

(1999) 08 AP CK 0005

In the Andhra Pradesh High Court

Case No : AAO No's. 1969 and 1970 of 1999 and CRP No's. 2889 and 2890 of 1999

NCL Industries Ltd., Hyd. and another

APPELLANT

Vs

M.S. Raju and another

RESPONDENT

Date of Decision : 11-08-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3A, Order 43 Rule 1, 115

Citation : (1999) 5 ALD 318 : (1999) 5 ALT 434 : (1999) 3 CivCC 541

Hon'ble Judges : Motilal B. Naik, J;A. Gopal Reddy, J

Bench : Division Bench

Advocate : Mr. B. Adinarayana Rao, for the Appellant; Mr. Amanacharla Krishna Mooti, for the Respondent

Judgement

Motilal B. Naik, J.—CMA No. 1969 of 1999 arises out of an order passed in IA No. 1756 of 1999, CMA No. 1970 of 1999 arises out of an order passed in IANo.1757 of 1999. C.R.P.No. 2889 of 1999 arises out of an order passed in IA No.1758 of 1999 and C.R.P.NO. 2890 of 1999 arises out of an order possession IA No. 1789 of 1999.

2. Orders passed in the above I.As. by the Chief Judge, City Civil Court Hyderabad, dated 15-7-1999 are assailed before us in these two CMAs and two CRPs.

3. Since the appellants in both the CMAs and the revision petitioners in both the CRPS and the respondents thereto are one and the same, these four matters are decided by this judgment.

4. The respondents herein instituted a suit in O.S.No. 294 of 1999 against these appellants and petitioners on the file of the Chief Judge, City Civil Court, Hyderabad, seeking the following reliefs :

(1) to pass a decree for specific performance of the MoU dated 3-10-1996 in

favour of the plaintiffs against the defendants directing the first defendant to execute the sale deed in respect of Schedule 1A and 1B as per the plaint schedule.

(2) to direct the 1st defendant to receive the balance of consideration if any from the plaintiffs after reconciliation of the accounts and execute and register the sale deeds at the expenses of the plaintiffs and on failure to do so by the 1st defendant the sale deeds be executed and registered according to law at the expenses of the plaintiffs by the Hon'ble Court, in favour of 2nd plaintiff as per the request of the 1st plaintiff;

(3) without prejudices to above for grant of compensation for various defaults committed and injuries caused to the plaintiffs in the circumstances of the case;

(4) to grant such other relief or reliefs to the plaintiffs in the circumstance of the case.

(5) Cost of the suit.

Along with the said suit, the respondents herein have also filed four interlocutory applications in I.A.Nos.1756, 1757, 1758 and 1759 of 1999 for the following reliefs, viz.,

I,A.No.1756 of 1999:

Filed under Order 39, Rules 1 and 2 read with Section 151 CPC seeking ad-interim injunction restraining the respondents (appellants/petitioners herein) from entering into any sort of agreement and not to create any charge in favour of third parties including by way of sale or lease or pledge or otherwise of the Schedule 1(A) and 1(B) properties, filed along with the plaint.

LA.No.1757 of 1999:

Filed under Order 39, Rules 1 and 2 read with Section 151 CPC seeking an ad-interim injunction restraining the respondents (appellants/petitioners herein) or their officers, agents or persons claiming through or under them not to interfere the ingress and egress, the men and materials of the petitioner (respondents herein) with peaceful possession, enjoyment and running the said two units of the 1st petitioner company at Nandigaon and Dommeru including manufacturing and marketing of the finished goods;

LA.No.1758 of 1999:

Filed u/s 151 CPC seeking to permit the petitioner (1st respondent herein) to operate the bank accounts i.e., Punjab National Bank, R.P.Branch, Secunderabad, State Bank of Hyderabad, Habsiguda Branch, State Bank of India, Kovvur Branch and Vijaya Bank, Kovvur Branch bearing Account Nos. CA 4345, 01000050347 and CA 303 respectively, independently by the petitioners or their nominees; and

I.A.No.1759 of 1999:

Filed u/s 151 CPC seeking to permit the petitioner (1st respondent herein) to pay the Central Excise Duty and Sales Tax and other statutory obligations independently and to issue the invoice-cum-challans, gate passes and to remove the goods manufactured from the said two units mentioned in the Schedule 1(A) and 1(B) and to market them either by themselves or by their agents or servants independently the petitioners or their nominees.

5. The Court below considered all these interlocutory applications and granted the reliefs as prayed for by an order dated 15-7-1999 while directing notice to these appellants/petitioners and posted the matters on 26-8-1999. Aggrieved by the said exports orders passed in the above four interlocutory applications by the Court below on 15-7-1999, these appellants and petitioners who are the respondents in the above I.As have assailed the said ex parte orders in these two CMAs and two CRPs. on various grounds.

6. Sri B. Adinarayana Rao, learned Counsel appearing on behalf of the appellants and petitioners in these four matters submitted that by virtue of the ad-interim injunction granted by the Court below in I.A.Nos.1756 and 1757 of 1999 on 15-7-1999, these appellants are restrained from alienating the Schedule 1(A) and I(B) of plaint properties or creating any charge in favour of third parties by way of sale, lease, pledge or otherwise pending disposal of those I.As. Counsel further submitted that by virtue of the interim orders passed in IA.Nos. 1758 and 1759 of 1999 which were filed u/s 151 CPC, the Court below permitted the respondent No.1 herein to operate the bank accounts of the first appellant-company insofar as the ceramic division is concerned and also permitted the first respondent herein to discharge all statutory functions sought in the petition (I.A.No. 1759 of 1999).

According to the learned Counsel, the orders so passed on 15-7-1999 by the Court below are in the nature of virtually putting the two ceramic units located in Nandigaon and Dimmeru in the hands of the respondent No.1 herein though he is not entitled to manage the affairs of those two ceramic units. It is further submitted that as provided under Rule 3 of Order 39 CPC, before granting injunction, the Court is required to direct notice to the opposite party and if the Court inclines to dispense with the said notice, it has to record reasons for doing so. Under Rule 3-A of Order 39 CPC, it is provided that the Court shall make end eavour to finally dispose of the injunction application within thirty days from the date on which the injunction was granted if no notice is given to the opposite party, and if the Court is unable so to do, it shall record its reasons for such inability. While drawing our attention to the above Rule 3-A of Order 39 CPC, learned Counsel stated that the impugned orders passed by the Court below are dated 15-7-1999 and that the matters have been directed to be listed only on 26-8-1999. Counsel, therefore, contended that when the Court below without ordering notices to these appellants and petitioners granted (id-interim injunctions, as required under Rule 3-A of Order 39 CPC, ought to have made efforts to dispose of the same within thirty days from 15-7-1999, but the Court

below posted the said matters on 26-8-1999 i.e., beyond the period of thirty days and has not assigned any reasons for doing so. Counsel further contended that when the Court below dispensed with issuing of notices to these appellants in I.A.Nos.1756 and 1757 of 1999, as required under Order 3 of Rule 39 CPC, the Court below ought to have recorded reasons for the same. However, Counsel contended that no such reasons are recorded by the Court below for dispensing with the notices to these appellants. Counsel stated that when ad-interim injunctions of this nature which have far reaching repercussions are to be granted, Courts are to exercise the powers vested under Order 39 Rules 1 and 2 CPC sparingly. Counsel complained that the Court below in a casual manner has granted the ad-interim injunctions by giving a go-bye to the provisions contemplated under Order 39 Rules 1 and 2 CPC. With all these deficiencies, learned Counsel tried to contend that the suit OS No.294 of 1999 instituted by these respondents is laid on the basis of MoU dated 3-10-1996 for specific performance. It is further contended that the appellants have issued a notice dated 1-7-1999 rescinding the MoU and basing on such notice the suit has been laid for the relief as indicated above. Counsel contended that when the suit for specific performance of the MoU is pending adjudication. Which is filed by the respondents herein against these appellants and petitioners, the Court below ought not to have granted the impugned orders dated 15-7-1999. Counsel, therefore, complained to us that grave injustice is caused to these appellants and petitioners and had the Court below ordered urgent notice before granting the ad-interim injunctions, these appellants would have appeared before the Court below and placed relevant records and basing on the same, the Court would have passed an appropriate order in the circumstances of the case. Under these circumstances, Counsel submitted that the impugned orders dated 15-7-1999 passed by the Court below are unsustainable and they are liable to be set aside.

7. In support of his contentions, learned Counsel has taken us to the following decisions reported in *Bacharaj Singhvi v. Hastimal Kothri* 1981 AWR (II) 40 and in *Kasugant Anantarao v. Kasuganti Aruna* 1985 (2) ALT 339.

8. Sri Amcmcharla Krishna Murthy, learned Counsel appearing on behalf of the respondents in these four matters, on the contrary, submitted that the Court below having satisfied that if no ad-interim injunctions as prayed for are granted, these respondents would suffer irreparable injury and as such, granted the same by dispensing with the notices to these appellants. Counsel further submitted that though Rule 3 and Rule 3-A of Order 39 CPC require reasons to be recorded by the Court if notice to the opposite party is dispense with; for disposing of the injunction application within thirty days from the date of granting ad-interim injunction, these Rules are not mandatory and they are only procedural in nature which put a restriction on the Court from exercising the powers available to it under Order 39 Rules 1 and 2 CPC in a routine manner. Learned Counsel stated that by virtue of MoU entered into between the parties on 3-10-1996, the entire consideration of more than Rupees Four Cores has been paid to the first appellant by the first respondent and that the resolutions passed by the Board of

Directors of the first appellant-company from time to time would go to show that the two ceramic units have been placed at the disposal of the first respondent who is the first plaintiff and stated that when the second appellant tried to play mischief by issuing a notice dated 1-7-1999 seeking to rescind the MoU entered into between the parties on 3-10-1996 the respondents herein are compelled to move the Court below and the Court below on being satisfied with the material placed before it, passed the impugned orders which are just and reasonable. Learned Counsel submitted that apprehending interference in the management of the ceramic units, in the background of the notice dated 1-7-1999 issued by the second appellant, the respondents are justified in moving the Court below seeking ad-interim injunctions. It is further submitted that it is open to these appellants to approach the Court below and file their counters in the said I.As and contest the matters. When such alternative remedy is available to these appellants, learned Counsel contended that these appeals and revisions are not maintainable. In support of his contentions, learned Counsel has drawn our attention to a decision of the Calcutta High Court reported in *Muktakesi Dawn and Others Vs. Haripada Mazumdar and Another*, .

9. We have heard both the learned Counsel extensively and perused the orders impugned which are dated 15-7-1999. In the wake of the above divergent submissions, the following points arise for our consideration, viz.,

(1) Whether the impugned orders dated 15-7-1999 in these two CMAs and two CRPs. passed by the Court below are sustainable ? and

(2) Whether the Court below is justified in dispensing with the notice to these appellants as required under Rule 3 of Order 39 CPC?

10. It is settled proposition that when an urgent order is sought to be obtained by a party invoking the jurisdiction of the Courts under Order 39 Rules 1 and 2 CPC, Courts are entitled to dispense with the requirement contemplated under Rule 3 of Order 39 CPC provided the Courts record the reasoning for doing so. Even under Rules 3-A of Order 39 CPC, if the injunction petition cannot be disposed of within a period of 30 days from the date of granting ex parte injunction, Court are required to record reasons for such delay.

11. What is seen by us is that the provisions incorporated under Rules 3 and 3-A of Order 39 CPC by the Parliament by an amendment in the year 1976. The Legislature has taken care to protect the interest of the opposite party which is likely to be affected when an order of far reaching consequences is passed against it, by desiring the Courts to exercise greater restraint in issuing ex parte ad-interim injunctions and if Courts are satisfied in a given case for dispensing with the procedure contemplated under Rules 3 and 3-A of Order 39 CPC, Courts shall record a finding to that effect. It would thus appear to us that Rules 3 and 3-A of Order 39 CPC are in the nature of mandatory requirements and the Courts are to follow the procedure laid down therein. However, Courts are also entitled to dispense with the procedure contemplated under Rules 3 and 3-A of Order 39

CPC by recording reasons. In the decisions cited *Bacharaj Singhvi v. Hasthimal Kothari* and *Kasuganti v. Kasuganti Aruiia* (supra), by (he learned Counsel Sri B. Adtnarayana Rao, appearing on behalf of the appellants and petitioners, this Court has held that the requirements laid down under Rules 3 and 3-A of Order 39 CPC are mandatory in nature and non-compliance of such requirements would vitiate the ex parte injunction order.

12. Sri Amancherla Krishna Murthy, learned Counsel appearing on behalf of the respondents, placing reliance on the decision of the Calcutta High Court cited *Suit. Muktakesi Dawn v. Haripada Muzumdar* (supra), contended that the Calcutta High Court has held that though the procedure required to be followed under Rule 3 or 3-A of Order 39 CPC looks to be mandatory, but in effect, it is not so mandatory and only procedural and when the Court is satisfied on the basis of the material placed before it, the Court is entitled to dispense with the said requirement and the injunction order passed in those circumstances cannot be held to be bad.

13. It may be true that requirement under Rule 3 or 3-A of Order 39 CPC is procedural and if the situation demands or the circumstances warrant, in order to prevent irreparable injury that would be caused to a party if urgent orders are not passed, Courts are justified in dispensing with the requirement contemplated under Rule 3 or 3-A of Order 39 CPC by recording reasons for doing so. The Legislature has, therefore, visualised such a contingency and has clothed the Courts with powers to act upon in such a situation but requiring the Courts to record reason for doing so. It could be said that when sufficient material is available before the Courts and the Courts are satisfied that irreparable injury would be caused to the party if injunction is not granted in its favour, Courts are justified in dispensing with the requirement of Rule 3 or Rule 3-A of Order 39 CPC and grant injunction. But, however, Courts are expected to visualise the irreparable injury that would be caused to the other side by virtue of an ex parte injunction that is to be granted in favour of the party which is present before the Courts. Unless this satisfaction is recorded by the Courts, we have no hesitation to say, the order of injunction passed under these circumstances, would invariably cause more damage to the other side than the party which approach the Court and seeks to dispense with the procedure contemplated under Rule 3 or 3-A of Order 39 CPC.

14. Now, turning to the material placed before us in the four matters, the Court below in I.A.Nos. 1756 and 1757 of 1999 granted ad-interim injunction restraining the appellants from alienating or creating any charge in favour of third parties by way of sale, lease, pledge or otherwise of the Schedule 1 (A) and 1(B) of the plaint schedule properties and further restrained the appellants from interfering with the business activities of two ceramic units. In I.A.Nos. 1758 and 1759 of 1999, the Court below permitted the respondent No. I herein to operate the bank accounts of the first appellant-company in respect of the two ceramic units and also permitted the first respondent herein to discharge all statutory

functions. It is also seen from the orders impugned passed by the Court below that though they are dated 15-7-1999, but instead of posting them within thirty days for appearance of the other side and making efforts for their disposal as ex parts ad interim injunction orders were granted, the Court below posted them to 26-8-1999. Posting of those I.As on 26-8-1999 by the Court below, therefore, is well beyond the period of 30 days from 15-7-1999 on which date those orders were passed and it virtually amounts to non-compliance of the requirement contemplated under Rule 3-A of Order 39 of CPC.

15. Sri Amancherla Krishna Murthy, learned Counsel for the respondents stated that when the appellants have an opportunity to contest the matter before the Court below by making their appearance and by filing counter, filing of these CMAs and CRPs is not permissible as they are not maintainable. We do not think we can agree with the said submission of the learned Counsel for the respondents in this regard. As against an exparte order of injunction passed by a lower Court, a right to appeal is provided to the aggrieved party under Order 43 Rule 1 of CPC and that if the order passed by a lower Court is such that no appeal against it could be filed, a revision to the High Court u/s 115 of CPC is available to such aggrieved party. However, u/s 115 of CPC, the scope is very limited to the extent of examining whether the Court which passed the order had jurisdiction to pass the same or failed to exercise such jurisdiction, vested in it or whether the said Court committed any material irregularity. It shall also be remembered that the High Court while exercising revisional powers u/s 115 of CPC has to see if the order passed by the Court below if allowed to sustain, whether it would occasion failure of justice or cause irreparable injury against whom it was made. If the High Court is of the view that if the order passed by the lower Court causes grave injustice or irreparable injury to the other party, the High Court is entitled to set aside the same. Therefore, availability of an alternative remedy is not a ground for this Court to reject an appeal filed under Order 43 Rule 1 of CPC or a revision filed u/s 115 of CPC.

16. Having regard to our above discussion, we are of the prima facie view that the impugned orders of injunctions granted in favour of these respondents by the Court below have the effect of upsetting the functioning of two running ceramic units as shown in plaint Schedule I(A) and 1(B) and further by virtue of the impugned orders respondent No.1 herein is permitted to discharge all statutory functions and to operate the batik accounts, which have an element of causing hardship to these appellants. We are, therefore, convinced that the impugned orders passed by the Court below cannot be sustained. We accordingly set aside the impugned orders dated 15-7-1999 passed by the Court below in I.A.Nos.1756, 1757, 1758 and 1759 of 1999. Consequently, these I.As. are restored to the file of the Court below. We permit both the parties to make their appearance before the Court below on 17-8-1999 on which date these I.As. shall stand posted. It would be open to the appellants to file their counters and other relevant material before the Court below on 17-8-1999. Since the parties are vying with each other for supremacy over the two ceramic units and as high

stakes are involved, the Court below shall hear the parties on 17-8-1999 and dispose of the IANos.1756, 1757, 1758 and 1759 of 1999 in OS No.294 of 1999 within a period of 10 days thereafter.

17. The CMAs and CRPs are allowed as indicated above. No costs.