

(2025) 01 CAL CK 1709
In the Calcutta High Court, Appellate Side
Case No : C.O. 74 Of 2025

Satwic Vivek Ruia

APPELLANT

Vs

Soumyendu Dutt & Ors

RESPONDENT

Date of Decision : 10-01-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 151, Order 39 Rule 3(a), Order 39 Rule 3(a) (iii)

Citation : (2025) 01 CAL CK 1709

Hon'ble Judges : Raja Basu Chowdhury, J

Bench : Single Bench

Advocate : Jishnu Chowdhury, Varun Kothari, B. N. Joshi, A. Agarwala, P. Garain, Soumyendu Dutt, Debangana Dey Nayak

Final Decision : Disposed Of

Judgement

Raja Basu Chowdhury, J

1. Affidavit of service filed in Court today is taken on record. Supplementary affidavit filed in Court today on behalf of the petitioner is also taken on record.
2. The opposite party no. 1 is represented in-person in Court.
3. The opposite party no. 5 is represented by advocate in Court today. A copy of the revisional application has been served on the opposite party no. 5 in Court today which has been accepted by Ms. Dey Nayak, learned advocate representing the opposite party no.5.
4. The present revisional application has been filed inter alia, challenging the failure on the part of the learned 4th Civil Judge (Junior Division), Alipore in Title Suit No. 2114 of 2024 in failing to take note of the non-compliance of the provisions of Order XXXIX Rule 3(a) of the Code of Civil Procedure (hereinafter referred to as the Code). It is the petitioner's case although an ex parte order of injunction had been passed by the learned Court on 16th December, 2024. The plaintiff/opposite party no. 1 did not comply with the provisions of Order XXXIX

Rule 3(a) of the Code, by not making available the copies of the documents relied on by the plaintiff/opposite party no. 1, to the petitioner along with the plaint and the injunction application immediately following passing such order as required in terms of Order XXXIX Rule 3(a)(iii) of the Code. Following the aforesaid, the petitioner had brought such fact to the notice of the learned Court by filing an application under Section 151 of the Code which was moved on 19th December, 2024. The petitioner claims that the learned Judge by the order impugned has refused to take note of the infraction in compliance of the provisions of Order XXXIX Rule 3(a) of the Code and has kept the application pending. According to Mr. Chowdhury, learned Senior advocate for the petitioner, the non-compliance of the above mandatory provision vitiates the order, the ex parte ad interim order of injunction should accordingly be set aside. He would submit that only after the above application was filed, by a cover of letter dated 21st December, 2024 the opposite party no.1 had served the plaint and injunction application with annexures. The above according to him does not constitute compliance of Order XXXIX Rule 3(a)(iii) of the Code.

5. The opposite party no. 1 appears in-person in Court and candidly submits that he had engaged an advocate before the trial Court. Despite his best efforts to ensure compliance of the provisions of Order XXXIX Rule 3(a) of the Code, the documents which were relied on by him were not supplied to the petitioner. He would submit that immediately upon coming to learn with regard to the aforesaid infraction he had rushed to Court and had attempted to deliver the documents on 19th December, 2024 itself, the same was however, refused. He candidly submits that by reasons of inadvertence, the learned advocate did not supply the copies of the documents relied on by the opposite party no. 1 at the time of hearing of the injunction application to the petitioner along with the plaint and the injunction application. Such mistake was later rectified. He would also submit that the opposite party no. 1 should not be made to suffer for such minor infraction.

6. Heard the learned advocates appearing for the petitioner and the opposite party no.5 as also the opposite party no.1 in-person. Admittedly, in this case the opposite party no.1 chose not to move the injunction application upon service on the petitioner. The injunction application was moved ex parte. Thus, having obtained an ex parte order of injunction the opposite party no.1 was obliged to ensure compliance of the mandatory provision as provided in Order XXXIX Rule 3(a) and (b) of the Code. Admittedly, in this case the mandatory provision of the Order XXXIX Rule 3(a)(iii) of the Code had not been complied with. Although, the opposite party would submit that the same is only a minor infraction and that the fault was of his advocate, I am of the view that if the opposite party no.1 had proceeded to obtain an ex parte order, the opposite party no.1 was obliged to ensure strict compliance of the provision of Order XXXIX Rule 3(a)

(iii) of the Code. Having not done so the opposite party no.1 must face the consequence. Having regard thereto and taking note of the fact that there has

been non-compliance of Order XXXIX Rule 3(a)(iii) of the Code, I am of the view that the matter should be remanded back to the learned trial Judge for hearing of the injunction application afresh, in presence of the petitioner.

7. In view thereof, the order dated 16th December, 2024 is set aside. However, taking note of the urgency involved, I direct the learned 4th Civil Judge (Junior Division), Alipore in Title Suit No. 2114 of 2024, to hear the injunction application on 13th January, 2025, if necessary by advancing the date of hearing of the injunction application. The learned Court shall be at liberty to pass ad interim order, if occasion so demands.

8. It is made clear that this Court has not gone into the merits of the injunction application and it shall be open to the learned Court to pass appropriate orders as it may deem fit and proper.

9. With the above observations and directions, the revisional application is disposed of.

10. The parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.