

(1995) 12 MAD CK 0025
In the Madras High Court
Case No : C.R.P. No. 2589 of 1995

Shaw Wallace Co. Ltd.

APPELLANT

Vs

Shaw Wallace Co. Ltd., Glue and Acid Plants Employees'
Union

RESPONDENT

Date of Decision : 08-12-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 3, 9
Constitution of India, 1950 — Article 227

Citation : (1996) 2 CTC 148

Hon'ble Judges : Jagadeesan, J

Bench : Single Bench

Advocate : Rita, for Aiyar and Dolia, for the Appellant; M.C.R.A.J. Pragasam, for the Respondent

Judgement

Jagadeesan, J.—This revision has been filed under Article 227 of the Constitution of India. The petitioner is the defendant in the suit,

O.S.No. 721 of 1994, on the file of the District Munsiffs Court, Poonamallee. The respondent herein had filed the above suit praying for an

injunction restraining the defendant therein from removing the machinery, raw materials from the factory premises during the subsistence of

industrial dispute pending before the Assistant Commissioner of Labour. The respondent also filed an application, I.A.No.2854 of 1994, seeking

for an interim injunction pending disposal of the suit. The trial court has granted interim injunction and only against the said order the revision has been filed.

2. Learned counsel for the petitioner contended that the lower court has granted interim injunction on September 8, 1994, without following the

statutory requirements prescribed under Order 39, Rule 3 of the Civil Procedure Code, 1908, as it has failed to give any reason to grant an ex

parte order. Not only an ex parte order was granted against the petitioner but also the court below without any reason had adjourned the matter

periodically even though counter had been filed in IA.No.2853 of 1994 on January 6, 1995. When Order 39, Rule 3-A of the Civil Procedure

Code, 1908, makes it clear that the court should make an endeavour to dispose of the interlocutory application within thirty days from the date of

the order, wherever an ex parte order has been granted. The lower court on March 9, 1995, had adjourned the matter to March 24, 1995, and

subsequently to April 20, 1995, June 28, 1995, August 4, 1995, September 15, 1995, and October 20, 1995. On more than one occasion the

court below had adjourned the matter beyond thirty days and hence the court below is not inclined to dispose of the matter as provided under

Order 39, Rule 3-A of the Civil Procedure Code. Learned counsel for the petitioner also relied upon the two judgments in Suryanarayana Paper

and Boards Pvt. Ltd. and others Vs. V. Padmakumar and others, and Silver Granites Vs. Murugan and others, .

3. I have perused the order of the court below. I heard both counsel. They relied upon the judgments referred to above. I am of the view that the

order of the court below dated September 8, 1994, has to be set aside, since the lower court has passed the order contrary to the provisions of

the Civil Procedure Code. Learned counsel for the respondent also conceded that the lower court has not followed the procedure prescribed

under the Civil Procedure Code. But the only plea of the respondent is that merely because the lower court has not followed the procedure the

respondent should not be prejudiced. At this stage, I do not think the respondent's interest can be safeguarded by sustaining the illegal order or by

passing any direction. Hence, the order of the court below dated September 8, 1994, in the interlocutory application is set aside.

4. Learned counsel for the petitioner further contended that the suit itself is not maintainable, since the matter is pending before the Industrial

Tribunal. Wherever an industrial dispute is pending, the parties cannot seek for any relief before the civil court. She also relied upon the two

judgments in Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, and The Premier Automobiles Ltd. Vs.

Kamlekar Shantaram Wadke of Bombay and Others, . I do not think that this Court can enter into the discussion with regard to the maintainability

of the suit at this stage. Hence, it is open to the petitioner to take all the pleas before the trial court.

5. For the reasons stated above, the civil revision petition is allowed and the order in IA.No.2854 of 1994 in O.S.No.721 of 1994, dated

September 8, 1994, on the file of the District Munsiffs Court, Poonamallee, is set aside and the LA. is remanded to the lower court for fresh

disposal in accordance with law. No costs.