

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

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**IN VIRTUAL COURT**

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**CR No. 3286 of 2021**

**Date of decision : 14.12.2021**

**Sahil Gupta**

**.....Petitioner**

**Vs.**

**Sonia Gupta and another**

**.....Respondents**

**CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present : Mr. RPS Babbar, Advocate, for the petitioner

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**Rajbir Sehrawat, J. (Oral)**

This petition has been filed under Article 227 of the Constitution of India against order dated 19.10.2021 (Annexure P-1), passed by the Principal Judge, Family Court, Ludhiana, in civil suit bearing CS No. 5418 of 2021, titled as 'Sonia Gupta v. Rajesh Gupta and another', filed by respondent No.1 for permanent injunction; whereby application under Order 39 Rule 4 read with Section 151 CPC, filed by the petitioner (defendant No.2) for vacation of the ex-parte ad interim injunction dated 24.9.2021 for gross non-compliance of provisions of Order 39 Rule 3 CPC and for filing a false affidavit before the trial Court regarding compliance under Order 39 Rule 3 CPC, has been dismissed.

The counsel for the petitioner has submitted that the ad-interim injunction was granted by the trial Court without issuing notice but subject to compliance of provisions of Order 39 Rule 3 CPC. The same was not complied with. Therefore, the petitioner had moved application for vacating the ad-interim injunction. However, that application has been wrongly declined by

the trial Court vide the impugned order. The counsel has further submitted that since the provisions contained in Order 39 Rule 3 CPC are mandatory, therefore, in case of non-compliance of the said provisions, the interim injunction granted by the trial Court is required to be vacated.

This Court has heard counsel for the petitioner and perused the case file. This Court does not find any substance in the argument of the counsel for the petitioner. Of course, the ad-interim injunction was passed by the trial Court in this case prior to hearing the defendants while issuing notice. The interim injunction was also made subject to the compliance of the provisions of Order 39 Rule 3 CPC. It is not even the case of the petitioner that there was a total non-compliance of the said provisions by the plaintiff. On the contrary, it has come on record that in compliance of the said provisions, the plaintiff had sent the documents to the defendant/present petitioner through registered post. It is the claim of the petitioner that he never opened the said envelope, still he had filed an application claiming that the plaintiff/ respondent had not complied with the provisions of Order 39 Rule 3 CPC. How the petitioner could have come to the conclusion qua non-compliance of the provisions of Order 39 Rule 3 CPC despite not opening the envelope received by him from the plaintiff through registered post, is beyond reasoning. Therefore, the application filed by the present petitioner before the trial Court itself was speculative in nature. Moreover, the petitioner claimed to have presented the said envelope before the Court in sealed condition. The Court has mentioned in the order that the said envelope was opened in the presence of the parties and it was found containing the copy of the plaint, copy of the application and the affidavit supporting these pleadings. The Court has

further recorded that the relief of ad-interim injunction granted to the plaintiff was not granted on the basis of any other documents but was granted only on the basis of those documents, which have been supplied by the plaintiff in compliance of Order 39 Rule 3 CPC. Hence, the Court has found substantial compliance of the provisions of Order 39 Rule 3 CPC, and has, accordingly, refused to vacate the order only for alleged non-compliance of provisions of Order 39 Rule 3 CPC. So far as the merits of the case are concerned, the petitioner has not even filed reply to the stay application. No written statement has been filed. On the contrary, an application under Order 7 Rule 11 CPC has been filed by the petitioner seeking rejection of the plaint. Hence, so far the petitioner has not even contested the application moved by the plaintiff for interim injunction; on merits. Hence, this Court does not find any illegality in the course of action adopted by the trial Court. Moreover, the petitioner has not been excluded from any contest to the interim injunction; as such. Rather the matter stands adjourned only for enabling the petitioner to file reply to the application moved by the plaintiff under Order 39 Rule 1 and 2 CPC. Hence, even any prejudice is not shown to have been caused to the petitioner. Rather, the petitioner has chosen not to seek an early decision on application filed by the respondents under Order 39 Rule 1 and 2 CPC.

Although counsel for the petitioner submits that since the plaintiff had not complied the provisions of Order 39 Rule 1 and 2 CPC, therefore, it was mandatory for the trial Court to vacate the said ad-interim injunction as per mandate of Order 39 Rule 4 CPC, however, this Court does not find any force even in this submission. A bare perusal of Order 39 Rule 4 CPC shows that in case the interim injunction is granted without issuing notice to the opposite

party, then the Court shall vacate the injunction only if it come to the conclusion that the plaintiff had knowingly made false or mis-leading statement in relation to the material particulars leading to grant of injunction. However, undisputedly, there is nothing placed on record by the petitioner to even remotely suggest that the plaintiff had knowingly made some false or mis-leading statement to obtain the interim order. Accordingly, this Court does not find any illegality in not vacating the interim order passed by the trial Court as well. Needless to say that the provision of Order 39 Rule 4 CPC is only an enabling provision and the trial Court is not required to vacate the ad-interim injunction except on being satisfied qua the criteria mentioned in this provision. Moreover, as observed above, the trial Court has found substantial compliance of the Order 39 Rule 3 CPC.

In view of the above, finding no merit in the present petition, the same is dismissed.

**(RAJBIR SEHRAWAT)**  
**JUDGE**

**14.12.2021**

*Ashwani*

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|-------------------|---|--------|
| Speaking/Reasoned | : | Yes/No |
| Reportable        | : | Yes/No |