

(1999) 12 MAD CK 0033

In the Madras High Court

Case No : C.R.P. No. 3546 and 3547 of 1999 and C.M.P. No. 19972, 19973
20600 and 20601 of 1999

The Andhra Social and Cultural Association

APPELLANT

Vs

R. Karuppan

RESPONDENT

Date of Decision : 23-12-1999

Acts Referred:

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

Citation : (2000) 2 CTC 235

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Advocate : Mr. K.V. Sundarrajan, for the Appellant; Mr. R. Karuppan, for the Respondent

Judgement

1. Petitioner is an Association. They are the third respondent in I.A.Nos.18317 and 18318 of 1999 in O.S.No.7331 of 1999 of the file of XVIII

Assistant Judge, Civil City Court, Chennai. The above revisions are filed against the ex parte interim orders passed under Order 39, Rule 3 of the

CPC dated 19.11.1999.

2. The main contention of the learned counsel for the petitioner is that this order is passed in violation of the mandatory provisions of order 39,

Rule 3, CPC without giving reasons. It is further submitted that on the plaint averments, petitioner is not a member of the Association and that his

application for membership has been rejected. Whiles, an injunction in the nature of a mandatory order to the respondent herein not to interfere

from using the facilities as a member for his family members was granted erroneously. Besides, the learned City Civil Court Judge also passed an

interim order directing the respondents to accept the payment. Thus, according to him, the learned Judge did not consider the matter before issuing an ex parte interim injunction orders.

3. The respondent appearing as a party-in-person raised the following points:

According to him, the civil revision petitions are not maintainable without impleading the order necessary parties who are parties in the I.A.

Secondly, it is submitted that the petitioner has not countered the various objections raised by the respondent herein in his affidavit filled in support

of the I.A. Especially, the copy of the admission register was omitted to be furnished for scrutiny. According to him, the petitioner has suppressed

the material facts and manipulated the records to deny the legitimate and legal right of the respondent to become the member and continue as a

member based on the permission granted earlier.

4. I have heard the counsel for the petitioner and the respondent and considered the matter.

5. The order passed by the learned judge does not satisfy the requirement of Order 39, Rule 3, CPC. The Honourable Supreme Court as well as

this Court, in a series of decisions, have directed the subordinate Courts that they should pass speaking orders in terms of Order 39, Rule 3, CPC.

In all those cases, it has been held that the requirement is mandatory that before granting an injunction without giving notice to the opposite party,

the Court shall record reasons for its opinion and that the object of granting injunction would be defeated by delay. This mandatory requirement

and the ingredients are lacking in this order. Therefore, it is clear that the impugned order does not satisfy the requirement of law. In *Suryanarayana*

Paper and Boards Pvt. Ltd. and others Vs. V. Padmakumar and others, , *Srinivasan, J.* (as he then was), following the two Supreme Court

judgments in *Morgan Stanley Mutual Fund v. Kartic Das*, 1994 SCC 225 and *Shiv Kumar Chadha v. Municipal Corporation of Delhi*, 1993 (3)

SCC 1611, held that interlocutory orders of this nature are wholly unsustainable and without jurisdiction and they have to be set aside. The very

same learned judge (as he then was), in *R.I & C. Syndicate Ltd. v. Vairava Prakasam*, 1988 (2) LW 179, deprecated the practice of granting

such order of injunction.

6. From the arguments, it is seen that in the plaint averment itself, it is stated by

the respondent that he received a letter dated 4.11.1999 informing that his application dated 30.9.1999 for admission of membership has been rejected by the managing Committee on 3.11.1999. Hence, they returned the cheque and the photographs of the petitioner. According to the respondent, such an order only be passed by an extraordinary genearly body supported by two-thirds majority. He has further stated in the plaint that the said order of the defendant rejecting the application is illegal. This has also been referred to in the cause of action paragraph. This has been referred to by the counsel for the petitioner stating that the averment of the petitioner, petitioner had not become a member and therefore, the question of passing a resolution by two-third majority does not arise for consideration and there is no question of balance of convenience since he has not been admitted as member, to continue to enjoy the benefit of membership. Therefore, the petitioner is right in pointing out that the learned judge did not go into the averments contained in the plaint and the prima facie case also. The learned judge did not give reasons as to how he has come to the conclusion that a prima facie case has been put and that the balance of convenience is in favour of the respondent. The non-application of mind before passing the orders is evident from the order obtained in I.A.No.18318 of 1999. There is an application to receive two cheques which were returned by the petitioner Association. The order says ""Ad interim injunction till 30.11.99..." It is unfortunate that the trial court has passed such mechanical orders inspite of repealed decisions and clear provision of law.

7. It is submitted that the Association is the only party aggrieved by the order passed by the learned judge. All the remaining respondents in the I.A. are members of the petitioner Association in their capacity as office bearers and therefore, the revision under Article 227 of the Constitution of India is maintainable by an aggrieved party namely the petitioner herein. It is further submitted on behalf petitioner that in the application filled in support of an interim order before this Court, necessary averments have been made and they have filled a counter to the I.A. in the lower court denying each and every allegation contained in the affidavit filled in support of the I.A. There no question of suppression of any material before this Court.

8. Considering the above facts and circumstances, I am satisfied that the order of the learned City Civil Judge cannot be sustained both on law as

well as on merits. Accordingly, the said order is set aside and the learned judge is directed to dispose of the applications as expeditiously as

possible, at any rate within three months from the date of receipt of a copy of the order, uninfluenced by any observation contained in this order.

As a matter of fact, I have directed in the interim order dated 26.11.99 as follows:

The interim suspension order passed by this Court shall not, in any way, prevent the learned trial judge to dispose of the application. On 30.11.99

after hearing both the parties on merits and in accordance with law.

9. The civil revision petitions are allowed with the above direction. Consequently, the connected C.M.Ps. are closed.