

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.s 1044, 970 and 971 of 2020

COMMON ORDER :

These three Revisions arise out of the same suit O.S.No.144 of 2015 on the file of III Senior Civil Judge, City Civil Court, Secunderabad between the same parties, and so, they are being disposed of by this Common Order.

2. Petitioners in these three Revisions are plaintiffs in the above suit.

3. In the said suit, the petitioners filed I.A.No.402 of 2015 under Order XXXIX Rules 1 and 2 of Civil Procedure Code, 1908 for an *ad interim injunction* restraining respondents from interfering with their alleged peaceful possession and enjoyment over the suit schedule property.

4. On 26.06.2015, an *ex parte ad interim injunction* was granted in favour of petitioners restraining respondents from interfering with their alleged peaceful possession and enjoyment over the suit schedule property till 10.07.2015.

5. It appears that the said order was extended from time to time. The respondent also filed a counter-affidavit in the said I.A.

6. On 07.06.2018, the Court below recorded that “*respondent was present but, both the petitioners and respondent were not ready for*

hearing / enquiry; without prejudice to rights of both sides, I.A.No.402 of 2015 was closed since the main suit was posted for trial'.

7. According to petitioners, on 27.06.2020, the respondent and his henchmen allegedly surrounded the suit schedule property, that the 1st petitioner was dragged out of the house by the respondent with the help of local police and petitioner was dispossessed from the suit schedule property, which is a house, in spite of the *ad interim injunction* subsisting in his favour.

8. Petitioner(s) then filed E.I.A.No.337 of 2020 in the suit to punish the respondent for Contempt of Court for violating the order dt.26.06.2015 and to send him to a civil prison; I.A.No.338 of 2020 praying to the Court below to restore *status quo ante* by way of restoration of the suit schedule property to petitioners and I.A.No.339 of 2020 to grant police aid to petitioners to ensure that they continue in peaceful possession and enjoyment of the suit schedule property.

9. The respondent did not file any counter-affidavit in the above applications.

10. The Court below dismissed all the three applications, viz., E.I.A.No.337 of 2020, I.A.No.338 of 2020 and I.A.No.339 of 2020 by a Common Order dt.24.08.2020 holding that on 07.06.2018 I.A.No.402 of 2015 had been closed; that observations made in a Bail Order by the IV Additional Chief Metropolitan Magistrate Court,

Nampally, Hyderabad are not binding on the Civil Court; that an F.I.R. in Crime No.201 of 2020 had been lodged by the wife of 1st petitioner, but in the said F.I.R., there was no mention that the respondent and police came and dragged 1st petitioner and his wife out of his house and dispossessed them. The Court below also observed that there was no oral evidence adduced by petitioner. It also recorded that there was no material to show that petitioners were dispossessed from the suit schedule property and that if petitioner had been dispossessed in spite of *ad interim injunction* orders, he has to amend the plaint and seek relief in the main suit for restoration of the suit schedule property rather than proceed to filing an I.A. seeking restoration of possession. It thus concluded that there was nothing to establish that the respondent had violated any order of the Court, and so the respondent cannot be punished for Contempt of Court and petitioner also cannot seek restoration of *status quo ante* or protection from Police.

11. Assailing the same, the present Civil Revision Petitions are filed.

12. The counsel for petitioners sought to contend that the mere fact that the Trial Court had recorded in its order passed on 07.06.2018 that I.A.No.402 of 2015 was closed does not mean that the injunction granted therein had been vacated, and placed reliance on the decision of this Court in **Bagh Amberpet Welfare Society vs. State of Andhra Pradesh**¹. He also contended that the Court below should have taken into account the conduct of respondent and certain

¹ 2015 (2) A.L.T. 795

photographs filed with the C.D. to accept the plea of dispossession by the respondent in violation of the interim order granted on 26.06.2015 in I.A.No.402 of 2015 and allowed all the three I.A.Nos.337, 338 and 339 of 2020.

13. Sri A. Sudhakar Rao, counsel for respondent, refuted the said contentions.

Consideration by the Court

14. I may point out that the initial order granting *ad interim injunction* in I.A.No.402 of 2015 was passed on 26.06.2015 and it states as under :

“Upon perusing the petition and documents filed by the petitioners/plaintiffs and upon hearing the arguments of advocate for petitioners, this Court doth order to issue ad interim injunction restraining the respondents from interfering form the peaceful possession and enjoyment of the petitioners over the petition schedule property..”

15. I am of the opinion that the order passed by the Court below on 26.06.2015 in I.A.No.402 of 2015, being an *ad interim ex parte injunction*, reasons ought to have been recorded by the Court below for granting the same in favour of petitioners.

16. The Supreme Court in **Shiv Kumar Chadha vs. Municipal Corporation of Delhi**² has held that when proviso to Order XXXIX Rule 3 requires reasons to be recorded for granting such injunction, the said requirement cannot be ignored by a court. It held :

² (1993) 3 S.C.C. 161

“34. The imperative nature of the proviso has to be judged in the context of Rule 3 of Order 39 of the Code. Before the proviso aforesaid was introduced, Rule 3 said “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”. The proviso was introduced to provide a condition, where court proposes to grant an injunction without giving notice of the application to the opposite-party, being of the opinion that the object of granting injunction itself shall be defeated by delay. The condition so introduced is that the court “shall record the reasons” why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex parte injunction, cannot be held to be a mere formality. 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 of Rule 3, the procedure prescribed under the proviso has been followed. 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. We are quite conscious of the fact that there are other statutes which contain similar provisions requiring the court or the authority concerned to record reasons before exercising power vested in them. In respect of some of such provisions it has been held that they are required to be complied with but non-compliance therewith will not vitiate the order so passed. But same cannot be said in respect of the proviso to Rule 3 of Order 39. The Parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side, under exceptional circumstances. Such ex parte orders have far-reaching effect, as such a condition has been imposed that court must record reasons before passing such order. If it is held that the compliance with the proviso aforesaid is optional and not obligatory, then the introduction of the proviso by the Parliament shall be a futile exercise and that part of Rule 3 will be a surplusage for all practical

*purposes. Proviso to Rule 3 of Order 39 of the Code, attracts the principle, that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all. This principle was approved and accepted in well-known cases of **Taylor v. Taylor** and **Nazir Ahmed v. Emperor**. This Court has also expressed the same view in respect of procedural requirement of the Bombay Tenancy and Agricultural Lands Act in the case of **Ramchandra Keshav Adke v. Govind Joti Chavare**.” (emphasis supplied)*

17. In my opinion, the trial Court when it granted the ex parte ad interim injunction in favor of the petitioners failed to give any reasons and so the said order is contrary to law and unsustainable.

18. The ex-parte ad interim injunction order dt. 26.06.2015 in I.A.No.402 of 2015 appears to have been subsequently extended on 13.04.2016 and ultimately on 07.06.2018 the said I.A. was closed stating the following:

“Defendant present. Both not ready for hearing / enquiry without prejudice to rights of both sides this I.A. is closed because main suit is posted for trial.”

19. Thus even after such ex parte ad interim injunction was granted in favor of the petitioner, the Court below did not decide it within 30 days as mandated by Or.XXXIX Rule 3-A CPC. It also did not record any reasons for its inability to so dispose of the said application.

20. Order XXXIX Rule 3-A states as under :

“3-A: Court to dispose of application for injunction within 30 days:-

Where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavor to finally dispose of the application within 30 days from the date of which the

injunction was granted; and where it is unable so to do, it shall record its reasons for such inability.”

21. It thus directs that where an injunction has been granted without giving notice to the opposite party, the Trial Court should dispose of the said application seeking temporary injunction within (30) days from the date on which the injunction was granted and if it is unable to do so it should record reasons for such inability.

22. In **A. Venkatasubbiah Naidu vs. S. Chellappan and others**³, the Supreme Court held that Order XXXIX Rule 3-A casts the following protection to the party against whom the *ex parte injunction* order was passed : viz., (1) legal obligation that the Court should finally dispose of an application for injunction within the period of (30) days; (2) the legal obligation that if for any valid reasons the Court could not finally dispose of the application within the aforesaid time, the Court has to record reasons in writing.

23. Therefore, in the instant CRP's, the Court below when it granted the *ex parte ad interim injunction* on 26.06.2015 in I.A.No.402 of 2015 ought to have granted reasons but also decided the said application within (30) days from the date on which the injunction was granted and if it was unable to do so, it should have recorded reasons for such inability.

24. The petitioners therefore cannot harp on the technicality of the I.A. being closed and seek to take advantage of the decision rendered

³ (2000) 7 SCC 695

by this Court in **Bagh Amberpet Welfare Society** (1 supra) to contend that the injunction order has to be taken as being in subsistence, that it has been violated and so the respondent must be punished for Contempt of Court apart from restoring *status quo ante* and giving police aid to him.

25. In these circumstances, I am of the opinion that interests of justice would be served by setting aside the order dt.07.06.2018 in I.A.No.402 of 2015 in O.S.No.144 of 2015 and directing its disposal by the Court below within a fixed period of time.

26. Therefore, the Civil Revision Petitions are disposed of setting aside the order dt.07.06.2018 in I.A.No.402 of 2015 in O.S.No.144 of 2015; the said I.A. would stand restored to the file of the Court below; and the Court below shall decide the said I.A. in accordance with law after hearing both sides on or before 15.02.2021 uninfluenced by any observations made by it while deciding I.A.Nos.337, 338 and 339 of 2020.

27. The orders passed by the Court below in I.A.Nos.337, 338 and 339 of 2020 are also set aside and they are also remitted back to the Court below. If the petitioner were to succeed in I.A.No.402 of 2015 in O.S.No.144 of 2015 after fresh orders are passed by the Court below, the petitioner can pursue these IA No.s.

28. Accordingly, the Civil Revision Petitions are disposed of as above. No order as to costs.

29. As a sequel, miscellaneous petitions pending if any in these Civil Revision Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date:28.12.2020

Ndr

