

(2003) 03 MAD CK 0213

In the Madras High Court

Case No : Civil Revision Petition No"s. 464 and 465 of 2003 and CMP. No"s. 3055 and 3056 of 2003 and VCMP. No"s. 3713 and 3714 of 2003

B. Ramachandra Adityan

APPELLANT

Vs

M. Amarnath, Ganesan, Shri George John, B. Ramani Raj, S. Kanagasabapathy, P.S. Sathyaselan, P. Nadarajan, D.V.A. Manoharan, S. Manoharan, M.G.M. Maran, T.R. Tamilarasu, G. Kathiresan and B. Selvarathinam

RESPONDENT

Date of Decision : 28-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 3
Constitution of India, 1950 — Article 227

Citation : (2003) 114 CompCas 550 : (2003) 3 CompLJ 224

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : C. Harikrishnan for H. Karthik Seshadri, for the Appellant; K. Doraisami for Muthumani Doraisami For 1st respondent, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, Adv.

1. By consent of the parties, the main revision petitions themselves are taken up for final disposal.

2. CRP.No.464 of 2003 is directed against the order of the learned District Munsif, Periyakulam dated 18.02.2003 made in I.A.No.131 of 2003 in O.S.No.41 of 2003, in and by which ad-interim injunction was granted till 05.03.2003 and ordered notice to the respondents. In CRP.No.465 of 2003, the very same petitioner challenges the order of the same Court made in I.A.No.141 of 2003 in O.S.No. 41 of 2003 dated 18.02.2003. Here again, the Court below has granted an order of status quo and ordered notice to the respondents.

3. Heard, Mr. C. Harikrishnan, learned senior counsel for the petitioner and Mr. K. Doraisami, learned senior counsel for the contesting first respondent.

4. It is seen that the Tamil Nadu Mercantile Bank Limited (hereinafter referred to as "Bank"), which has its Head Office at Tuticorin, was incorporated under the then Companies Act, 1921 for the benefit and welfare of Nadar Community. In or about 1994, a section of the members of the Bank belonging to the Nadar Community had sold away their holdings to a total extent of 67% to Essar Group of Companies. The Essar Group of Companies had given control over the seven Transferee Companies to Sterling Group of Companies headed by one Sivasankaran. Several persons of the Nadar Community with an object of retrieving the shares and to redistribute them among the Members of the Nadar Community formed a Trust under the name of Nadar Mahajana Bank Investors Forum (hereinafter referred to as "the Trust"), for which B. Ramachandra Adityan, the petitioner in the above civil revision petitions is the Chairman. The Trust had entered into a Memorandum of Understanding with the said Companies of Sivasankaran for the purchase of shares, so that the same could be re-sold to the members of the Nadar Community, who are willing to purchase. In CRP.No.30 of 1998, considering the difficulties expressed, by an order dated 26.07.1999, this Court held that a suit in relation to the Bank can lie only at the place where the Registered Office of the Bank is located, i.e., Tuticorin and the said direction should be in force for a period of three years. By a further order dated 19.07.2002, the period was extended by another three years with a direction that the said order should be communicated to all the Subordinate Courts in the State. In order to consider various subjects, meeting of the Board of Directors was fixed to be held on 18.02.2002. Just prior to the same the first respondent had filed civil suit in O.S.No.41 of 2003 in the District Munsif Court of Periyakulam and obtained an ex parte order in I.A.Nos.131 and 141 of 2003. Questioning the said orders, B. Ramachandra Adityan has filed the above revisions.

5. Mr. C. Harikrishnan, learned counsel for the petitioner after taking me through both the orders passed in I.A.Nos.131 and 141 of 2003, has raised the following contentions:

" 1. In the light of the earlier order of this Court in CRP.No.30 of 1998, prohibiting other Courts entertaining suits against the Bank except its registered office at Tuticorin, the present suit, namely O.S.No.41 of 2003 before the District Munsif, Periyakulam is not maintainable, accordingly, the learned District Munsif committed an error in granting injunction and status quo order; and

2. The learned District Munsif failed to follow Order XXXIX Rule 1 and 3 of the CPC (in short "CPC"), while granting ad-interim injunction and status quo order.

6. On the other hand, Mr. K. Doraisami, learned senior counsel for the contesting first respondent - plaintiff would contend that the earlier order of this Court in CRP.No.30 of 1999 applies only to those suits in which Tamil Nadu Mercantile Bank is a party and those suits alone to be filed in Tuticorin. According to him, since the Bank was not a necessary party in O.S.No.41 of 2003, the said suit filed before the learned District Munsif, Periyakulam, where cause of action arose

cannot be faulted with. He also contended that the learned District Munsif had granted ad-interim injunction and status quo only after considering the irreparable injury that would be caused to the first respondent / plaintiff, if an interim order is not granted. He also pleaded that by virtue of power under Article 227 of the Constitution of India, this Court can mold the relief in the interest of justice.

7. I have carefully considered the rival submissions.

8. In order to appreciate the rival submissions, it is useful to refer the orders passed by the learned District Munsif, Periyakulam in I.A.Nos.131 and 141 of 2003.

"I.A.No.131 of 2003:

17.02.2003: Heard. Documents perused. Share purchase, Advance money, Reserve Bank of India orders perused. Prima facie case made out. Hence Ad-interim injunction granted till 5.3.2003. Notice to Respondents call on 5.3.2003. Order 39 Rule (3) complied with.

Int. M.P. Dist. Munsif, Periyakulam. "

I.A.No.141 of 2003:

18.2.2003: Heard. Documents perused. Status Quo orders. Noticed to Respondents. Call on 5.3.2003.

Int.: M.P.District Munsif, Periyakulam."

Though the Bank is not a party in the suit, perusal of the plaint averments show that the matter relates to affairs of the Bank. In such a circumstance, it is incumbent on the part of the Court below to consider whether the District Munsif Court, Periyakulam has jurisdiction in the light of order passed by this Court in CRP.No.30 of 1998 dated 26.07.1999 and further order dated 19.07.2002. The orders referred to above does not disclose whether the learned District Munsif Court considered the said aspect before granting interim orders.

9. This Court as well as the Apex Court in many decisions have held that while granting temporary ex parte injunction under Order XXXIX Rule 1 and 3 of CPC, particularly granting interim orders without giving notice of the application to the opposite party, it is incumbent on the part of the Court to record reasons. In the absence of adequate reasons, the interim order cannot be sustained. In this regard, it is useful to refer the decision of mine (P. Sathasivam,J.,) in the case of Rt Rev Dr. V. Devasahyam, Bishop in Madras CSI and Another Vs. D. Sahayadoss and Others, , where I had an occasion to consider the scope of Order XXXIX Rule 1 and 3 and interference by this Court exercising revisional jurisdiction under Article 227 of the Constitution of India. After referring various decisions of the Supreme Court and the relevant provision, namely Order XXXIX Rule 3, I have held:

"9. It is clear from Rule 3 that whenever the Court intends to grant ex parte injunction without notice to the opposite party, the Court shall record its reason / reasons for its opinion that the object of granting the injunction would be defeated by the delay and also require the applicant to fulfill the conditions stipulated on Clauses (a) and (b) therein."

Likewise, I have also held that mere statement that there is a prima facie case made out would not be sufficient for strict compliance of Rule 3. Ultimately, I have concluded,

"When there is error of jurisdiction or flagrant violation of law laid down by Courts by exercising revisional powers, the Court can set aside the order passed by the Tribunals / Courts."

It is clear from the said decision that in the case of granting injunction without hearing the opposite party, it is mandatory on the part of the trial Court to record the reason / reasons for its opinion for granting such injunction. When the said condition is violated, I am of the view that in order to do justice between the parties, this Court can interfere by exercising the revisional powers under Article 227 of the Constitution of India. I have already extracted both the orders of the learned District Munsif. I am satisfied that they are bereft of reasons and the same cannot stand moment's scrutiny.

10. Though the learned senior counsel for the contesting first respondent elaborately argued the merits of the claim made in the suit, I am of the view that it is unnecessary for this Court to consider those aspects at this juncture. Further, inasmuch as the impugned orders does not disclose the reasons for its conclusion, those arguments cannot be tested.

In the light of what is stated above, order dated 18.02.2003 made in I.A.Nos.131 and 141 of 2003 in O.S.No.41 of 2003 of the learned District Munsif, Periyakulam are set aside and the learned District Munsif is directed to restore both the applications on his file and dispose of the same afresh uninfluenced by any of the observation made in this order, on or before 30.04.2003, after affording opportunity to all the contesting parties. Both the civil revision petitions are allowed. No costs. Consequently, connected CMPs., and VCMs., are closed.