
(2004) 09 DEL CK 0193

In the Delhi High Court

Case No : IA 384 of 2004 and C.S. (OS) No.48 of 2004

SSA International Limited

APPELLANT

Vs

Paras Sales Corporation and Others

RESPONDENT

Date of Decision : 21-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3, Order 39 Rule 4, 151

Citation : (2004) 09 DEL CK 0193

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : Pratibha M.Singh and Ritika Talwar, for the Appellant; G.L. Rawal and Kuljeet Rawal, for the Respondent

Judgement

R.C. Jain, J.—This is an application under Order 39 Rule 1 and 2 read with Section 151 CPC made on behalf of the plaintiff for grant of an ad-interim injunction. The application came up for hearing before the Court along with the suit on 21.1.2004 when this Court granted an ad-interim ex parte injunction restraining the defendants from using the label of their gunny bags of basmati rice of the design as shown at page-50 of the documents file or which was deceptively similar to the plaintiff's label shown on the same page. While issuing this ad-interim ex parte injunction, the Court directed the plaintiff to comply with the provisions of Order 39 Rule 3 CPC within a week. The said ex-parte ad interim injunction is still in force and a reply has been filed by the defendants to the said application, inter alia, raising a plea for vacation of the ad interim ex parte injunction primarily on the ground that the provisions of Order 39 Rule 3 CPC have not been complied with by the plaintiff. In these circumstances, it has become imminent to answer this objection and depending upon the outcome of the said objection, the application will be taken up for disposal on its merits.

2. I have heard Ms. Pratibha M.Singh, counsel for the plaintiff and Mr.G.L.Rawal, counsel for the defendants and have perused the material on record. The Court

while issuing the ex-parte ad-interim injunction, on the request of the plaintiff, had also appointed two local commissioners to visit the premises of the defendants for preparation of inventory of the infringed stocks etc. lying at the premises of the defendants. Mr.Rawal, learned counsel for the defendants has strenuously urged that as per the plaintiff's own documents brought on record, there has been no compliance of the provisions of Order 39 Rule 3 CPC in as much as the notice, which can be said to be in compliance of the said provision, was issued by the plaintiff only on 29.1.2004 i.e. on the 9th day of the making of the order and, Therefore, the ad-interim ex parte injunction granted against the defendants is liable to be vacated. In support of his contention, he has sought support from a decision of this Court in the case of S.B.L. Ltd. Vs. Himalaya Drug Co., . In that case the Court had considered the effect of non-compliance of the provisions of Order 39 Rule 3 CPC and has answered the same in para-36 of the judgment, which is to the following effect:

"We are of the opinion that if the Court is satisfied of non-compliance by the applicant with the provisions contained in the proviso then on being so satisfied the Court which was persuaded to grant an ex parte ad interim injunction confiding in the applicant that having been shown indulgence by the Court he would comply with the requirements of the proviso, it would simply vacate the ex-parte order of injunction without expressing any opinion on the merits of the case leaving it open to the parties to have a hearing on the grant or otherwise of the order of injunction but bi-parte only. The applicant would be told that by his conduct (mis-conduct - to be more appropriate) he has deprived the opponent of an opportunity of having an early or urgent hearing on merits and, Therefore, the ex-parte order of injunction cannot be allowed to operate any more."

3. The said judgment was made on the facts of that case having referred to the attending circumstances and taking into account the subsequent conduct of the plaintiff. Another case relied upon by Mr.Rawal is a Supreme Court decision in the case of A.Venkatasubbaiah Naidu Vs. S.Challappan and Ors. 2000 VII AD (S.C.) 333. In that case the Court held that failure of the applicant to comply with the provisions of Order 39 Rule 3 CPC will disentitle him to complain about the disobedience alleged against opposite party.

4. On the other hand, Ms.Pratiba M.Singh, counsel for the plaintiff has urged that the plaintiff has in substance complied with the provisions of Order 39 Rule 3 CPC and the direction of this Court firstly because the notice was issued by the plaintiff along with the copies of the complaint etc. to the defendant on 29.1.2004 as the order of this Court dated 21.1.2004 was received by her only on 22.1.2004 and, Therefore, time of one week if computed from 23.1.2004 there is full and timely compliance of the order. She also submitted that the defendants, otherwise, had due notice of the proceedings through the local commissioners who visited the spot on 27.1.2004 and one commissioner served a copy of the order on the representatives of the defendant while he other could not serve it because the person found on the spot declined to accept it. An

affidavit of compliance of the provisions of Order 39 Rule 3 CPC has been filed on behalf of the plaintiff. Besides, counsel for the plaintiff also sought to point out that the conduct of defendants in not filing written statement and reply to application under Order 39 Rule 1 and 2 CPC within 90 days and filed no application under Order 39 Rule 4 CPC till date. It is also pointed out that the defendants by disposing off the stocks with them have defied the order of the Court and consequently committed the contempt of this Court.

5. In support of her contention that the ad-interim injunction is not liable to be vacated for the alleged non-compliance of the provisions of Order 39 Rule 3 CPC, she has relied upon decisions of this Court in the case of Exide Industries Ltd. Vs. Exide Corporation, USA and Others, and an earlier judgment in the case of Nat Organic Chemicals Industries Vs. B.L. Industries, wherein the Court has taken a view that it is not in all cases of non-compliance of the provisions of Order 39 Rule 3 CPC that an ex-parte order should be vacated but before doing so, the defendant must show that it has caused a serious prejudice to him.

6. In the case in hand, having regard to the totality of facts and circumstances and the material brought on record, more particularly the fact that the two local commissioners appointed by this Court visited the premises of the defendants and served/made an attempt to serve the Court order on the defendants' representative and executed the commission and that the plaintiff had, in fact, dispatched the formal notice on 29.1.2004 by speed post and further that the defendants did not approach this Court immediately about their grievance of non-compliance of the provision may be on account of some alleged negotiations, and did not file the written statement lest an application under Order 39 Rule 4 CPC, this Court is of the opinion that there has been substantial compliance by the plaintiff of the provisions of Order 39 Rule 3 CPC and no prejudice is shown to have caused to the defendant merely on account of slight delay which can at best be said of one day in compliance of the provisions of Order 39 Rule 3 CPC. This Court is, Therefore, of the opinion that the ad-interim ex parte injunction, as granted on 21.1.2004, is not liable to be vacated on the ground of the alleged non-compliance of Order 39 Rule 3 CPC. This objection is accordingly disposed of.

7. Now the application along with other pending application to come up for disposal on merits on 25th November, 2004