

(2002) 03 AP CK 0044

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3341 of 2000

Gottikonda Subhas Chandra Bose

APPELLANT

Vs

Andhra Pradesh State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3, Order 39 Rule 3A

Citation : (2002) 5 ALT 524 : (2002) 1 APLJ 481

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Venkateswara Rao Gudapati, for the Appellant; D. Vivekananda Swamy, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The following facts are admitted. The petitioner filed a suit for injunction against APSRTC and two others on 22.9.1999. In the said suit being O.S. No. 107 of 1999 on the file of the Court of the Junior Civil Judge, S. Kota, the petitioner also filed an interlocutory application being I.A. No. 361 of 1999 under Rules 1 and 2 of Order XXXIX of the Code of Civil Procedure, 1908 (for short "the Code"). The trial court granted ex parte ad interim injunction restraining the respondent herein not to interfere with his possession in respect of shop. The respondents immediately filed their counter and the matter was heard on 15.10.1999. On 10.11.1999, I.A. No. 361 of 1999 was dismissed vacating the ex parte ad interim injunction. Against the said order the petitioner-plaintiff filed a civil miscellaneous appeal being C.M.A. No. 22 of 1999 on the file of the court of the District Judge, Vizianagaram who by impugned order dated 24.7.2000 partly allowed the appeal restoring I.A. No. 361 of 1999 but refused to restore ex parte ad interim injunction. The lower court, was, however, directed to dispose of the said interlocutory application on merits after hearing both the parties.

2. Assailing the order dated 24.7.2000 passed by the learned District Judge, Sri Venkateswara Rao submitted that on 10.11.1999 though a request was made to the trial court to pass over the matter the trial court dismissed the interlocutory application and immediately the petitioner filed appeal and obtained order of status quo and therefore the order of the District Judge in so far as the same denies ex parte ad interim injunction amounts to an error which requires correction by this Court. Sri Vivekananda Swamy, the learned standing counsel for APSRTC, refuted these contentions.

3. In the considered opinion of this Court no error much less grave error occasioning any failure of justice has crept into the impugned order. Be it noted that a civil court, though is competent to pass an ad interim injunction without giving notice duly recording reasons as contemplated under proviso to Rule 3 of Order XXXIX of the Code, by reason of rule 3A of the said Order the civil court is bound to dispose of the application for injunction within 30 days from the date on which injunction was granted and if it is not possible to do so, the civil court shall have to record its reasons for its inability to dispose of the application for injunction within 30 days from the date of grant of ex parte ad interim injunction. Admittedly in this case ad interim injunction was granted on 22.9.1999 and even before expiry of 30 days on 21.10.1999, the APSRTC entered appearance and made its submissions on 15.10.1999. As already noticed, the interlocutory application was dismissed on 10.11.1999 which was restored by the appellate Judge. It is clear that from 10.11.1999 till disposal of C.M.A. No. 22 of 1999 there was no injunction in favour of the petitioner nor ad interim ex parte injunction was in force which admittedly expired on 21.10.1999. In view of this it cannot be said that the District Judge has committed any error. The principle that in the event of restoration of suit dismissed for default all the interim orders would revive has no application in a case like this because ad interim injunction was never in force as on the date of filing the appeal. The Civil Revision Petition is accordingly dismissed with costs.