

(2011) 04 MAD CK 0026

In the Madras High Court

Case No : C.R.P. (PD) No. 2791 of 2010 and M.P. No's. 1 and 2 of 2010

P.R. Dhanasundari @ Rajeshwari, S. Ramakrishnan @ Gopal, APPELLANT
Miss Shyamala and Miss Deepa

Vs

M. Sugumar Reddy and A.V. Manoharan RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Civil Procedure Code Amendment Act, 1976 — Order 39 Rule 3
Constitution of India, 1950 — Article 227

Citation : (2011) 04 MAD CK 0026

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : S. Parthasarathy for K. Govi Ganesan, for the Appellant; P. Subba Reddy, for R1, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—Defendants 1 to 4 in O.S. No. 157 of 2010 on the file of the Principal District Judge, Chingle put, who are

Respondents 1 to 4 in I.A. No. 661 of 2010, filed the revision against the order passed by the Principal District Judge granting ad interim

injunction in the above suit.

2. The first Respondent/Plaintiff filed the above suit for permanent injunction restraining the revision Petitioners from interfering with their

possession and enjoyment of the property and for direction. Along with the suit, the Respondent filed 22 documents and the learned Principal

District Judge, after hearing Respondent/Plaintiff, passed the following order 30.7.2010 which is challenged in this revision:

Heard both sides.

The partnership firm has been registered in the name and style of M/s. South India Engineering Works. Wherein the partners in the firm are

1) Thiru.A.C. Nataraja Mudaliar and

2) Thiru.A.V. Manoharan. Each one is having 50% right in the firm.

The firm bought the suit property in the firm's name and holding and enjoying the property. After that in between two partners on 22.5.1971

Dissolution Deed has been made and as per Dissolution Deed Thiru.A.V. Manoharan retired from the firm and the burden shifted to another party

Thiru. A.C. Nataraja Mudaliar automatically and the entire assets and liabilities were taken over by Thiru.A.C. Nataraja Mudaliar for a

consideration of Rs.5000/-. Document NO.1 is the Dissolution of partnership firm. Document NO.2 is the General Power of Attorney dated

30.1.1991 given to Thiru.Umakanthan to sell the property. Document No.3 is the Death Certificate of Thiru.A.C. Nataraja Mudaliar. Document

No.4 is the Sale Deed in favour of Thiru.S. Ratnasamy dated 19.8.1994. Document No.5 is the Sale deed dated 4.7.1995 in favour of Tmt.

Dhanam Ramasamy. Document No.6 is the Sale deed dated 4.7.1995 in favour of Thiru.Ramasamy. Further, Dhanam Ramasamy sold the same

property in the year 2007 to the plaintiff i.e., Document Nos.7 to 13. Patta, Chitta, Adangals, i.e., Document No.16 stands in the name of the

plaintiff. Document NO.18 is the Sale Deed executed by Thiru. A.V. Manoharan (D5) in favour of Defendants 1 to 4. On perusal of the

documents it shows that the plaintiff purchased the property from one Tmt.Dhanam Ramasamy in the year 2007 by way of documents 7 to 13. For

that, patta also transferred in the name of the plaintiff by way of document No.16. Therefore, prima facie case is made out. Balance of convenience

is also in favour of the plaintiff and the plaintiff is in possession and enjoyment of the suit property. Ad-Interim injunction is granted till 12.8.2010.

Notice to Respondents by then. Order 39 Rule 3 (a) to be complied with.

3. Heard both sides. Mr. S. Parthasarathy, learned Senior Counsel for the Petitioners submitted that though against an order of ad interim

injunction normally, are vision will not lie and the revision Petitioners ought to have approached the court below and if any temporary injunction is

granted, they ought to have filed appeal before the first appellate court, having regard to the nature of the order passed by the Principal District

Judge, the revision is maintainable against the ad interim injunction order granted by the court below. The learned Senior Counsel submitted that as per Order XXXIX Rule 3 of the Code of Civil Procedure, when the court proposed to grant an injunction without giving notice of the application to the opposite party, the court shall record the reasons for its opinion that the object of granting interim injunction would be defeated by delay and therefore, while granting ad interim injunction without giving notice to the other party, the court ought to have stated in the order in specific terms that if injunction is not granted, the object of granting the same would be defeated, while recording the reasons and in this case, the court below has not stated as to how the object of grant of injunction would be defeated by delay and therefore, there is violation of mandatory provisions of Order XXXIX Rule 3 of the CPC and therefore, the revision is maintainable against the ad interim injunction order. He further submitted that admittedly, the order was an ex parte order passed after hearing the counsel for the Plaintiff and while passing the order, the court below has stated that both sides were heard and that would also prove non-application of mind on the part of the court below and on that ground also, the order is liable to be set aside in revision. In support of his contention, the learned Senior Counsel for the Petitioner submitted the following citations:

1. Rathinam and Others Vs. Pavathal,
2. Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others,
3. Suryanarayana Paper and Boards Pvt. Ltd. and others Vs. V. Padmakumar and others,
4. A. Chinnarajan Vs. N. S. Subbaiyah and others,
5. The Deputy Manager, Disciplinary Authority, Oriental Insurance Company Limited and Another Vs. K. Veerasamy,
6. H.H. Rijhwani Vs. N. Venkat Ramani and either others,
7. Kodaikanal International School Vs. Nihal Ghosh, through his Mother and Natural Guardian Elaine Mari Ghosh,
8. K. Chandran Vs. Smt. Siriya Pushpam,
9. Indiabulls Finance Services Ltd. v. Jubilee Plots and Housing Private Ltd. 2009 (3) CTC 64
10. Irin Stephan v. J.Musafargani (2009) 7 MLJ 304.

4. On the other hand, Mr. Subba Reddy, learned Counsel for the first Respondent submitted that the court below has rightly granted the ad interim injunction after stating the reasons in the order and the documents filed by the first Respondent/Plaintiff were considered and also discussed in the order and that shows the application of mind by the court below and there is no necessity to state specifically that the object of grant of injunction would be defeated by delay if injunction is not granted and it is sufficient for the court to record its reasons for the grant of injunction and in this case, the court has recorded the reasons and hence, there is no violation of the provisions of Order XXXIX Rule 3 of the CPC and therefore, the revision is not maintainable. Further, this Court has held in various judgments that against the order of interim injunction, no revision will lie and brought to my notice the judgment delivered by me in Governing Council of American College v. Dr. M.D. Christoher (2010) 6 MLJ 172. He further submitted that due to mistake, the court below has stated that both sides were heard and it is admitted that after hearing the counsel for the Plaintiff, the court below has passed the order of ad interim injunction and hence, there is no violation of the provisions of Order XXXIX Rule 3 of the CPC and there vision is not maintainable.

5. To appreciate the contention of both the parties, we will have to see the provisions of Order XXXIX Rule 3 of the CPC which is as follows:

Before granting injunction, Court to direct notice to opposite party

The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

[Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant-

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy

of the application for injunction together with-

(i) a copy of the affidavit filed in support of the application;

(ii) a copy of the plaint; and

(iii) copies of documents on which the applicant relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.]

6. The provisions of Order XXXIX Rule 3 has been dealt in extenso by the Honourable Supreme Court in Shiv Kumar Chadha and Others Vs.

Municipal Corporation of Delhi and Others, as follows:

32. Power to grant injunction is an extraordinary power vested in the Court to be exercised taking into consideration the facts and circumstances

of a particular case. The Courts have to be more cautious when the said power is being exercised without notice or hearing the party who is to be

affected by the order so passed. That is why Rule 3 of Order 39 of the Code requires that in all cases the Court shall, before grant of an injunction,

direct notice of the application to be given to the opposite party, except where it appears that object of granting injunction itself would be defeated

by delay. By the CPC (Amendment) Act, 1976, a proviso has been added to the said rule saying that "where it is proposed to grant an injunction

without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the

injunction would be defeated by delay....

33. It has come to our notice that in spite of the aforesaid statutory requirement, the Courts have been passing orders of injunction before issuance

of notices or hearing the parties against whom such orders are to operate without recording the reasons for passing such orders. It is said that if the

reasons for grant of injunction are mentioned, a grievance can be made by the other side that Court has prejudged the issues involved in the suit.

According to us, this is a misconception about the nature and the scope of interim orders. It need not be pointed out that any opinion expressed in

connection with an interlocutory application has no bearing and shall not affect any party, at the stage of the final adjudication. Apart from that now

in view of the proviso to Rule 3 aforesaid, there is no scope for any argument. When the statute itself requires reasons to be recorded, the Court

cannot ignore that requirement by saying that if reasons are recorded, it may amount to expressing an opinion in favour of the Plaintiff before

hearing the Defendant.

34. The imperative nature of the proviso has to be judged in the context of Rule 3 of Order 39 of the Code. Before the Proviso aforesaid was introduced, Rule 3 said "the Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party". The proviso was introduced to provide a condition, where Court proposes to grant an injunction without giving notice of the application to the opposite party, being of the opinion that the object of granting injunction itself shall be defeated by delay. The condition so introduced is that the Court "shall record the reasons" why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex parte injunction, cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule 3, the procedure prescribed under the proviso has been followed. The party which invokes the jurisdiction of the Court for grant of an order of restraint against a party, without affording an opportunity to him of being heard, must satisfy the Court about the gravity of the situation and Court has to consider briefly these factors in the ex parts order. We are quite conscious of the fact that there are other statutes which contain similar provisions requiring the Court or the authority concerned to record reasons before exercising power vested in them. In respect of some of such provisions it has been held that they are required to be complied with but non-compliance therewith will not vitiate the order so passed. But same cannot be said in respect of the proviso to Rule 3 of Order 39. The Parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side, under exceptional circumstances. Such ex parte orders have far reaching effect, as such a condition has been imposed that Court must record reasons before passing such order. If it is held that the compliance of the proviso aforesaid is optional and not obligatory, then the introduction of the proviso by the Parliament shall be a futile exercise and that part of Rule 3 will be a surplus age for all practical purposes. Proviso to Rule 3 of Order 39 of the Code, attracts the

principle, that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all. This principle was approved

and accepted in well-known cases of *Taylor v. Taylor*. (1875) 1 Ch.D. 426; AIR 1936 253 (Privy Council) . This Court has also expressed the

same view in respect of procedural requirement of the Bombay Tenancy and Agricultural Lands Act in the case of *Ramchandra Keshav Adke*

(Dead) by *Lrs. and Others Vs. Govind Joti Chavare and Others*, .

35. As such whenever a Court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without

notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant

factors, including as to how the object of granting injunction itself shall be defeated if an ex parte order is not passed. But any such ex parte order

should be in force up to a particular date before which the Plaintiff should be required to serve the notice on the Defendant concerned. In the

Supreme Court Practice 1993, Vol. 1, at page 514, 16reference has been made to the views of the English Courts saying:

Ex parte injunctions are for cases of real urgency where there has been a true impossibility of giving notice of Motion....

An ex parte injunction should Generally be until a certain day, usually the next motion day....

7. In the judgment in *Director, Horticulture Punjab and Others Vs. Jagjivan Parshad*, , the Honourable Supreme Court underlined the necessity to

record reasons in the following words:

7. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in

its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has

rendered the High Court's judgment not sustainable.

9.

15. ""Even in respect of administrative orders Lord Denning, M.R. in *Breen v. Amalgamated Engg. Union* observed: (1971 (1) All ER

1148)observed: (All ER p.1154h)

The giving of reasons is one of the fundamentals of good administration."" In *Alexander Machinery (Dudley) Ltd. v. Crabtree* 1974 (1) CR 120 it

was observed:

Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question

and the decision or conclusion arrived at.

Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the ""inscrutable face of the sphinx"" ,

it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in

adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party

can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in

other words, a speaking out. The ""inscrutable face of a sphinx"" is ordinarily incongruous with a judicial or quasi-judicial performance. (See

Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar,

8. In the judgment reported in Dr. Devasahyam, V. Rt. Rev. v. D. Sahayadoss 2002 (1) CTC 458, the Honourable P. SATHASIVAM, J, as he

then was, has held in para 8 that

In view of the Proviso to Rule 3 aforesaid, I hold that without recording the reasons, the grant of ad-interim injunction cannot be sustained. When

the statute itself requires reasons to be recorded, the Court cannot ignore the requirements. Further, the condition so introduced is that the court

shall record the reasons"" why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this

background, the requirement for recording the reasons for grant of ex parte injunction, cannot be held to be a mere formality. This requirement is

consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a

statute or under the common law, must be informed why instead of following the requirement of Rule 3, the procedure prescribed under the

proviso has been followed. The party which invokes the jurisdiction of the court for grant of an order of restraint against a party, without affording

an opportunity to him of being heard, must satisfy the court about the gravity of the situation and court has to consider briefly these factors in the ex

parte order. Proviso to Rule 3 of Order 39 of the Code, attracts the principle, that if a statute requires a thing to be done in a particular manner, it

should be done in that manner or not at all. This principle was approved and accepted in well known cases of Taylor v. Taylor 1875 (1) Ch D.

426 : 45 LJ Ch 373 and AIR 1936 253 (Privy Council) . To make it clear that whenever a court considers it necessary in the facts and

circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should

take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be

defeated if an ex parte order is not passed. It is also relevant to note the Constitutional Bench decision of the Apex Court in Mohinder Singh Gill

and Another Vs. The Chief Election Commissioner, New Delhi and Others, , wherein Their Lordships have held that when a statutory functionary

makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in

the shape of affidavit or otherwise. In the light of the specific provision, namely, Proviso to Rule 3, in the absence of recording reasons for granting

ad-interim injunction even before notice to the opposite party, I hold that the impugned order of the learned Subordinate Judge dated 29.11.2001

is liable to be interfered.

9. Therefore, from the above judgments, it has been made clear that while granting ex parte interim injunction, the court has to consider various

factors viz., prima face case, balance of convenience and irreparable injury that would be caused to the Petitioner in not granting the injunction and

taking into consideration all these factors, record reasons for grant of injunction.

10. Bearing in mind the principles stated above, we shall see whether the court below has passed the order in contravention of the provisions of

Order XXXIX Rule 3 of the Code of Civil Procedure.

11. As extracted above, the court has narrated the facts as well as the documents filed by the Respondent/Plaintiff and after discussing the nature

of documents filed by the Respondent/Plaintiff, came to the conclusion that the Respondent/Plaintiff purchased the property from one Ramasamy,

Dhanam Ramasamy under documents 7 to 13 and patta also transferred in his name under document No. 16 and the Plaintiff/first Respondent was

found to be in possession and thereafter, granted ad interim injunction. Therefore, after considering the facts of the case and the documents filed by

the first Respondent/Plaintiff and on being prima facie satisfied with the case of the first Respondent/Plaintiff, the court below granted ad interim

injunction and hence, in my opinion, it cannot be stated that the order was passed without application of mind and without stating the reasons.

12. The other judgments relied upon by the learned Senior Counsel would not help the revision Petitioner as in those judgments, our High Court

has set aside the ex parte interim injunction as they were passed without stating reasons. On the other hand, in this case, the court below has

extracted the case of the Plaintiff and also discussed the documents and prima facie came to the conclusion that the Plaintiff has got a case and he

is found to be in possession of the property and granted injunction. Hence, there is no violation of provisions of Order XXXIX Rule 3 of the Code

of Civil Procedure.

13. The contention of the learned Senior counsel that in the order, while recording the reasons for granting ad interim injunction, the court ought to

have stated that the object of granting injunction would be defeated by delay and in the absence of such specific allegation in the order, the order is

liable to be set aside, cannot be accepted. In Morgan Stanley Mutual Fund Vs. Kartick Das, , the principles under which the ex parte order of

injunction could be granted were laid down as follows:

As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the

grant of ex parte injunction are:

(a) whether irreparable or serious mischief will ensue to the Plaintiff;

(b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;

(c) the court will also consider the time at which the Plaintiff first had notice of the act complained so that the making of improper order against a

party in his absence is prevented;

(d) the court will consider whether the Plaintiff had acquiesced for some time and in such circumstances it will not grant ex parte injunction;

(e) the court would ex parte a party applying for ex parte injunction to show utmost good faith in making the application.

(f) even if granted, the ex parte injunction would be for a limited period of time;
(g) general principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court.

14. Therefore, the court has to take in to consideration various factors stated therein as narrated above while granting ad interim injunction and

state the reasons for granting ad interim injunction so as to enable the party to understand the reasons for ad interim injunction. Therefore, it is not

necessary that the court has to repeat the exact words as stated in the Order or Rule and it is sufficient if the order shows that the court has

understood the case of the Plaintiff and after taking into consideration various factors as laid down by the Honourable Supreme Court, granted

injunction by stating reasons.

15. Further, in the judgment in Governing Council of American College v. Dr. M.D.Christober (2010) 6 MLJ 172, I have dealt in detail that

revision will not lie ordinarily against ad interim injunction by invoking the provisions of Article 227 of the Constitution of India and only in

exceptional cases, Article 227 can be invoked. According to me, no such exceptional case has been brought out in this case and therefore, on that

ground also, the revision is not maintainable.

In the result, the civil revision petition is dismissed. No costs. The connected miscellaneous petitions are also dismissed.