

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

C.R.P.Nos.2590 and 2591 of 2022

COMMON ORDER:

These Civil Revision Petitions are filed under Article 227 of the Constitution of India, assailing the docket order dated 15.11.2022 in IA Nos.2008 and 2009 of 2022 in OS No.469 of 2022 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad respectively. Accordingly, both the civil revision petitions are disposed of through this common order.

2. The petitioners/plaintiffs have filed the original suit for partition and separate possession of their share against the respondents 1 to 119 in respect of suit schedule 'A' to 'T' properties. Along with the original suit, they have filed these two Interlocutory Applications. I.A.No.2008 of 2022 is filed under Order-39 Rules-1 and 2 of the Civil Procedure Code, 1908 (for short 'CPC') to restrain the respondents/defendants from alienating the suit schedule 'A' to 'T' properties or creating any third party interest thereof. Whereas I.A.No.2009 of 2022 is filed to

restrain the respondents/defendants from changing the nature of the schedule A to T properties, as per the schedule of property mentioned in the plaint.

3. Upon consideration of the material available on record and the submissions made by the learned counsel for the petitioners, the learned II Additional Chief Judge, City Civil Court, Hyderabad has granted *ex parte* ad-interim injunction on 12.10.2022 as prayed for restraining the respondents from alienating A to T schedule properties excluding L, P, Q schedule properties till 15.11.2022 and restraining them from changing the nature of the same till 15.11.2022.

4. As per the order impugned, dated 15.11.2022, the mandatory requirement under Order-39 Rule-3 (a) of CPC was complied by sending copy of the affidavit filed in support of the application, but the copy of plaint, copy of the documents on which the applicant relied were not sent and the mandatory requirement under Order 39 Rule (a) (ii) and (iii) was not complied with. As such upon hearing some of the respondents, as the mandatory requirement of

Order-39 Rule-3 (a) and (b) of CPC is not complied with, the *ex parte* injunction order dated 12.10.2022 has been vacated without expressing any opinion on the merits of the case holding that both the parties have right to contest the matter by canvassing their contentions in the future course. The petition filed by the revision petitioners for extension of injunction order was also dismissed.

5. Feeling aggrieved by the impugned orders, these civil revision petitions are filed by the petitioners/plaintiffs alleging that the orders impugned are contrary to law, the trial Court failed to appreciate the circumstances and erroneously dismissed the applications on the ground of non-compliance of order-39 Rule 3(a) of CPC. In all there are 119 respondents and in fact at the time of filing of the suit itself, Office has taken objection for filing 119 sets of documents for each and every respondent/defendant. At that time, a memo was filed by the petitioners explaining voluminous record running into 2,580 pages and obtained permission to serve the copies on all the counsels appearing for the defendants physically instead of service

on the defendants. Thereafter, the trial Court on appreciation of the submissions made and the documents available granted ad-interim injunction order till 15.11.2022 and it would be difficult for the petitioners to send such voluminous documents to all the defendants, as such the learned judge of the trial Court is not justified in vacating the *ex parte* orders granted on 12.10.2022.

6. Heard the learned counsel for the revision petitioners/plaintiffs, the learned counsel for the respondents/defendants 1 to 3 and 119, the leaned counsel for the respondent No.4 and the learned counsel for respondent No.23. The submissions made on either side have received due consideration of this Court.

7. The admitted or undisputed facts are that the plaintiffs have filed the original suit in O.S.No.469 of 2022 for partition and separate possession of their share in the suit schedule A to T properties. Along with the original suit, the petitioners/plaintiffs have filed two Interlocutory Applications in I.A.Nos.2008 and 2009 of 2022 to restrain the respondents from alienating the suit schedule

properties or creating any third party interest and not to change the nature of properties respectively. The trial Court upon considering the urgency expressed granted *ex parte* temporary injunction order dispensing with the notice under Order-39 Rule-3 of CPC. However, the petitioners/plaintiffs failed to comply with the mandatory requirement of Order-39 Rule 3 (a) and (b) of C.P.C. till 15.11.2022, thereby the trial Court has vacated the interim order dated 12.10.2022 without expressing any opinion on merits of the case holding that compliance of Order-39 Rule 3 (a) and (b) of CPC is mandatory and the Court has no power to extend the interim injunction.

8. The learned counsel for the revision petitioners strenuously contends that in all there are 119 respondents /defendants and that there is voluminous record running into 2,580 pages, as such when the Office has taken objection at the time of registering the suit, the petitioners/plaintiffs have obtained permission from the Chief Judge, City Civil Court, Hyderabad and they were permitted to furnish copies of documents to the learned counsel for the

defendants, instead of parties, but the trial Court has erroneously vacated the order dated 12.10.2022. It is further argued by the learned senior counsel for the petitioners that the petitioners have sent copy of the affidavit filed in support of the application to all the respondents in compliance with the provisions of Order-39 Rule-3 (a) and (b) of CPC and this fact was not taken into consideration by the learned judge of the trial Court and the order impugned is liable to be set aside. The learned Senior Counsel has relied upon the following decisions:

- i) ***Exide Industries Ltd. Vs. Exide Corporation, USA and others***¹;
- ii) ***Naturepro Biocare INC and others Vs. Natureoma Herbal Pvt. Ltd. and others***²;
- iii) ***Nat Organic Chemicals Industries Vs. B.L. Industries***³;
- iv) ***SSA International Limited Vs. Paras Sales Corporation and others***⁴;
- v) ***Himalaya Drug Co. Vs. S.B.L. Ltd.***⁵.

¹ MANU/DE/1374/2001

² MANU/OR/0435/2012

³ MANU/DE/0096/1988

⁴ MANU/DE/0808/2004

⁵ 1996 SCC Online Del 464

9. *Per contra*, the learned counsel appearing for the respondents 1 to 3 and 119 would submit that: i) the civil revision petitions are not maintainable against the orders impugned and they are only appealable orders; ii) the learned Chief Judge, City Civil Court, Hyderabad cannot pass any such orders and the memo relied upon by the revision petitioners is only filed before the learned Chief Judge, City Civil Court, Hyderabad, at the time of numbering the suit and it was made over to the learned II Additional Chief Judge, City Civil Court, Hyderabad. As such, any compliance or time requesting for compliance has to be filed only before the learned II Additional Chief Judge, City Civil Court and the said memo filed before the Chief Judge at the time of registration of the suit is not helpful to the petitioners to prove the compliance of mandatory requirement under Order 39 Rule 3 (a) and (b) of CPC; iii) the compliance of Order-39 Rule-3 (a) and (b) of CPC is mandatory in nature, mere sending copy of affidavit by registered post does not amount compliance; and iv) there is no infirmity in the orders impugned, the learned judge of the trial Court has rightly exercised jurisdiction

and vacated the *ex parte* order dated 12.10.2022 both in IA Nos.2008 and 2009 of 2022.

10. The learned counsel for the respondents 1 to 3 and 119 would further submit that law does not recognize any partial compliance or substantial compliance and that the entire material as contemplated under Order-39 Rule-3 (a) (i) to (iii) of CPC i.e., copy of the affidavit filed in support of the application, copy of the plaint and copies of documents on which the applicant relies have to be sent or delivered as required under Order 39 Rule 3 (b) of C.P.C. to all the respondents and shall file proof to that effect before the trial Court immediately on the date on which such injunction is granted or on the day immediately following that day with an affidavit stating that the copies of aforesaid documents have been delivered or sent.

11. The learned counsel for the respondent No.4 has adopted the arguments submitted by Sri A. Venkatesh, learned counsel for the respondent Nos.1 to 3 and 119. The learned counsel for respondent No.23 also made submissions on similar lines and further submitted that

the consequence of non-compliance with the requirement enumerated in clause (a) and (b) of Rule-3 of Order-39 CPC are that the party cannot be allowed to take advantage of such injunction orders and the aggrieved party is only entitled to prefer an appeal and that the civil revision petitions are not maintainable.

12. The learned counsel for the respondent Nos.1 to 3 and 119 also have relied on the principles laid in the following decisions:

- i) ***Shiv Kumar Chadha and others Vs. Municipal Corporation of Delhi and others***⁶ (paras 9, 33 and 34);
- ii) ***S.B.L. Ltd. Vs. Himalaya Drug Co.***⁷ [Delhi High Court order dated 15.07.1997 in FAO (OS) No.301 of 1996] (para-34);
- iii) ***Karni Adivamma and others Vs. Karada Chenchu Naidu***⁸;
- iv) ***Pasmala Anjaiah Chary Vs. T. Satyanrayana***⁹ [(DB) paras 7 & 8];
- v) ***Hari Chand Vs. Panchayat Mohalla Soodan***¹⁰ (P&H High Court: order dt.03.08.2018 in CR No.8999 of 2017 (O&M) (paras 14 & 20);

⁶ (1993) 3 SCC 161

⁷ AIR 1998 Delhi 126

⁸ MANU/AP/0740/1999

⁹ MANU/AP/3576/2013

¹⁰ MANU/PH/2088/2018

- vi) **Ved Prakash Shrma Vs. Lachmi Chand Sharma**¹¹ (APHC: Order dated 21.07.1999 in CRP No.331 of 1998).

13. The leaned counsel for the respondent No.23 relied on the principles laid in the following decisions:

- i) **A. Venkatasubbaiah Naidu Vs. S. Chellappan and others**¹²;
- ii) **Ashwani Pan Products Pvt. Ltd. Vs. Krishna Traders**¹³ [CS (OS) No.284 of 2012 (Delhi HC);
- iii) **Agi Logistics Inc and another Vs. Sher Jang Bhadhur & another**¹⁴;
- iv) **Tamilselvi Vs. Pandiyan Educational Board**¹⁵ (CRP No.1716 of 1995 Madras High Court);
- v) **Interlink Services (P) Ltd., Vs. S.P. Bangera**¹⁶;
- vi) **V. Devasahyam Vs. D. Sahayadoss**¹⁷ (order dated 08.02.2002 in CRP No.4015 of 2001 of Madras High Court);
- vii) **Nikesh Vs. Malathi Bai and others**¹⁸ (Order dated 09.08.1996 in CRP No.4048 of 1991 of A.P. High Court);
- viii) **Shiv Kumar Chadha's** case (6th supra);
- ix) **Techno Mechanical (P) Ltd., R.R. etc. and another Vs. Democratic Labour Union etc.**,¹⁹ (order dated 18.10.1996 in CRP No.2005 of 1995 & batch, Madras High Court);

¹¹ MANU/DE/0626/2000

¹² AIR 2000 SC 3032

¹³ MANU/DE/0866/2012

¹⁴ (2009) 163 DLT 137

¹⁵ MANU/TN/0659

¹⁶ 1997 (40) DRJ 299

¹⁷ MANU/TN/0014/202

¹⁸ MANU/AP/0559/1996

¹⁹ 1997-2-L.W.243

- x) **Dasari Laxmi Vs. Bejjenki Sathi Reddy**²⁰ (APHC: order dated 21.10.2014 in CRP No.76 of 2014);
- xi) **Ved Prakash Sharma**'s case (11th supra);
- xii) **Shambhu Dutt Dogra Vs. Shakti Dogro** (Delhi High Court: Order dated 05.07.2012 in IA No.13139 of 2011 in CS (OS) No.1163 of 2011);
- xiii) **Hari Chand**'s case (10th supra);
- xiv) **S.B.L. Ltd.**'s case (7th supra);
- xv) **Virudhnagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and others** (Order dt: 03.10.2019 in Civil Appeal No.7764 of 2019 of Supreme Court);
- xvi) **R. Munniraj and others Vs. T.D. Venkatesappa** and others (Order dated 15.03.2018 in CRP (PD) No.925 of 2018 of Madras High Court).

14. I have given my anxious consideration to the ratio laid in the above decisions cited and relied by the learned counsel for the petitioners and the respondents.

15. Be it stated that when an *ex parte* injunction is granted the petitioners have to strictly comply with the proviso to Order-39 Rule-3 (a) and (b) of CPC. Thus, the party obtaining the injunction is required to deliver the

²⁰ MANU/AP/1633/2014

opposite party or to send him by registered post immediately after the order granting injunction has been made a copy of the application for injunction together with i) copy of the affidavit filed in support of the application; ii) copy of plaint; and iii) copies of documents on which the application relies on and to file on the day on which the injunction is granted or on the day immediately following that day an affidavit stating that copies aforesaid have been so delivered or sent.

16. Admittedly, in the instant case, copy of plaint and copies of documents on which the applications are relying have not been sent to the respondents. It is the case of petitioners that these are in all 119 respondents, voluminous documents running into 2,580 pages, it was not possible for them to send a copy of the plaint and all the documents running into 2,580 pages to all the respondents/defendants and the petitioners have obtained permission from the learned Chief Judge, City Civil Court, Hyderabad.

17. Perused the memo filed by the petitioners wherein the learned Chief Judge has dispensed with the filing of the said documents. But it was only filed at the time of registration of the suit, when the Office has taken objection that the required number of sets of document, copies of plaint and affidavit were not filed. Thereafter, the original suit was numbered and made over to the learned II Additional Chief Judge, City Civil Court, Hyderabad, who passed *ex parte* order, dated 12.10.2022 and subsequent thereto, no such permission was obtained from the learned II Additional Chief Judge, City Civil Court, Hyderabad.

18. It is pertinent to mention that, it is must that on the day on which injunction is granted or on the day immediately following that day an affidavit stating that all the documents mentioned in proviso to Rule (3)(a) (i) to (iii) of Order-39 of CPC are sent to the respondents by registered post and there is no question of any substantial compliance or the court dispensing with the sending of such documents considering the request, if any made by the petitioners does not arise. Thus, whenever temporary

injunction is ordered dispensing with the notice in exceptional circumstances the aforesaid requirement is mandatory. In this context, I may refer to the relevant authoritative pronouncement of Hon'ble Supreme Court and this Court and Delhi High Court for better appreciation.

19. A Division Bench of this Court in **Pasmala Anjaiah Chary**'s case (supra) relying on the principles laid in **Shiv Kumar Chadha**'s case (supra) held at para-8 as under:

"8. Thus, from a reading of the aforesaid judgment of the Hon'ble Supreme Court, it is clear that ordinarily the interim relief should not be granted without serving any notice on other side, but in exceptional circumstances, if the interim relief is required to be granted without serving any notice, the aforesaid requirement is a must. The legislature thought it fit that the court must be satisfied with exigency of the facts for grant of an ex parte interim order, and such satisfaction must be recorded to inform any one including adversary as to why ex parte ad interim relief is granted. In our view, in judicial field exercise of arbitrary action cannot at all be tolerated. If any authority does not act in terms of provisions of law then such act and omission yield a situation of arbitrariness. We, therefore, set aside the judgment and order of the learned single Judge. We request His Lordship to consider the prayer for interim relief afresh, after hearing the parties in this case, at an early date. Accordingly, the Writ Appeal is disposed. Miscellaneous petitions, if any, pending shall also stand closed. No order as to costs."

20. A Division Bench of Delhi High Court in **S.B.L. Ltd.**'s case (supra) relying on the principles laid by the Hon'ble Apex Court in **Shiv Kumar Chadha**'s case (supra) held in para-36 as under:

"36. We are of the opinion that if the court is satisfied of non-compliance by the applicant with the provisions contained in the proviso then on being so satisfied the court which was persuaded to grant an ex parte ad interim injunction confiding in the applicant that having been shown indulgence by the court he would comply with the requirements of the proviso, it would simply vacate the ex parte order of injunction without expressing any opinion of the merits of the case leaving it open to the parties to have a hearing on the grant or otherwise on the order of injunction but bi-part only. The applicant would be told that by this conduct (misconduct to be more appropriate) he has deprived the opponent of an opportunity of having an early or urgent hearing on merits and, therefore, the ex parte order of injunction cannot be allowed to operate any more."

21. I have given my anxious consideration to the principles laid in the decisions relied by the learned counsel for the revision petitioners. In my considered opinion, the ratio laid by the Apex Court in **Shiv Kumar Chadha**'s case (supra) was correctly followed by a Division Bench of this Court in **Pasmala Anjaiah Chary**'s case (supra) holding that ordinarily the interim relief should not be granted without service of notice on the other side, in

exceptional cases if the interim relief is required to be granted without service of notice, the compliance of proviso to Rule-3 of Order-39 of CPC is mandatory. Similarly, a Division Bench of Delhi High Court in **S.B.L. Ltd.**'s case (supra) relying on the principles laid in **Shiva Kumar Chadha**'s case (supra), dealt with the consequences and the procedure in case non-compliance of proviso to Rule 3 of Order 39 C.P.C.

22. Therefore, in view of the authoritative pronouncement of the Hon'ble Supreme Court and a Division Bench of this Court and the Division Bench of Delhi High Court as discussed in the preceeding paragraphs as to the mandatory nature of compliance of the proviso to Order 39 Rule 3 CPC in case whenever injunction order is granted dispensing with the notice, I do not find any irregularity or infirmity in the order impugned. Accordingly, in view of non-compliance of mandatory requirements under Rule-3 proviso to Order 39 of CPC, the learned II Additional Chief Judge, City Civil Court, Hyderabad, has rightly vacated the interim order dated

12.10.2022 passed in IA Nos.2008 of 2022 and 2009 of 2022 without expressing any opinion on merits of the case holding that both the parties have right to contest the petition by canvassing the respective contentions in future course. As such, the order impugned does not warrant any interference by this Court and it is sustained.

23. In the result, the Civil Revision Petition Nos.2590 and 2591 of 2022 are dismissed confirming the order impugned dated 15.11.2022 in I.A. Nos.2008 and 2009 of 2022 in OS No.469 of 2022 respectively on the file of the II Additional Chief Judge, City Civil Court, Hyderabad, in its entirety. However, in the circumstances of the case, both the parties shall bear their respective costs.

As a sequel, miscellaneous applications, if any pending in these civil revision petitions, shall stand closed.

A. VENKATESHWARA REDDY, J.

Date: 13.12.2022
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