
(1990) 02 AHC CK 0032
In the Allahabad High Court
Case No : F.A.F.O. No. 923 of 1989

Shree Mad Brahamanand Inter College and Another	APPELLANT
Vs	
Mithileswar Mahadeoji Maharaj Trust and Others	RESPONDENT

Date of Decision : 20-02-1990

Acts Referred:

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

Citation : (1990) 02 AHC CK 0032

Hon'ble Judges : N.N. Mithal, J;M.L. Bhat, J

Bench : Division Bench

Judgement

N.N. Mithal, J.—This is an appeal against the order passed under Order 39, Rules 1 and 2 of the Code at the instance of the Defendant-Appellants. The main ground of attack is that in the order passed by the court below there is no compliance of Rule 3 the reasons for granting injunction ex-parte have not been given.

2. It appears that a suit for permanent injunction was filed by the Plaintiff-Respondent and simultaneously an application for grant of temporary in-junction was also moved. At the ex-parte stage the court passed for lined order directing that the Defendants are restrained from raising construction on the disputed land and fixed a date a week hence. But the Defendant without responding to the notice has come up before this Court straight away challenging the order on the grounds mentioned earlier.

3 The Respondents have put in appearance and the parties have exchanged Counter & rejoinder affidavits.

4. The main ground of attack by the Appellant was that when any order is passed under Rule 1 or Rule 2 of Order 39 the ordinary requirement is that a notice of the application be given to the opp-party. It is only in exceptional circumstances where the court is of the view that the object of granting injunction would be defeated by the delay that it can grant an ex-parte order of injunction but while

doing so it is necessary that the court should record the reasons informing this opinion and also to comply with the provisions of Sub-clause (a) & (b) of the proviso. It is urged that since the court has not given any reason and there is also no mention of the material which has been considered by the court informing the opinion to grant ex-parte injunction. The order was totally without jurisdiction and against the provisions of Rule 3.

5. The above argument is vehemently met by the other side on the ground that although the order does not itself show the reasons for granting ex-parte injunction yet it is not an inviolable rule that if reasons are not given the order would be bad in all cases. It is urged that if there was material before the court on the basis of which ex-parte injunction could be granted that will be good enough ground for sustaining the order although that documentary evidence or other material has not been mentioned in the order and specific reasons have not been mentioned for granting the injunction ex-parte.

6. Having heard learned Counsel for the parties we are of the opinion that the order impugned herein cannot be sustained in law. It is true that even according to the Appellants, there was some material before the court as is mentioned in para 4 of the affidavit in support of the stay application but unfortunately copies of all the documents have not been placed before us barring two of them. It is therefore, not possible for this Court to form a judgment as to whether the material that was placed before the Trial Court at the time when the impugned order was passed was enough to form an opinion that the delay would defeat the purpose, of injunction if notice was sent first. The Appellants' learned Counsel pressed that this Court should decide this matter as the Appellant was suffering irreparable loss on account of ceaser of construction work for the last couple of months Be that as it may, it is not possible to dispose of the appeal here for want of material as the Appellant has not placed the copies of all the documents which had been filed by the Appellant for obtaining the ex-parte order. Had that material been placed before us it would have given us an opportunity of forming an opinion as to whether there was enough material for grant of ex-parte injunction or not. However, in the absence of such material we do not think it will be proper for us to express any opinion in this regard as it is likely to prejudice the right of the parties to a great extent.

7. During the course of argument the learned Counsel for the Appellant tried to refer to certain documents we are afraid that we cannot look into them as the some do not form part of the record of the court below. Looking into this evidence would amount to admitting additional evidence before us which we do not think will be proper for us to do.

8. Apart from this cannot really find any justifiable reason for the Appellant not to have filed his reply in the court below so far. Whatever may have been the fate of this appeal the Appellant should have put in appearance in the court below on 8-9-1989, the date fixed by the notice and to contest the matter in the Trial Court by filing such evidence as it wished to rely upon.

9. Rule 3 in the form as it is now has been introduced by the CPC (Amendment Act) of 1976 with allowed object of curtailing reckless grant of ex-parte injunction and also to assist the appellate court in judging whether ex-parte injunction had been granted on reasonable ground. This object would be totally defeated if the Trial Courts are permitted to pass order of injunction ex-parte even without recording any reason for doing so. We do not commend the Trial Court for adopting the procedure whatever may have been the urgency in the matter. Its order of ex-parte injunction must indicate that it had at least considered the material placed before it and also the circumstances that any delay in granting injunction ex-parte would frustrate the very object of injunction. In this connection reference maybe made to a case of *Rajkamal v. Moot Chand* 1989 ALJ 957. However a reference has been made to a contrary decision by a Division Bench of Calcutta High Court in *Smt. Muktesri Down and Ors. v. Haripada Majoomdar and Anr.* 1988 (1) CCC 981. In that case also an ex-parte injunction had been passed without recording reasons but the order was upheld by the court after it assessed the evidence itself and came to the conclusion that there were good grounds for issuing ex-parte injunction. However, the case is not fully applicable to the facts of the present case in as much as we do not have before us the material which had been placed by the Plaintiff before the Trial Court. In these circumstances the Court cannot assess for itself the material which persuaded the court below to grant ex-parte injunction. Thus the order impugned herein cannot be sustained and ought to be set aside. However, we find that the action of the Appellant would result in changing the status quo of the property in dispute and merely because of the mistake committed by the court below the Plaintiff is likely to suffer irreparable loss, it is a well settled principle of law that the mistake of the court should not result in injustice to a party. Keeping in mind this broad principle we are of the opinion that while setting aside the order passed by the Court below we should direct the parties to maintain status quo at least for a period of two months from to day and in the meantime the Trial Court should dispose of application for temporary injunction after hearing both the parties. We have been informed that the Appellant has not so far filed any objection or evidence before the Trial Court though, according to the Appellants counsel, appearance has already been put in by him. It would therefore, be appropriate if the Appellant files his objection to the application 7-C for grant of temporary injunction within a period of 15 days of the order passed by us and thereafter the temporary injunction application is disposed of within six weeks. It will be open to the parties to obtain a certified copy of this order and file it in the court below so that it may take further steps in the matter.

10. The appeal is accordingly allowed and the order passed by the Trial court on 28-8-1989 is set aside. However, the parties are restrained from changing the present position of the disputed property in any manner for a period of two months from the date of this order and the Trial Court will dispose of the interim injunction matter in the light of the directions given above. There will be no

order as to costs of this appeal.

11. A certified copy of this order may be issued to the counsel for the parties on payment of requisite charges within twenty four hours.