Court for service of summons/notice upon Defendants, no doubt, is another mandatory requirement of law. However, that alone is not enough. If the Plaintiff wants to take the benefit of an ex parte ad interim injunction, then there is no escape from complying with the mandatory requirement of Order XXXIX Rule 3, CPC.

. 16. Since it is plain that the Plaintiffs have not complied with the requirement of Order XXXIX Rule 3, CPC, the interim order passed by this Court on 22nd July, 2009 hereby stands vacated. IA No. 9768 of 2009 is accordingly allowed.

13. Likewise Hon'ble Delhi High Court in **Ashwani Pan Products Pvt. Ltd.'s** case (supra) by relying upon the decision of Hon'ble the Supreme Court in **A. Venkataubbiah Naidu's** case (supra) as well as **AGI Logistics's** case (supra) held that in view of non-compliance of Order 39 Rule 3 CPC, the interim order was liable to be suspended. Relevant extract of the same is reproduced as under:

the compliance of Order XXXIX Rule 3 CPC from Mr Ashok Mittal, Advocate, who appeared on behalf of the plaintiff. He submitted that in compliance of Order XXXIX Rule 3 CPC, an affidavit of the plaintiff's counsel was filed in the Registry. However, he agreed that the weight of the entire paper book filed before Court is more than 2.5 k.g. and the parcel sent under the compliance of Order XXXIX Rule 3 CPC is about 1 k.g. He also undertook before Court to produce relevant record of the green colour label if it has been used by the plaintiff at any point of time with cogent evidence. He was unable to give any justification as to why the sale figures produced by the plaintiff in Court did not tally with the sale figures filed in the Trade Mark Office.

5. When the ex-parte order was granted on 06.02.2012, one week's time was granted to the plaintiff to comply with the provisions of Order XXXIX Rule 3 CPC. According to the learned counsel for the plaintiff, the affidavit was filed within one week. But, the fact remains that the complete set of paper book was not sent under the said compliance. The learned counsel for the defendant argued that there is a total non-compliance of mandatory provision contained under Order XXXIX Rule 3 CPC.

6. Order XXXIX Rule 3 CPC provides in unambiguous terms that in cases where the court proposes to grant an ex parte interim injunction in favour of a party, it shall require the applicant to comply with the provisions contained in the said rule by delivering 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 a copy of the affidavit filed in support of the application, a copy of the plaint, and copies of documents on which the applicant relies.

7. Order XXXIX Rule 3 CPC provides for two mandatory conditions which have to be followed, while sending the relevant documents and pleadings to the opposite party, i.e., (a) the pleadings and documents have either to be delivered to the opposite party (obviously envisaging a situation where hand delivery is effected), or

(b) the pleadings and documents have to be sent to the opposite

party by registered post.

8. It is settled law that in the event there is a non compliance with the mandatory provisions contained in Order XXXIX Rule 3 CPC to supply to the opposite party copy of the application for temporary injunction, together with other relevant documents relied upon by the applicant in support of the said application, immediately after the order granting ex parte interim injunction is passed, the said order is liable to be vacated, for the said provision is mandatory in nature.”

14. Accordingly, in view of the decision of Hon'ble the Delhi High Court in **M/s Marble Udyog Ltd.'s** case (supra), **M/s Interlink Services Pvt. Ltd. v. Shri S.P. Bangera Sole Prop**, 65 (1997) DLT 228, **AGI Logistics's** case (supra) and **A. Venkataubbiah Naidu's** case (supra), it was held that the plaintiff had failed to comply with the mandatory provisions of Order 39 Rule 3 CPC as he had not sent a complete set of paper books and documents admittedly on the basis of the record available in the matter, therefore, order dated 6.2.2012 granting interim injunction was liable to be suspended but since no one had appeared on behalf of the plaintiff to argue the interim application, the same was dismissed.

15. Likewise, decision of Hon'ble the Delhi High Court in **Ved Parkash Sharma's** case (supra) held that in case of grant of ex parte interim injunction, the same could be vacated on account of non-compliance of the provisions contained in the proviso to Rule 3 Order 39 CPC as the said requirements were mandatory and it did not make any difference whether or not the Court had issued specific directions to the applicant to comply with the requirements of proviso to Rule 3 Order 39 and applicant was bound to comply with said requirements. The Hon'ble Delhi High Court in **Ved Parkash Sharma's** case (supra), by relying on the Division Bench decision of Hon'ble Delhi High Court in **S.B.L. Ltd. vs. The Himalaya Drug Co.**, 67 (1997) Delhi Law Times 803 held that in view of non-

compliance with the provisions of proviso to Rule 3 of Order 39 CPC, the vacation of ex parte interim order by the learned Senior Civil Judge was valid. The Hon'ble Delhi High Court also held that irrespective of whether the Court had issued a specific direction to the applicant to comply with the requirements of Clauses (a) and (b) of the proviso to Rule 3 of Order 39 CPC the applicant was bound to comply with the said requirements and the permission of the Court to direct the applicant to comply with the requirement of Clauses (a) and (b) of Rule 3 of Order 39 CPC could not be pleaded as a ground for the continuance of an illegal and effective order especially when the beneficiary of the said order had failed to comply with the mandatory requirements of Clauses (a) and (b) of the proviso to Rule 3 Order 39 of the CPC. However, the Hon'ble Delhi High Court held that even if the ex parte interim order was liable to be vacated for non-compliance with the requirements of Clauses (a) and (b) of the proviso to Rule 3 Order 39 of the CPC, the application under Order 39 Rule 1 and 2 of the CPC was not liable to be dismissed without considering it on merits and hearing the parties.

16. Likewise in **Shambu Dutt Dogra's** case (supra) decided by Hon'ble the Delhi High Court, the view in **A. Venkataubbiah Naidu's** case (supra) and **AGI Logistics's** case (supra) was followed. Accordingly, while holding that non-compliance of requirements as stipulated in the provisions of Order 39 Rule 3 CPC could not be allowed to go without consequences, the ex parte order of injunction was vacated while leaving it open to the parties to have a hearing on the grant or otherwise on the order of injunction. Relevant extract of the decision in **Shambu Dutt Dogra's** case (supra) is reproduced as under:

“16. This Court is clearly bound by the aforesaid dicta laid down by the Division Bench in the S.B.L. Ltd. case (supra). There is an admission in the instant case by the plaintiff of his failure to comply with the provisions

contained in the proviso to Rule 3 of Order XXXIX CPC after availing of the ex parte ad interim injunction order in his favour. The Court, therefore, is left with no choice except to vacate the ex parte order of injunction with the clarification that this is being done without expressing any opinion on the merits of the case leaving it open to the parties to have a hearing bi-partite on the grant or otherwise of the order of injunction. Clearly, the defendants/applicants have been deprived by the misconduct/lapse of the plaintiff of having an early hearing on merits. The ex parte order of injunction cannot, therefore, be allowed to operate any longer. The interim order passed by the Court on 13.05.2011 hereby stands vacated.”

17. Per contra learned counsel for the respondent has relied upon the decision of Hon'ble the Orissa High Court in case titled as **Naturepro Biocare Inc. & anr. Versus M/s Naturoma Herbal Pvt. Ltd. & ors. 2012 (72) RCR (Civil) 503** in support of the plea that for non-compliance with the provisions of Order 39 Rule 3, an ex parte interim injunction order could not be vacated automatically and the said order would only be varied, discharged or confirmed in the final order to be passed in the application for interim injunction under Order 39 Rule 1 and 2 CPC as per the provisions of Rule 4 and that the Court below committed error in straightway vacating the ex parte ad interim order of injunction passed by it earlier only on the ground of non-compliance of the provision of Order 39 Rule 3 CPC. The Hon'ble Orissa High Court, inter alia, considered the decision of the Delhi High Court in **M/s Interlink Services Pvt. Ltd.'s** case (supra) which in turn relied upon the decision in **Shiv Shankar Chadha etc. etc. versus Municipal Corporation of Delhi and others, (1993) 3 SCC 161** and **M/s Marble Udyog Ltd.'s** case (supra) which had held that the provisions of Order 39 Rule 3 CPC were mandatory and that for non compliance of the provisions there was no option left to the Court except to vacate the ex parte order of injunction, therefore, the temporary injunction was liable to be vacated. However, the

Hon'ble Delhi High Court in **M/s Interlink Services Pvt. Ltd.'s** case (supra) did not eventually vacate the temporary injunction on the aforementioned point but held that plaintiff had been found to be not entitled to temporary injunction on merits.

18. The Hon'ble Orissa High Court held that although the Delhi High Court had held that non-compliance of the provisions of Order 39 Rule 3 CPC would entail automatic vacation of the ex parte order of ad interim injunction but the same was not borne out from the decision of Hon'ble Supreme Court in **Shiv Shankar Chadha's** case (supra). The Hon'ble Orissa High Court held that it was of the view that once an order of ad interim ex parte injunction has been passed by assigning reasons as contemplated under Order 39 Rule 3 CPC, the order could only be varied, discharged or set aside when an application was filed by the opposite party for that purpose under Order 39 Rule 4 and that non compliance with the requirement under the proviso to Order 39 Rule 3 CPC would only tantamount to the fact that such an ex parte order would not be binding on the opposite party. The Orissa High Court further held that the Supreme Court in **Shiv Kumar Chadha's** case (supra) while holding the provisions of Rule 3 of Order 39 CPC as mandatory, disposed of the appeals directing that the application for interim injunction should be considered and disposed of in the manner stated therein. It needs mentioning here that Hon'ble the Orissa High Court has placed reliance on the decision of Hon'ble the Supreme Court in **Shiv Shankar Chadha's case (supra)** to hold that while in the said decision it was held that the provisions of Order 39 Rule 3 CPC were mandatory in nature, the same had disposed of the appeals by directing that the application for ad interim injunction should be considered and disposed of in the manner indicated therein i.e.,

application with a copy of the plaint along with relevant documents on the counsel for the Corporation or any competent authority of the Corporation and the order should be passed only after hearing the parties.

(ii) 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 39 of the Code, before passing an order for injunction. 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 competent authority or the counsel for the Corporation. Affidavit of service of notice should be filed as provided by proviso to Rule 3 of Order 39 aforesaid. If the Corporation has entered appearance, any such ex parte order of injunction should be extended only after hearing the counsel for the Corporation.

(iii) While passing an ex parte order of injunction the Court shall direct the plaintiff to give an undertaking that he will not make any further construction upon the premises till the application for injunction is finally heard and disposed of.

In the result, the appeals are allowed to the extent indicated above. In the circumstances of these cases, there shall be no order as to costs.

Appeals allowed."

Accordingly, the Hon'ble Orissa High Court held that the ex parte interim order of injunction passed earlier could not be vacated only on the ground of non-compliance of provision of Order 39 Rule 3 CPC.

19. However, the decision of Hon'ble the Orissa High Court does not take into account the decision of Hon'ble the Supreme Court in **A. Venkataubbiah Naidu's** case (supra), decided on 19.2.2000 and which judgment has been relied upon by Hon'ble the Delhi High Court in **AGI Logistics's** case (supra), decided on

16.9.2009, **Ashwani Pan Products Pvt. Ltd.**'s case (supra), decided on 2.3.2012 though the decision in **Ved Parkash Sharma's** case (supra) by the Delhi High Court is of a date earlier than the date of decision in **A. Venkataubbiah Naidu's** case (supra). Hon'ble the Supreme Court in **A. Venkataubbiah Naidu's** case (supra) held that the consequences of the party who secured the order for not complying with the duties which required to perform is that he cannot be allowed to take advantage of such order if the orders not obeyed by the other party. Relying upon the aforementioned decision by Hon'ble the Supreme Court, Hon'ble the Delhi High in **AGI Logistics's** case (supra), held that the object being mandatory, there is a logic behind insisting that the plaintiff who obtains an ex parte ad interim injunction order should at the earliest point in time deliver to the party against whom such injunction has been granted, all the documents on the basis of which such injunction was granted so as to enable the opposite party to know what the case against it is and to approach the Court at the earliest point in time to seek if necessary a variation of the interim order. Hon'ble Delhi High Court further held that if the Court were to take a lenient view and not insist on strict compliance with the mandatory requirement of Order 39 Rule 3 CPC then it would be possible for most plaintiffs to continue to enjoy ad interim ex parte stay in their favour for any length of time and plead genuine mistake by their counsel for non-compliance and that in view of the fact that at the time of considering an application for ex parte ad interim injunction against the opposite party, the Court at that stage has no means of knowing what the version of the opposite party is, therefore, interim orders were made both time bound as well as conditional, condition being requirement of compliance with Order 39 Rule 3 CPC within the time specified by the Court and there was no question of the plaintiff not being required to comply with the mandatory requirement of Order 39 Rule 3 CPC

within the time granted by the Court. The Hon'ble Delhi High Court held that strict compliance with the mandatory requirement of the provisions was required to be insisted and any laxity shown to parties would defeat the very purpose for which such provision had been inserted. It is not that on failure of complying with the mandatory provisions of Order 39 Rule 3 CPC, the claim of the plaintiff is decided on merit, it is only that in order to ensure strict compliance with the provisions of Order 39 Rule 3 CPC it has been held that in case of non-compliance, the Court would simply vacate the ex parte order of interim injunction without expressing any opinion on the merits of the case leaving it open to the parties to have a hearing on the grant or otherwise of injunction. Not only has there been non-compliance with the requirement of provisions of Order 39 Rule 3 CPC to deliver to the party against whom such injunction has been granted all the documents on the basis of which injunction was granted but even the requirement of recording reasons as is stipulated in Order 39 Rule 3 CPC has not been complied with. The learned Civil Judge while passing the ex parte ad interim injunction merely recorded that from the documents placed on record a prima facie case was made out in favour of the plaintiff and in case relief of ex parte interim injunction was not granted the purpose of filing the suit would be defeated. This is nothing except reproduction of the proviso minus the recording of reasons. The proviso also mentions that the Court shall record the reasons for its opinion that the object of granting injunction would be defeated by delay. Though the same has been recorded by the learned Civil Judge, the only thing is that the reasons for its opinion have not been recorded. The Hon'ble Delhi High Court in **Shambu Dutt Dogra's** case (supra) held in the circumstances, the requirement of complying with the provisions of Order 39 Rule 3 CPC is mandatory and the plaintiff who

time and at any rate not later than the time granted by the Court deliver to the parties in any manner prescribed by Order 39 Rule 3(a) CPC all the documents on the basis of which such injunction was granted in his favour so as to enable the opposite party if he so desires to approach the Court for vacation of such ex parte ad interim injunction order granted against him and/or to bring to the notice of the Court facts which may not have been disclosed to the Court at the time of the grant of ex parte ad interim injunction order.

20. Accordingly, in the light of position as noted above, while allowing the revision petition, it needs mention here that on the application filed by the petitioner-defendant to vacate the ex parte ad interim injunction order and to initiate proceedings against the respondent-plaintiff under Section 340 Cr.PC, the learned Civil Judge did not hear the parties on merits and while dismissing the application for vacation of the ex parte interim injunction order dated 7.7.2017 granted liberty to the petitioner-defendant to pursue the matter by separate application qua the claim for initiation of proceedings under Section 340 Cr.PC. Accordingly, ad interim injunction order dated 7.7.2017 (Annexure P-3) as also order dated 6.11.2017 (Annexure P-8) refusing to vacate the ex parte stay order dated 7.7.2017 are set aside. The ex parte ad interim injunction dated 7.7.2017 is vacated. However, after ensuring compliance with the provisions of Order 39 Rule 3(a) CPC, the learned Civil Judge would consider the application under Order 39 Rule 1 & 2 CPC for grant or otherwise of order of the injunction but only after giving opportunity of hearing to both the parties. The rationale in vacating an ex parte ad interim injunction on account of non-compliance of Order 39 Rule 3(a) CPC is to make it clear to the plaintiff that by his conduct of non-compliance with the mandatory provisions of Order 39 Rule 3(a) CPC, rather of

requirement of supplying the documents etc. as contemplated under Order 39 Rule 3(a) CPC and yet filing an affidavit in Court of the requirement having been complied with thereby depriving the opponent of an opportunity of having an earlier urgent hearing on merits is that the ex parte order of injunction granted in his favour cannot be allowed to operate in such circumstances.

21. Revision petition allowed as above.

August 03, 2018

ps

(B.S. WALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No