

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WEDNESDAY, THE SEVENTH DAY OF APRIL
TWO THOUSAND AND TWENTY ONE

PRESENT

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HONOURABLE SRI JUSTICE T.VINOD KUMAR

CIVIL MISCELLANEOUS APPEAL Nos. 90 & 173 OF 2021

CMA No.90 of 2021

(Appeal under Order XLIII Rule 1 of Code of Civil Procedure against the Order in IA No.1 of 2021 in R&T.P.No.5 of 2021, dated 12-1-2021, on the file of the High Court, renumbered as IA No.59 of 2021 in OS No.13 of 2021, on the file of the court of the XVI Additional District Judge, Ranga Reddy District at Malkajgiri.)

BETWEEN:

1. Sri. G.V. Gyaneshwar Naidu S/o G.P.R. Naidu,
Aged 55 years, Occ: Business,
R/o Plot No. 103. MLA MP Colony,
Road No. 10C. Shaik Pet. Hyderabad 500033. Telangana
2. Sri Sudhakar Reddy C., S/o.Late Dharma Reddy,
Aged :52 years, Occ: Business.
R/o.C-34/1, BHEL COLony, Opp. Loyola college,
Old Alwal, Secunderabad- 500010
3. Sri Ramesh Gaikwad, S/o Hanmanth Rao
Aged : 50 years, Occ: Business, R/o 8-4-549/38/1,
Nethaji Nagar, A.G. Colony,
Erragadda, Sanathnagar, Hyderabad
4. Sri Palepu Jaya Kumar, S/o P. Manohar,
Aged: 35 years, Occ: Doctor,
R/o 1-7-204. Flat No. 101,
Nirmala Residency, Bakaram,
Musheerabad, Hyderabad 500020
5. Sri Voḍela Madhava Rao, S/o. V. Mallal Rao,
Aged 38 years, Occ: Business, R/o. 37-93/399/9, Road No. 6,
Church Street, Madhuranagar,
Neredmet, Secunderabad- 500056

...Appellants/Respondent No. 1,4,5,7&9/Defendants 1, 4,5, 7 &9

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AND

- /1. Smt Lalitha Srikrish W/o. Late Srikrish Srinivasan,
Aged 60 years, Occ: Business,
R/o. 12710, Bloomfield Ave. Apartments, 153,
Norwalk, CA, 90650
- /2. Ms. Swetha Srikrish, D/o. Late Srikrish Srinivasan,
Aged 37 years, Occ: Housewife,
R/o. 35117, 11th Street, Union City,
California, 94587, USA,
- /3. Mr. Sushant Srikrish S/o Late Srikrish Srinivasan,
Age: 31 years, Occ: Service,
R/o. 35117, 11th Street, Union City,
California, 94587, USA
- /4. Mr. Shankar Srinivasan, S/o. Sri Late T.R. Srinivasan,
Aged 60 years, Occ: Business,
R/o. 14611, Horse Shoe, Dr. Saratoga,
California, 95070, USA
- /5. M/s L.A. Krish Enterprises,
Situated at 3-6-101/C, Chiranjeevi Apartments,
West Marredpally, Secunderabad -500026
Rep. by Smt Lalitha Srikrish residing at 12710,
Bloom Field Ave. Apartment. 153. Norwalk. C.A. 90650 6
- /6. Dr. Padmasree Dream Projects Pvt. Ltd.,
having its Regd. Office at 37-126151,
Sree Colony, Neredmet X Road,
Hyderabad 500056,
Rep by its Chairman and Managing Director,
Dr. Pitla Sreen Raj, S/o. Pitla Krishna.
Aged 46 years, Occ: Doctor/Business.
(Respondents No. 1 to 5 Rep. by Respondent No. 6, as GPA Holder)

...Respondents/Petitioners/Plaintiffs

7. Sri Tatineni Prasad Rao, S/o. T. Lokeshwar Rao,
Aged 57 years, Occ: Business,
R/o 33-29/60 13, Telecom Colony,
Secunderabad 500094
8. Sri K. Akhil Reddy, S/o. K. Pratap Reddy,
Aged: 27 years, Occ: Business.
R/o Flat No. 102. Kundan Towers 3-5-963/1,
Narayanaguda. Himayath Nagar. Hyderabad- 500029.
9. Sri Esther Athma Tanuja Bezawada, W/o Sudershan,
Aged : 62 years, Occ: Housewife, R/o Plot No 203,
Sri Sai Srinivas Estates, Sri Ranga Gardens,
West Marredpally, Nehru Nagar,
Hyderabad Telangana 500026

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10. Smt. K. Anusha, D/o. K.P. Paul Sing (W/o Palepu Jaya Kumar),

Aged: 32 years ,Occ: Doctor,

R/o 1-7-204. Flat No. 101,

Nirmala Residency, Bakaram,

Musheerabad, Hyderabad-500020

11. Sri Bhikaram Choudhary S/o Ansaram Choudhary,

Aged: 51 years Occ: Business,

R/o 12-38, Balaji Nagar,

Jawahar Nagar. Yaprul,

Secunderabad 500087

12. Smt Roopa Devi Choudhary, W/o Bhikaram Choudhary,

Aged 47 years, Occ: Housewife,

R/o 12-38, Balaji Nagar, Jawahar Nagar,

Yaprul, Secunderabad -500087

13. Sri Mangilal Choudhary, S/o Bheekaram Choudhary,

Aged: 49 years, Occ: Business,

R/o 29-1480/5/1, Kakathiya Nagar,

Neredmet, Hyderabad 500056

14. Smt Sukiya Devi, S/o. Mangilal Choudhary,

Aged: 46 years, Occ: Housewife,

R/o 29-1480/5/1, Kakathiya Nagar,

Neredmet, Hyderabad -500056

(Respondents No. 7 to 14 are Not Necessary Parties)

...Respondents/Respondents/Defendants 2,3,6,8,10,11,12&13

IA NO: 1 OF 2021

Application under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order passed by the Hon'ble High Court for the State of Telangana in I.A. No. 1 of 2021 in R & T Petition No. 5 of 2021, passed on 12-01-2021 renumbered as IA No.59 of 2021 in OS No.13 of 2021, on the file of XVI Additional District Judge, Ranga Reddy at Malkajgiri.

IA NO: 2 OF 2021

Application under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to fix any date of hearing of CMA No.90 of 2021.

For the Appellants: SRI K.MOHAN, Advocate

For the Respondents: SRI CH.A.B. SATYANARAYANA, Advocate

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CMA No: 173 OF 2021

(Appeal under Order 43 Rule 1 read with Section 151 of CPC against the Order in IA No.1 of 2021 in R.T.P.No.5 of 2021, dated 12-1-2021, on the file of the High Court, renumbered as IA No.59 of 2021 in OS No.13 of 2021, on the file of the court of the XVI Additional District Judge, Ranga Reddy District at Malkajgiri.)

Between:

K. Akhil Reddy, S/o K. Pratap Reddy
Age: 27 years, Occ: Business
R/o Flat No. 102, Kundan Towers, 3-5-963/1
Narayanguda, Himayath Nagar
Hyderabad - 500029

...Appellant/Defendant No. 3

AND

1. Smt. Lalitha Srikrish, W/o Late Srikrish Srinivasan
Age: 60 years, Occ: Business
R/o 12710, Bloomfield Ave Apartments, 153
Norwalk, CA – 90650
2. Ms. Swetha Srikrish D/o Late Srikrish Srinivasan
Age: 37 years, Occ: Housewife
R/o 35117, 11th Street, Union City
California, USA – 94587
3. Mr. Sushant Srikrish S/o Late Srikrish Srinivasan
Age: 31 years, Occ: Service
R/o 35117, 11th Street, Union City
California, USA – 94587
4. Mr. Shankar Srinivasan S/o Late T.R. Srinivasan
Age: 60 years, Occ: Business
R/o 14611, Horse Shoe, Dr. Saratoga
California, USA – 95070

5. M/s L.A. Krish Enterprises
Situating at 3-6-101/C, Chiranjeevi Apartments
West Marredpally, Secunderabad - 500026
Represented by:
Smt. Lalitha Srikrish
R/o 12710, Bloomfield Ave Apartments, 153
Norwalk, CA - 90650
6. M/s Dr. Padmasree Dream Projects Pvt. Ltd.
Having its Registered Office at:
37-126151, Sree Colony, Neredmet
X Road, Hyderabad - 500056
Represented by:
Its Chairman and Managing Director
Dr. Pitla Sreen Raj S/o Pitla Krishna
Age: 46 years,
Occ: Doctor/ Business
7. Sri G.V. Gyaneshwar Naidu S/o G.P.R. Naidu
Age: 55 years, Occ: Business
R/o Plot No. 103, MLA MP Colony
Road NO. 10C, Shaik Pet
Hyderabad - 500033
8. Sri Tatineni Prasad Rao S/o T. Lokeshwar Rao
Age: 57 years, Occ: Business
R/o 33-29/60/13, Telecom Colony
Secunderabad - 500094
9. Sri Sudhakar Reddy Chillvery S/o Late C. Dharma Reddy
Age: 52 years, Occ: Business
R/o C-34/1, BHEL Colony, Opp. Loyola College
Old Alwal, Secunderabad - 500010
10. Sri Ramesh Gaikwad S/o Hanmanth Rao
Age: 50 years, Occ: Business
R/o 8-4-549/38/1, Nethaji Nagar
A.G. Colony, Erragadda
Sanathnagar, Hyderabad
11. Smt. Esther Athma Tanuja Bezawada W/o Sudershan
Age: 62 years, Occ: Housewife
R/o Plot No. 203, Sri Sai Srinivas Estates
Sri Ranga Gardens, West Marredpally
Nehrunagar, Hyderabad, Telangana - 500026
12. Sri Palepu Jaya Kumar S/o P. Manohar
Age: 35 years, Occ: Doctor
R/o 1-7-204, Flat No. 101, Nirmala Residency
Bakaram, Musheerabad
Hyderabad - 500020

...Respondents/Plaintiffs

- 6 -
13. Smt. K. Anusha W/o Palepu Jaya Kumar
Age: 32 years, Occ: Doctor
R/o 1-7-204, Flat No. 101, Nirmala Residency
Bakaram, Musheerabad
Hyderabad – 500020
 14. Sri Vodela Madhava Rao S/o V. Mallal Rao
Age: 38 years, Occ: Business
R/o 37-93/339/9, Road No. 6, Church Street
Madhuranagar, Neredmet
Secunderabad – 500056
 15. Sri Bhikaram Choudhary S/o Ansaram Choudhary
Age: 51 years, Occ: Business
R/o 12-38, Balaji Nagar, Jawahar Nagar
Yapral, Secunderabad – 500087
 16. Smt. Roopa Devi Choudhary W/o Bhikaram Choudhary
Age: 47 years, Occ: Housewife
R/o 12-38, Balaji Nagar, Jawahar Nagar
Yapral, Secunderabad – 500087
 17. Sri Mangilal Choudhary S/o Bheekaram Choudhary
Age: 49 years, Occ: Business
R/o 29-1480/5/1, Kakathiya Nagar
Neredmet, Hyderabad – 500056
 18. Smt. Sukiya Devi W/o Mangilal Choudhary
Age: 46 years, Occ: Housewife
R/o 29-1480/5/1, Kakathiya Nagar
Neredmet, Hyderabad – 500056

...Respondents/ Defendants Nos. 1,2,4-13

IA NO: 1 OF 2021

Application under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to dispense with the filing of the certified copy of the impugned Order dated 12.01.2021 in RTP No. 5/2021 on the file of High Court renumbered as I.A. No. 59 of 2021 in O.S. No. 13 of 2021 on the file of the XVI Additional District Judge, Ranga Reddy at Malkajgiri.

IA NO: 2 OF 2021

Application under Section 151 of CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to suspend the operation of the Order dated 12.01.2021 in I.A. No. 1 of 2021 in RTP No. 5 of 2021 on the file of High Court, renumbered as I.A. No. 59 of 2021 in O.S. No. 13 of 2021 on the file of the XVI Additional District Judge, Ranga Reddy at Malkajgiri.

For the Appellants: SRI R.SUSHANTH REDDY, Advocate

For the Respondents: ----

The Court delivered the following Common Judgment:

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

CMA.No.s 90 and 173 of 2021

COMMON JUDGMENT: (Per Hon'ble Sri Justice M.S. Ramachandra Rao)

1. During the Sankranthi vacation of this Court, when the trial courts are closed, there is a practice to file suits , which are normally filed in the trial courts, in the High Court, if urgent interim orders are needed in the suits, with a request to the High Court to Receive and transmit the same to the trial courts after considering the applications for interim relief.

2. On such suit OS(SR) No.... 2021, which ought to have been filed in the Court of XVI Additional District Judge, Ranga Reddy District, was presented by the respondents 1 to 6/plaintiffs in the High Court along with an IA.No.5 of 2021 under Order XXXIX Rules 1 and 2 of CPC and Receive and Transmit Petition which was numbered as Receive and Transit Petition No.5 of 2021.

3. On 12.1.2021, a learned single Judge of this Court granted an exparte ad interim injunction in favor of the respondents/plaintiffs in IA No.1 of 2021 in OS(SR) No.... 2021 while directing the receipt of the said suit and it's transmission to Court of XVI Additional District Judge, Ranga Reddy District .

4. After the learned Single Judge passed the order on 12.01.2021, the XVI Additional District Judge, Ranga Reddy District at Malkajgiri had numbered the suit as OS.No.13 of 2021 and IA No. 1 of 2021 filed by the respondents 1 to 6/plaintiffs under Order XXXIX Rules 1 and 2 of CPC as IA.No.59 of 2021.

5. In both these appeals, the said order dt.12.01.2021 passed in IA.No.1 of 2021 in OS(SR) No.... 2021 passed by the learned Single Judge of this Court in the Vacation Court is being challenged.

6. Since the order is pronounced by the Vacation Bench of this Court, treating it as an appeal against the order passed by the trial court, these appeals are preferred to this Court invoking Or.43 R.1 CPC to consider the correctness of the said order dt.12.01.2021.

7. The learned Single Judge when he passed the order on 12.01.2021 in IA.No.1 of 2021 in OS(SR) No.... 2021 observed in the said order that he had perused the plaint and documents filed in support of the plaint by respondents 1 to 6/plaintiffs, that he had *prima facie* found that the respondents 1 to 6 have title and possession over the suit schedule properties, and that there is every possibility that respondents 1 to 6/plaintiffs would be put to hardship, if *ex parte* injunction is not granted; and then he proceeded to grant *ad-interim* injunction up to 27.01.2021 by dispensing

with the notice under Order XXXIX Rule 3 CPC subject to compliance of sub-Rule (b) thereof by the respondents 1 to 6 within 24 hours.

8. Though counsel for the appellants Sri K.Mohan, Sri R.Sushanth, and counsel for the respondents 1 to 6, Sri M.Surender Rao, Senior Counsel for Sri Ch.A.B.Satyanarayana and Sri K.S.Murthy, advanced several contentions on merits, we are of the opinion that the matters can be disposed of on a short point, i.e, that in the order dt.12.01.2021 passed in IA.No.1 of 2021 in Order XXXIX Rule 3 CPC, the learned Single Judge while granting *ex-parte ad-interim* injunction, he had not recorded the reasons, which are required as per the *proviso* to Rule 3 of Order XXXIX CPC.

9. The learned Single Judge had simply referred to the contentions in the plaint in one paragraph, and contentions of Sri M.Surender Rao, Senior Counsel appearing for the respondents 1 to 6/plaintiffs in the next paragraph, and the concluded that he had perused the plaint and documents and he *prima facie* finds that the plaintiffs have title and possession.

10. Unfortunately, there is no discussion of the contents of any documents either in regard to the title set up by the respondents 1 to 6 or on the aspect of possession of respondents 1 to 6 on the date of filing of the suit, which are required to be recorded while granting *ex-parte* injunction

against the appellants to protect the alleged possession of respondents 1 to 6.

11. The Supreme Court in **Shiv Kumar Chadha v. Municipal Corpn. of Delhi**¹ held that:

"32. Power to grant injunction is an extraordinary power vested in the court to be exercised taking into consideration the facts and circumstances of a particular case. The courts have to be more cautious when the said power is being exercised without notice or hearing the party who is to be affected by the order so passed. That is why Rule 3 of Order 39 of the Code requires that in all cases the court shall, before grant of an injunction, direct notice of the application to be given to the opposite-party, except where it appears that object of granting injunction itself would be defeated by delay: By the Civil Procedure Code (Amendment) Act, 1976, a proviso has been added to the said rule saying that "where it is proposed to grant an injunction without giving notice of the application to the opposite-party, the court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay...".

33. It has come to our notice that in spite of the aforesaid statutory requirement, the courts have been passing orders of injunction before issuance of notices or hearing the parties against whom such orders are to operate without recording the reasons for passing such orders. It is said that if the reasons for grant of injunction are mentioned, a grievance can be made by the other side that court has prejudged the issues involved in the suit. According to us, this is a misconception about the nature and the scope of interim orders. It need not be pointed out that any opinion expressed in connection with an interlocutory

¹ 1993(3) SCC 161

application has no bearing and shall not affect any party, at the stage of the final adjudication. Apart from that now in view of the proviso to Rule 3 aforesaid, there is no scope for any argument. When the statute itself requires reasons to be recorded, the court cannot ignore that requirement by saying that if reasons are recorded, it may amount to expressing an opinion in favour of the plaintiff before hearing the defendant.

34. The imperative nature of the proviso has to be judged in the context of Rule 3 of Order 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**(1875 1 Ch D 426) and **Nazir Ahmed v. Emperor**(AIR 1936 PC 253(2)). 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 **Ramchandra Keshav Adke v. Govind Joti Chavare**(1975 (1) SCC 559)."

(emphasis supplied)

12. We respectfully follow the said judgment of the Supreme Court, and only on the ground that the ex-parte ad-interim injunction granted by the learned Single Judge in IA.No.1 of

2021 in OS(SR) No.... 2021 (now renumbered as IA.No.59 of 2021 in OS.No.13 of 2021 by XVI Additional District Judge, Ranga Reddy District at Malkajgiri) does not contain such reasons, we deem it appropriate to set aside the said order and remand the matter back to the Court of the XVI Additional District Judge, Ranga Reddy District at Malkajgiri for fresh consideration.

13. Accordingly, the order dt.12.01.2021 in IA.No.1 of 2021 in OS (SR) ... 2021 by the learned Single Judge (now renumbered as IA.No.59 of 2021 in OS.No.13 of 2021 by XVI Additional District Judge, Ranga Reddy District at Malkajgiri) is set aside, and said IA is remanded back to the Court of the XVI Additional District Judge, Ranga Reddy District at Malkajgiri for fresh adjudication; the XVI Additional District Judge, Ranga Reddy District at Malkajgiri is directed to decide IA.No.59 of 2021 in OS.No.13 of 2021 on his file, after hearing all the parties, on or before 30.04.2021 after considering their respective submissions.

14. It is made clear that this Court has not expressed any opinion on the merits of the contentions of either parties and the lower Court is directed to decide the said IA uninfluenced by what was recorded in the order dt.12.01.2021 in IA.No.1 of 2021 in OS (SR) ... 2021 of the learned single Judge and also this order.

15. With the above directions, both these Appeals are disposed of. No order as to costs.

16. Consequently, miscellaneous petitions pending, if any, shall stand closed.

//TRUE COPY//

Sd/- B.S.CHIRANJEEVI
JOINT REGISTRAR

GP
SECTION OFFICER

To

1. The XVI Additional District Judge, Ranga Reddy District at Malkajgiri (By **Special Messenger**)
2. One CC to Sri K.Mohan, Advocate (OPUC)
3. One CC to Sri CH.B.Satyanarayana, Advocate (OPUC)
4. One CC to Sri R.Sushanth Reddy, Advocate (OPUC)
5. Two C.D. Copies.

MRC





HIGH COURT

DATED: 7-4-2021



COMMON JUDGMENT

CMA Nos.90 & 173 OF 2021



DISPOSING OF THE CMAs WITHOUT COSTS

6
K. M. A.
09/4/2021