

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

**F.M.A. 1070 of 2022
With
CAN 1 of 2022**

**Arindam Paul
Vs.
Anupam Paul and Ors.**

**Mr. Partha Pratim Ray
Mr. Shibaji Kumar Das
Ms. R. Sreemani** **For the Appellant.**

**Mr. Suman Sankar Chatterjee
Mr. Pronoy Basak** **For the Respondents.**

An affidavit of service is on record.

The point involved in this appeal is short but very interesting.

We propose to dispose of the appeal after dispensing with all formalities.

On 30th June, 2022, the appellant/plaintiff obtained an ex-parte interim order from the learned court below.

Order 39, Rule 3 provides as follows:-

S.D. “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:

[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 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-

- (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.”

The appellant/plaintiff, on obtaining an ex-parte interim order is obliged to deliver or send to the defendant, a copy of the application along with other documents mentioned in paragraph (a) under the proviso to Order 39, Rule 3, on the day the order is passed or by the following day.

In this case as contended by learned counsel for

the appellant the order of injunction was passed on 30th June, 2022. On 1st July, 2022 on the ground of Ratha Yatra the Post Office was closed. The above document was sent by advocate on record for the appellant/plaintiff to the defendants on 2nd July, 2022. Hence there was a delay of one day.

When a mandate is given by a statute but no consequence of breach thereof is provided therein, normally the stipulation is taken as directory and not mandatory. Here also there is no default clause, which is to become operative if there is failure to comply with the requirement of Order 39, Rule 3 (a) and (b).

Therefore, in our opinion the mandate appears to be directory. Furthermore, there is no bar to the court extending the time under Section 148 of the Code of Civil Procedure.

We are of the view that in the above circumstances the learned judge of the court below was most stringent and in error in not condoning the delay of one day in filing the above papers by the appellant/plaintiff and in not extending the interim order.

We set aside the judgement and order dated 15th July, 2022.

The interim order made on 30th June, 2022 is extended till 31st January, 2023 or until final disposal of the injunction by the learned court below, whichever is

earlier and we request the learned court below to hear out the injunction application within the said period.

The appeal (FMA 1070 of 2022) and the application (CAN 1 of 2022) are disposed of.

(I.P. Mukerji, J.)

(Biswaroop Chowdhury, J.)

