

(2014) 03 KAR CK 0304

In the Karnataka High Court

Case No : Writ Petition No. 13992 of 2012 (GM-CPC)

N.A. Haris

APPELLANT

Vs

Rajiv Hegde

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3, Order 39 Rule 3A, Order 8 Rule 1

Citation : (2014) 4 KCCR 3162

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : Udaya Holla, Sr. Counsel, Advocate for the Appellant; Sajan Poovayya, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

N. Kumar, J.—This writ petition is filed challenging the order passed by the trial Court declining to grant ad interim order of injunction and ordering emergent notice returnable nearly after a month i.e., 24-5-2012. It is submitted at the time of arguments that the defendant has already entered appearance, filed the statement of objections to the I.A. However, the application for temporary injunction is not taken up for consideration and no orders are passed.

2. Order XXXIX Rule 1 and 2 provides for grant of an order of temporary injunction if the conditions stipulated therein are satisfied. A temporary injunction is of two types. One, granted without finally disposing of the application for temporary injunction to operate immediately till the disposal of the said application. Two, granted while finally disposing of the main application generally till the disposal of the suit. The former is generally called ad-interim injunction. The latter is generally called temporary injunction. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before the uncertainty could be resolved. It is only when a claim is made in the suit which, if established, would entitle the plaintiff to relief

by way of injunction. That interim relief could be granted by way of temporary injunction, so that relief in the suit might not be rendered infructuous.

3. Order XXXIX Rule 3 provides that the Court shall, in all cases, before granting an injunction, direct notice of the application to be given to the opposite party. It is a rule. However, the said provision carves out an exception, i.e., where it appears that the object of granting the injunction would be defeated by the delay, then the Court is vested with the power to grant an ex-parte ad interim injunction. The proviso to Rule 3 provides the conditions to be fulfilled while granting such ex-parte injunction. One such condition is, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, i.e., by issuing notice. Therefore, if there is no immediate threat, a notice should be issued. The requirement of giving reasons for the opinion of the Court that the object of granting the injunction would be defeated by delay, as laid down in the proviso, is mandatory. If it is held directory then the introduction of the proviso by the Parliament shall be a futile exercise and the proviso to Rule 3 will be a surplusage for all practical purposes. Therefore, the Court must record its reasons in writing for granting an ex-parte injunction.

4. If an order of injunction is granted then, an obligation is cast on the Court under Rule 3A to make an endeavour to finally dispose of the application within 30 days from the date of which the injunction was granted. However, if it is unable so to do it shall record its reasons for such inability. Therefore, Rule 3A of Order XXXIX casts a three-pronged protection to the party against whom the ex-parte injunction order was passed. First is that the Court is obliged to give him notice before passing the order. It is only by way of a very exceptional contingency that the Court is empowered to bypass the said protective measure. Second is the statutory obligation cast on the Court to pass final orders on the application within the period of 30 days. Here also it is only in very exceptional cases that the Court can bypass such a rule in which cases the legislature mandates on the Court to have adequate reasons for such bypassing and to record those reasons in writing. If that hump is also bypassed by the Court, it is difficult to hold that the party affected by the order should necessarily be the sole sufferer.

5. In view of these stringent conditions prescribed under law, the tendency is that no ex-parte injunction is granted. The Court is well within its jurisdiction to order notice. Then, it has an obligation to see that the said notice is duly served at the earliest so that the grievance of the plaintiff could be addressed after hearing both the parties. If this responsibility is not kept in mind, by ordering notice the case is adjourned beyond a month and in the meanwhile any injury is caused to the plaintiff who is already before the Court, then the very statutory remedy given to him would be rendered useless. Such a situation is to be avoided if people have to respect the Courts. In such cases emergent notice is to be ordered, on appearance of the defendant, he should be compelled to file the objections at the earliest and the application should be taken up for consideration

and an order is to be passed on its merits one way or the other. The Court should remember, the defendant is not entitled to adjournment as a matter of right to file objections after his appearance. The defendant after his appearance normally seeks time to engage a Counsel, or if he has engaged a counsel, he requests for an adjournment to file objections. Adjournment should not be granted for a mere asking. That is how the defendant wants to drag on the proceedings and delay the decision. It should not be encouraged. Once notice is duly served and the defendant enters appearance, the requirement of Rule 3 is complied with. The Court can proceed to pass orders after hearing the parties. If the defendant wants the Court to consider his defence, he must file his objections on his appearance. It is for that purpose the notice is issued. The Court is under an obligation to hear the parties at the earliest and pass an order on merits, one way or the other. If the Court declines to grant an order of temporary injunction, the plaintiff has a remedy by way of an appeal. He cannot have any grievance against the Court. But, after approaching the Court he is neither granted an interim order nor his application is heard and decided on merits after appearance of the defendant and in the meanwhile his or her rights are affected, injury is caused, then it would be a case of injury being caused to him by the in action on the part of the Court and not by the opposite party. Because all that is expected of him or her has been done, but still his or her case is not heard and no orders are passed. Such a situation is to be avoided at any cost by the Courts.

6. Though Rule 3A applies to a case where *ex parte* order of temporary injunction is granted, by the same analogy, the time prescribed there in could be applied to a case where notice is ordered also. In such cases also the Court should make every endeavour to finally dispose of the application for injunction within thirty days from the date on which notice is ordered or at least thirty days from the date on which the defendant enters appearance. Then only the said provision will have any meaning and the working of Civil Courts would be quite effective.

7. In the instant case, emergent notice is ordered returnable nearly after a month. Order VIII Rule 1 is amended making it obligatory for the defendant to file the written statement within 30 days from the date of service of summons. When that being the case, after declining to grant an *ex-parte* order of temporary injunction, posting the case beyond one month after ordering emergent notice would not be a proper exercise of power by the trial Court. The very object of issuing emergent notice is, to hear the defendant at the earliest and then pass orders on merits. The said object is defeated. Therefore, such an order suffers from failure to exercise jurisdiction vested in the Court by law. It also does not speak well of the system. One should do nothing to bring down the faith that the people of this country have in our judicial system.

8. Therefore the course open to this Court would be to direct the trial Court to take up the application for temporary injunction for hearing immediately and to dispose of the same within 7 days from the date of receipt of the copy of this order.

Writ petition stands disposed of in the above terms.