
(2013) 06 KL CK 0016
In the High Court Of Kerala
Case No : F.A.O. No. 183 of 2013

Ajmal Hassan

APPELLANT

Vs

Muhammed Shaffeeque

RESPONDENT

Date of Decision : 17-06-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 3, Order 39 Rule 4

Citation : (2013) 2 KHC 803 : (2013) 3 KLT 64

Hon'ble Judges : Thottathil B. Radhakrishnan, J; Babu Mathew P. Joseph, J

Bench : Division Bench

Advocate : Philip T. Varghese, Thomas T. Varghese, M.F. Mohammad Siyad and Nisha George, for the Appellant;

Judgement

Thottathil B. Radhakrishnan, J.—We have heard the learned counsel for the appellant and the learned counsel for the first respondent. Under challenge is an ad-interim order of temporary injunction issued by the District Court during the course of a suit governed by the provisions of the Copyright Act, 1957. The said ad-interim order was issued on 1st June, 2013, ordering compliance of O.XXXIX R. 3 of CPC within three days, and for return of notice; the matter was ordered to be listed on 15.6.2013. The fact that the appellant had applied for the certified copy of that order on 5.6.2013 by filing copy application No. 1615/13, unequivocally shows that he was served with the injunction on or before that date.

2. An interference by way of an appeal with ad-interim order of temporary injunction passed ex parte would not be resorted to except in the rarest of the rare cases. Such situation may arise where the trial court proceeds not to hear the person affected by the ad-interim order. Here, the fact of the matter remains that this appeal is presented on 13.6.2013 with the pointed complaint that the cinematographic film in relation to which the interlocutory order was issued by the court below is due for commercial release on 21.6.2013. We are not impressed to accept the plea of the appellant that he did not take necessary

steps to file counter affidavit immediately; even to seek that the ad-interim order be vacated by filing appropriate application under R. 4 of O.XXXIX as it was thought that the matter would not be heard expeditiously. Indian judiciary is not that slow. We find ourselves incapable to go ahead and decide the appeal on merits, particularly because, the appellant has not filed his version by way of an affidavit or counter affidavit before the court below.

We, therefore, dismiss the appeal clarifying that we have not expressed anything on the merits and preserving all rights of the appellant to file counter affidavit and contest the matter before the court below, including by making a request to the court below for expeditious consideration and disposal of the interlocutory application. We record the submission of the learned counsel for the appellant that having regard to the distance between the Ernakulam District Court complex and the 6th Additional District Court, there may be some delay in having the papers brought up before the court concerned. We record his request that such delay may be avoided, taking this as a special case. We leave that to the court below.

Appeal ordered accordingly.