

(2013) 04 KAR CK 0054

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2197 of 2011 (CPC)

Smt. Yashodamma

APPELLANT

Vs

Sri R. Kumara Swamy and Another

RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 1(a), Order 39 Rule 4

Citation : (2013) 3 KCCR 2574

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : T.N. Raghupathy, for the Appellant;

Judgement

S.N. Satyanarayana, J.—Defendant in O.S. No. 1478/2008 on the file of City Civil and Sessions Judge, Bangalore, has come up in this appeal impugning the exparte order of status quo passed on IA.I in O.S. No. 1478/2008, which is a suit filed for the relief of permanent injunction. It is stated that an application in IA.I under Order 39 Rules 1 and 2 of CPC was filed seeking an order of temporary injunction. Said application was considered exparte and an order of status quo was passed. The case of appellant herein is that on service of notice, she entered appearance and filed statement of objections to said application. However, Court below did not take up application in IA.I and dispose of the same considering statement of objections filed by defendant. Instead, expected the defendant, appellant" herein to file a separate application under Order 39, Rule 4 of CPC for vacation of said order. In the result, application which was filed in IA.I remained on file without being disposed of on merits. It is also stated that subsequently issues are framed and matter has reached the stage of evidence, where plaintiff has completed his evidence and defendant has to adduce evidence.

2. The main grievance of appellant is the correctness and procedure adopted by Court below in expecting defendant, appellant herein to file an application seeking vacation of ad-interim temporary injunction which was granted exparte.

According to him, when the issue of ad-interim order of temporary injunction/status quo pursuant to I.A.I prior to service of notice is only a temporary arrangement, which will remain in force until defendant enters appearance and files statement of objections to said application. Since that is done, Court below without waiting for defendant, appellant herein to file application for vacation of ad-interim order of temporary injunction should proceed to hear said application and dispose of the same on merits, which is not done in the instant case.

3. After going through the grounds of appeal and also after hearing the Counsel for appellant, this Court is in full agreement with the line of submission made by Counsel for appellant, defendant in Court below. The procedure which is adopted by Court below is contrary to the provisions of CPC. Under Order 39, Rule 1(a) the Court can pass an order of ad interim injunction even before service of notice to defendant/respondent. However, as contemplated under Rule 3A as and when opposite party enters appearance and files statement of objections, the said application will have to be disposed of within 30 days from the date of filing of statement of objections. Nowhere it is mentioned that Court below should wait for an application to be filed under Rule 4 seeking vacation of status quo order or varying the same. The procedure that is followed by Court below is contrary to the provisions governing Order 39 of CPC. In that view of matter, in the instant case serious injustice is caused in not disposing of said application even after four years of filing of the same. In the result the said application has become infructuous. Therefore, while disposing of this appeal, it is made clear that henceforth Court below while granting an order of ad interim injunction/status quo on an application should make sure that after opposite party enters appearance and files statement of objections, the same shall be disposed of within 30 days thereafter as contemplated under Rule 3A without waiting for parties to file application under Rule 4 seeking vacation or varying the said order.

Accordingly, the present appeal is disposed of as it has become infructuous.