

(1999) 02 MAD CK 0118
In the Madras High Court

The Deputy Manager, Disciplinary Authority, Oriental
Insurance Company Limited and Another

APPELLANT

Vs

K. Veerasamy

RESPONDENT

Date of Decision : 05-02-1999

Acts Referred:

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

Citation : (1999) 2 MLJ 238

Hon'ble Judges : S. S. Subramani, J

Bench : Division Bench

Judgement

S. S. Subramani, J.—In both these revision petitions, defendants are the revision petitioners. Defendants are aggrieved by the ad-interim

injunction granted by the lower court.

2. Plaintiff was suspended from service, and the same is challenged in O.S.No. 1263 of 1998. I.A.No. 1051 of 1998 was filed in that case for

injunction. Ad-interim injunction was granted. Subsequently, the very same plaintiff was charge-sheeted, and he filed O.S.No. 1591 of 1998.

I.A.No. 1057 of 1998 was filed in that case, and the same is the subject-matter of C.R.P.No. 3865 of 1998. In both the injunction petitions, ad-

interim injunction was passed. In I.A.No. 1051 of 1998, the injunction order reads thus:

Heard. Documents perused. Ad-interim injunction granted till 5.10.1998. Notice, Order 39, Rules 1 and 3, to be complied with,

In I.A.No. 1057 of 1998, the injunction order reads thus:

Heard. Documents perused. Interim injunction granted till 10.12.98. Notice by then. Order 39, Rules 1 and 3 to be complied with.

The above orders are challenged by defendants on various grounds. But I do not want to go into the merits of the case.

3. When the revision petitions came for admission, the interim order was suspended, and notice was directed to be served on respondent. After service, both parties were heard.

4. The Honourable Supreme Court has held in *Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others*, , as to how an interim order has to be passed, and what are the ingredients that are to be taken into consideration while passing the order. In paragraphs 34 and 3

5 (at pages 176 and 177), their Lordships have held thus:

The imperative nature of the proviso has to be judged in the context of Rule 3 of 6.39 of the Code. Before the proviso aforesaid was introduced

Rule 3 said, ""the court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before

granting an injunction, direct notice of the application for the same to be given to the opposite party."" The proviso was introduced to provide a

condition, where court proposes to grant an injunction without giving notice of the application to the opposite-party being of the opinion that the

object of granting injunction itself shall be defeated by delay. The Condition so introduced is that the court, ""shall record the reasons"" why an ex

parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the

reasons for grant of ex parte injunction, cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a

suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be

informed why instead of following the requirement of Rule 3, the procedure prescribed under the proviso has been followed. The party which

invokes the jurisdiction of the court for grant of an order of restraint against a party, without affording an Opportunity to him of being heard, must

satisfy the court about the gravity of the situation and court has to consider briefly these factors in the ex parte order. We are quite conscious of the

fact that there are other statutes which contain similar provisions requiring the court or the authority concerned to record reasons before exercising

power vested in them. In respect of some of such provisions it has been held

that they are required to be complied with but non-compliance therewith will not vitiate the order so passed. But same cannot be said in respect of the proviso to Rule 3 of Order 39. The Parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side, under exceptional circumstances. Such ex parte orders have far-reaching effect, as such a condition has been imposed that court must record reasons before passing such order. If it is held that the compliance with the proviso aforesaid is optional and not obligatory, then the introduction of the proviso by the Parliament shall be a futile exercise and that part of Rule 3 will be a surplusage for all practical purposes. Proviso to Rule 3 of Order 39 of the Code, attracts the principle, that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all. This principle was approved and accepted in well-known cases of *Taylor v. Taylor* and *Nazir Ahmed v. Emperor*. This Court has also expressed the same view in respect of procedural requirement of the Bombay Tenancy and Agricultural Lands Act in the case of *Ramachandra Keshav Adke v. Govind Joti Chavare*. As such whenever a court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an ex parte order is not passed....

[Italics supplied]

5. In *Dinesh Mathur Vs. O.P. Arora and Others*, , their Lordships have held thus:

...Granting injunction is a matter of discretion. Balance of convenience and irreparable injury are triable issues and are required to be examined and found positively....

6. in *Shiv Kumar Chadha's* case, their Lordships have held that the court gets jurisdiction to pass an order of interim injunction only when the court enters a finding as contemplated under Order 39, Rule 3, C.P.C. In doing so, reasons must also be recorded. Only on satisfaction of the grounds, the court gets jurisdiction to pass an order of ad-interim injunction and those findings also must be found positively. I have already extracted the interim order in this case, which does not satisfy the legal requirements, under

which the court gets jurisdiction to pass order under Order 39, Rule 1, C.P.C. If the court is exercising that power, it has to exercise the same only in that way, and not in any other manner. In this case, the lower court has failed to consider the legal position. Therefore, the impugned orders cannot stand. They are set aside. I direct the lower court to hear the injunction application on merits with notice to petitioners, herein and also after hearing their objections. The civil revision petitions are allowed. No costs. Connected C.M.Ps. are closed.