
(2004) 04 AP CK 0076
In the Andhra Pradesh High Court
Case No : CMA No. 1100 of 2004

Innovative Pharma Surgicals	Vs	APPELLANT
Pigeon Medical Devices (P) Ltd. and Others		RESPONDENT

Date of Decision : 19-04-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4, Order 43 Rule 1

Citation : AIR 2004 AP 310 : (2004) 3 ALD 228 : (2004) 4 ALT 8 : (2004) 2 APLJ 371

Hon'ble Judges : J. Chelameswar, J;Gopala Krishna Tamada, J

Bench : Division Bench

Advocate : M. Ravindranath Reddy, for the Appellant; O. Manohar Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Gopala Krishna Tamada, J.—The point that falls for consideration in this appeal is as to whether an appeal against an ad interim injunction granted under Order 39, Rule 1 C.P.C is maintainable and Order 43, Rule 1(r) C.P.C., is applicable.

2. As it has a general importance this Court has given its anxious consideration in disposing of this appeal.

3. The appellant is the 4th defendant and Respondents-2 to 5 are Defendants-1 to 3 and 5 and 1st respondent is the plaintiff in the suit. The parties will be referred to as they are arrayed in the suit for the sake of convenience.

4. Originally, the plaintiff herein instituted the suit being O.S.88 of 2004 and along with the suit, he filed I.A. No. 620 of 2004 and on hearing the learned Counsel for the plaintiff, the Court below while ordering notice to the defendants, granted ad interim injunction. Aggrieved by the same, the present appeal has been preferred by the 4th defendant.

5. The facts in brief are that the 1st defendant being Welch Allyn Inc. is a very

old and reputed company manufacturing several-patented life saving medical equipment and it is based in Syracuse of State of New York, U.S.A. While so, the plaintiff represented by Mr. K. Bhaskara Reddy approached the representative of the 3rd defendant company for distributorship in the entire South India, and a letter of appointment-dated 22.3.2003 was issued in favour of the plaintiff represented by Mr. K. Bhaskara Reddy. Pursuant to the said letter of appointment, the said Bhaskara Reddy and his associates incorporated the plaintiff-company i.e., Pigeon Medical Devices Private Limited and got itself registered with Commercial Tax Department of the State and the Central. In between April 2003 and November, 2003, several business transactions have taken place in between plaintiff and Defendants 1 to 3. But, however, during the 2nd Week of November, 2003, Mr. Bhaskar Reddy in whose favour, the letter of appointment was given, has expressed his inability to continue the business, as he is immigrating to New Zealand and further he is also suffering from a serious spinal problem. In view of the said letter addressed by Mr. Bhaskar Reddy, the 3rd defendant, i.e., Welch Allyn India expressed its shock about the intention of the plaintiff to close the business. Much correspondence has taken place between the plaintiff on one side and Defendants-1 and 2 on the other side and consequently, in view of recession of the contract by the plaintiff, the distributorship of the plaintiff was terminated with immediate effect and the 4th defendant was appointed as the distributor in its place and communicated the same to the 4th defendant and the plaintiff herein vide letter dated 2.12.2003. Be that as it may, the plaintiff company by its letter dated 4.3.2004 expressing ignorance of the 4th defendant's contract and also as if it is the sole distributor of Defendants-1 to 3, sought for a clarification as to whether Messrs. Keimed Ltd of Madras, arrayed as 5th defendant is authorized to deal with one of the customers viz., Messrs Appollo Hospitals. The plaintiff was surprised to know through Messrs Appollo Hospitals that the 4th defendant is appointed as the sole distributor of the products of the Defendants 1 to 3. Hence, the plaintiff was constrained to file the above suit seeking perpetual injunction.

6. Basing on the material available on record, the Trial Court passed an ad interim injunction in favour of the plaintiff as prayed for. As against the said order, the petitioner who is arrayed as the 4th defendant before the Trial Court and against whom an ad interim injunction is ordered approached this Court and filed the present appeal.

7. A caveat was entered and on behalf of the caveator plaintiff, Mr. O. Manohar Reddy, the learned Counsel put in his appearance.

8. Heard Mr. Ravindranath Reddy, the learned Counsel for the 4th defendant-petitioner and Mr. O. Manohar Reddy, the learned Counsel for the caveator-plaintiff.

9. According to Mr. Ravindranath Reddy, the learned Counsel for the petitioner, the plaintiff was no doubt appointed as the sole distributor on 20.2.2003. But, however, subsequently, he rescinded the contract, on account of which, the

petitioner herein was appointed as the sole distributor of the 1st defendant. The said fact can easily be inferred by the letter of the 2nd defendant addressed to the petitioner on 21.11.2003.

In furtherance of the termination of the contract of the plaintiff and appointment of the 4th defendant-petitioner herein as the sole distributor, the plaintiff has transferred the entire goods manufactured by the 1st defendant. It is further submitted by the learned Counsel for the petitioner that having rescinded the contract and suppressed the said fact, the plaintiff filed the above suit as if he is continuing to be the sole distributor of the 3rd defendant. As the plaintiff has approached the Court with unclean hands suppressing the material facts, the trial Court ought not to have granted the ad interim injunction. Further according to the learned Counsel for the petitioner, the suit itself is not maintainable. As the plaintiff does not satisfy the ingredients of Order 39, Rule 1 C.P.C. viz., prima facie case, balance of convenience and irreparable loss, the order impugned herein is not sustainable.

10. On the other hand, Mr. O. Manohar Reddy, the learned Counsel appearing for the caveator-plaintiff opposed the said submissions stating that the contentions put forth by the learned Counsel for the petitioner, cannot be gone into at this stage as it is only an ad interim junction and it is always open for him to approach the Trial Court by filing counter and get the order vacated. According to the learned Counsel for the plaintiff, in fact the Trial Court has assigned reasons as to why it has granted ad interim injunction. Further, it is contended by the learned Counsel for the plaintiff that the documents on which the learned Counsel for the petitioner is placing reliance, are not a matter of record and as such, the said documents cannot be looked into by this Court at this stage.

11. In the light of the said submissions and also as it is an ad interim injunction and as this appeal is against an ad interim injunction, it is necessary to look into the provisions of law to consider as to whether an appeal is maintainable or not.

The provisions of Order 43, deal with the "appeals from orders". Order 43, Rule 1(r) C.P.C enumerates that an Order under 39 Rule 1, Rule 2, Rule 2A, Rule 4(B) or Rule 10 of C.P.C. is an appealable order.

Order 39, Rule 1 C.P.C. reads thus:

"Cases in which temporary injunction may be granted:--Where in any suit is proved by affidavit or otherwise-

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to (defrauding) his creditors, or

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause

injury to the plaintiff in relation to any property in dispute in the suit,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or (dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit) as the Court thinks fit, until the disposal of the suit or until further orders."

12. From a plain reading of the above provisions of law, nowhere there is any prohibition that against an ad interim injunction, no appeal is maintainable.

13. In fact, a Division Bench of this Court had an occasion to deal with the subject in the judgment reported in E. Managamma Vs. A. Muniswamy Naidu, , and it has categorically held that an appeal against an ad interim a injunction order passed under Order 39, Rule 1 C.P.C. is very much maintainable.

What was considered in the said judgment is as to the maintainability of the appeal and in view of the fact that a Division Bench of the Madras High Court has taken a different view in the judgment reported in Abdul Shukoor v. Umachander, AIR 1976 Mad. 350, this Court in its judgment E. Mangamma v. A. Muniswamy Naidu (supra) while dissenting with the judgment of the Madras High Court, has ruled that the appeal is maintainable. In fact, what was considered in that judgment is as to whether the judgment of the Madras High Court should be followed as a Precedent or not. The contention put forth before the learned Judges, was that as the Madras High Court had taken the view that an appeal is not maintainable against an ad interim injunction, such a judgment is binding on this Court.

14. In fact, what was decided in that judgment Abdul Shukoor v. Umachander (supra), is as to whether the judgment of the Madras High Court should be followed as a Precedent or not. The contention put forth before the learned Judges was that as the Madras High Court has taken the view that an appeal is not maintainable against ad interim injunction, this Court also should rescind itself from entertaining an appeal. The Argument was that if for any reason, the Division Bench is not inclined to accept the view of the Madras High Court, it should be referred to a Full Bench. In that context, it necessitated for a Division Bench of this Court to hold that the said judgment is not binding and there was no necessity to refer the matter to a Full Bench. While dissenting, the learned Judges have held that an appeal against an order of an ad interim injunction is very much maintainable.

15. In fact, we have never expressed any doubt as to the maintainability of the appeal, and, are of the view that the appeal against an ad interim injunction is maintainable under Order 43, Rule 1(r) C.P.C.

16. Similarly, the Supreme Court had an occasion to deal with the subject and decide as to whether an appeal against an ad interim injunction is maintainable,

in a judgment reported in A. Venkatasubbiah Naidu Vs. S. Challappan and Others, , in which the Supreme Court has held affirmatively. It is necessary to extract paragraph 19 of the said judgment:

"Under the normal circumstances the aggrieved party can prefer an appeal only against an order passed under Rules 1, 2, 2A, 4 or 10 of Order 39 of the Code in terms of Order 43, Rule 1 of the Code. He cannot approach the appellate or revisional Court during the pendency of the application for grant or vacation of temporary injunction. In such circumstances the party who does not get justice due to the inaction of the Court in following the mandate of law must have a remedy. So we are of the view that in a case where the mandate of Order 39, Rule 3A of the Code is flouted, the aggrieved party shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force. In such appeal, if preferred, the appellate Court shall be obliged to entertain the appeal and further to take note of the omission of the subordinate Court in complying with the provisions of Rule 3A. In appropriate cases the appellate Court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry in his ACRs. Failure to decide the application or vacate the ex-parte temporary injunction shall, for the purposes of the appeal, be deemed to be the final order passed on the application for temporary injunction, on the date of expiry of thirty days mentioned in the Rule."

17. From a reading of the said judgment, it appears to our mind that it is only an extraordinary circumstance under which the aggrieved person can prefer an appeal against an ad interim injunction order. But, as a matter of course, the aggrieved person cannot approach the appellate or revisional Court during the pendency of the application for grant or vacation of temporary injunction. It was a case where an application to vacate an ad interim injunction was filed and as the said application to vacate the same, was not disposed of within the stipulated time under the provisions of Order 39, Rule 3A C.P.C., the parties therein approached the Appellate Court and in that context, the Supreme Court has held that an appeal is maintainable. But, however, it impliedly cautioned that in the normal course, the aggrieved party cannot approach the appellate or revisional Court during the pendency of the application for grant or vacation of temporary injunction. It is only when there is an inaction on the part of the Courts in following the mandate provisions, then only the aggrieved party can approach the Appellate Court.

18. So, it is clear that though an appeal is maintainable, such an appeal should be filed only in an extraordinary circumstance under which the party is able to explain as to why he prefers an appeal in the High Court instead of choosing to file a petition to vacate the ad interim injunction. Even in case of appeal against an ad interim injunction, the appellate Court will not be bound to apply its mind to all the contentions, which the Original Court is bound to consider on the case

shown by the party affected by ad interim order.

19. It is also urged before us by the learned Counsel for the petitioner that it is a futile exercise on the part of the petitioner to approach the Court below, as the learned 2nd Addl. Chief Judge, is not disposing of the matters. In the instant case, except an oral assertion that the 2nd Addl. Chief Judge before whom the matter is pending, takes a long time to dispose of the matter, no other explanation worthy, is forthcoming. Apart from that, Order 39, Rule 3A C.P.C. clearly mandates the disposal of the petition under Order 39, Rule 1 CPC within a period of 30 days from the date on which the injunction was granted. We have perused the order impugned. An ad interim injunction order was granted by the Court below on 11.3.2004 and while ordering urgent notice, the matter was posted to 5.4.2004 for hearing. In the meanwhile, the 4th defendant has approached this Court and presented the present appeal questioning the order impugned herein. At this juncture, without moving the Court below, the apprehension that the learned 2nd Addl. Chief Judge, may not dispose of the same early, is, in our considered view, without any basis and as such, the said contention holds no water.

20. The learned Counsel for the petitioner has also drawn our attention to various documents to establish the fact that the suit itself is not maintainable and also cited case law in support of his contentions inasmuch as the plaintiff having suppressed certain facts filed the suit. According to the learned Counsel for the petitioner, the contract-dated 22.2.2003 is rescinded and the same can be inferred from the letter-dated 21.11.2003. For the first time in this appeal, the said letter is pressed into service. We are afraid, we cannot go into that aspect inasmuch as the scope of the enquiry in this miscellaneous appeal, is very narrow and limited and the finding, if any thereon touches the very merits of the suit.

21. In case of granting injunction without issuing any notice to the opposite party, the opposite party is always at liberty under the provisions of Order 39, Rule 4 C.P.C, to apply to the Judge to vary or set aside the said order. Order 39, Rule 4 is intended to cover two classes of cases (1) When an urgent ex parte order has been passed under Rule 3, Rule 4 will allow the party against whom it has been passed to apply to have it discharged or varied or set aside and (2) when an injunction order already in force has, owing to fresh circumstances, become unduly harsh or unnecessary or unworkable, it would be open to either party to apply under Rule 4 to the Court to discharge, vary or set it aside.

22. In view of the divergence of judicial opinion, it may be necessary for this Court to examine carefully the principles upon which the different views mentioned above purport to be based and attempted as to the appeal against an ad interim injunction order. However, we are relieved from embarking on such enquiry in the instant case, as we are satisfied that as a matter of course, no appeal lies against an ad interim injunction order, except under any extraordinary circumstances as to the non-compliance of mandatory provisions or the rarest of

the rare circumstances where the order is perverse or bias or lack of jurisdiction.

23. It is not out of place to mention that Section 3 C.P.C. distinguishes the Courts for the purpose of the Code. The District Court is subordinate to the High Court and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court. However, the enumeration of Subordinate Courts in this section is not exhaustive and does not exclude other Courts from being subordinate to the High Court. This enumeration may be for the purpose of administration and as well as the jurisdiction. Jurisdiction means the extent of the authority of a Court to administer justice and also for the purpose of maintaining judicial discipline. It may be of three kinds viz., pecuniary jurisdiction, 2.Territorial jurisdiction and 3. Jurisdiction as regard the nature of the suit. Apart from that, the jurisdiction may be original and appellate. If any aggrieved party without exhausting the remedy that is available before the Court, which has first granted the ad interim injunction, approaches the Appellate Court as a matter of course, but not under any rarest of rare circumstances, the same is nothing but misusing the privileges that are conferred under the appellate jurisdiction and also amounting to abuse of process of the Courts.

24. The immediate remedy that is available to the opposite party in case of issuing temporary injunction without issuing notice, is under the provisions of Order 39, Rule 4 C.P.C which enables the Original Court to vary or set aside or discharge the ex parte order. In the light of the above provisions and also the legal propositions, no appeal lies, as a matter of course, against an ex parte order, except in extraordinary circumstances or the rarest of the rare cases where the order is perverse or bias or suffers from lack of jurisdiction, but it is not the case of the petitioner.

25. In the facts and circumstances of the case, we have no hesitation to hold that there are no such non-compliance of the mandatory provisions or the rarest of the rare circumstances that have prompted the petitioner to approach this Court availing the appellate jurisdiction and therefore, the appeal is not maintainable. At this stage, the defendants instead of approaching this Court against the order impugned, ought to have availed the opportunity by filing a detailed counter and agitated the matter there itself before the Court below for proper adjudication of the matter, inasmuch as during the pendency of the main Suit, the findings, if any by this Court may cause prejudice to the case of either of the parties.

26. In this view of the matter, without expressing any opinion on the merits of the case, We see no grounds to interfere with the order impugned.

27. In the result, this CMA is dismissed. No costs. However, we direct the learned 2nd Additional Chief Judge to dispose of the IA No. 620 of 2004 and pass appropriate orders in accordance with law, after filing of the counter and hearing both the parties as expeditiously as possible.

28. All the contentions raised before this Court, are kept open to the parties, to raise before the Court below.