
(2000) 09 AP CK 0056
In the Andhra Pradesh High Court
Case No : CRP No. 2006 of 1998

Yandapali China Subbarao and another APPELLANT
Vs
Sri Bhimalingeswaraswamivari Temple Chityala and another RESPONDENT

Date of Decision : 19-09-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2A, Order 39 Rule 3, Order 43 Rule 1(r)

Citation : (2000) 6 ALD 330 : (2000) 6 ALT 591

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : Mr. N.V. Suryanarayana Murthy, for the Appellant; Mr. Metta Chandrasekhar Rao, for the Respondent

Judgement

1. It appears that the petitioner has filed a suit which is pending before Junior Civil Judge, Kowur. He filed an application IA No.974 of 1998 for interim injunction in which the Court issued an urgent notice. The petitioner, aggrieved of this order filed an appeal before the District Judge. The appeal was rejected on the ground that, no appeal was maintainable in view of Order 43, Rule 1(r) of Civil Procedure Code, whereby appeal would lie only against order passed under Rule 1, Rule 2-A, Rule 4 or Rule 10 of Order 39. The learned District Judge was of the opinion that issuance of notice in an application under Order 39 was not an order which is appealable under Order 43 CPC.
2. This Court entertained the revision, issued an order of stay and a vacate stay petition has been filed. The learned Counsel for the parties have been heard at length, and hence the revision itself is disposed of.
3. The only question which needs to be considered is, whether issuance of notice in an application under Order 39 would be an appealable order? The learned Counsel for the petitioner relies on a judgment of this Court in K. Subba Rao v. P. Nagaratnayamma ATR 1982 AP 443. I am surprised that this judgment has been pressed into service by the learned Counsel for the petitioner, because this

judgment goes against the contention of the learned Counsel for the petitioner who argued that issuance of a notice in a mailer in which interim injunction is sought is in fact an order refusing grant of injunction, therefore it is appealable order. The same argument was considered by the Division Bench in the above matter (supra). Though the Court was dealing with a matter arising out of Letters Patent Appeal and they had to consider whether issuance of notice in a stay application by the High Court would be a judgment within the meaning of clause 15 of the Letters Patent or not, they also considered the impact of issuance of notice under Order 39 of CPC. The Division Bench was of the opinion that, an order issuing notice only in a stay application by the High Court would not be a judgment within the meaning of clause 15 of the Letters Patent and therefore appeal would not lie. They also came to the conclusion that, issuance of notice only in an application under order 39 CPC would also not be an order which could be an appealable order under Order 43. The advocate appearing in this matter is the same who had appeared before the Division Bench. Although he had contended before the Division Bench that some Courts treated refusal to grant an ex parte injunction and ordering notice as amounting to refusal to grant an ex parte injunction under Order 39 Rule 1 CPC, but the learned Counsel had failed to show any judgment to the Division Bench. He has not shown any judgment even to this Court. If the argument made by the learned Counsel for the petitioner that issuance of notice in an interim injunction application would amount to refusal of grant of stay is accepted that would amount to re-writing and re- drafting of Order 39. An ex parte injunction is always an exception and Order 39, Rule 3 makes it mandatory for the Courts to issue notice to the other side before an injunction is passed. However, it creates an exception and in such exceptional cases the Courts have to record the reasons for granting an injunction ex parte. Therefore, I do not think that the order issuing a notice in an application under Order 39 can be termed as an order of refusal of injunction for the purposes of appeal. The order issuing a notice in an application for injunction is only a step taken to decide the application for grant of injunction after hearing it in terms of Rule 3, Order 39 CPC.

4. For the reasons, this revision petition is misconceived and is accordingly dismissed. Stay vacated. The IA pending before the trial Court shall be disposed of expeditiously.