

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
CIVIL MISCELLANEOUS APPEAL No.90 of 2015

Date:11.03.2015

Between:

Shapporji Pallonji and Co. Ltd.,
Secunderabad and another.

..... Appellants

And:

K.Raghurama Reddy,
S/o K.Guruva Reddy and two others.

.....Respondents

Counsel for the appellants: Sri C.M.R.Velu

Counsel for the Respondents: Ms Anusha Mahmood

The Court made the following:

ORDER:

At the interlocutory stage, the appeal is taken up for hearing and disposal with the consent of learned counsel for both the parties.

The respondents filed O.S.No.17 of 2015 in the Court of III Senior Civil Judge, City Civil Court, Secunderabad, against the appellants for perpetual injunction restraining them from vacating the suit schedule premises till completion of 72 months period, which expires on 30.06.2017, or in the alternative to direct the appellants to pay Rs.4,00,001/- to each of the respondents, and to direct the appellants to pay the monthly rent regularly till they vacate the suit schedule

premises. Along with the suit, the respondents have filed I.A.No.82 of 2015 under Order-XXXIX Rule-1 read with Section 151 of the Code of Civil Procedure for grant of temporary injunction restraining the appellants from vacating the petition schedule property till completion of 72 months period. The lower Court by order, dated 09.02.2015, granted ad interim injunction restraining the appellants from vacating the petition schedule property till completion of 72 months. Feeling aggrieved by the said order, the appellants have filed this appeal.

Ordinarily, this Court is loath to entertain an appeal against an ad interim order. However, this Court finds this case as an exception to this general rule for, the lower Court has failed to follow the mandatory provisions contained in the proviso to Order-XXXIX Rule-3 of C.P.C.

Rule-3 of Order-XXXIX C.P.C. ordains that before granting injunction, the Court shall direct notice to opposite party. However, the proviso thereto contains an exception to this Rule, which envisages that where the Court proposes to grant injunction without giving notice of the application to the opposite party, it shall record reasons for its opinion that the object of granting the injunction would be defeated by delay and it shall require the applicant to do the following:

(a) to deliver to the opposite party, or to send to him by registered post immediately after the order granting the injunction has been made, a copy of the application for injunction together with-

- (i) a copy of the affidavit filed in support of the application;
- (ii) a copy of the plaint; and
- (iii) copies of documents on which the applicant relies; and

a(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit

stating that the copies aforesaid have been so delivered or sent.

A perusal of the order of the lower Court would show that no reasons whatsoever have been assigned by it for granting ad interim injunction. This fact is not disputed by learned counsel for the respondents. Therefore, the order of the lower Court passed in violation of the mandate of the proviso to Rule-3 of Order-XXXIX C.P.C. cannot be sustained and the same is, accordingly, set aside. The lower Court is directed to dispose of I.A.No.82 of 2015 after notice to the appellants.

The appeal is, accordingly, allowed.

As a sequel to disposal of the appeal, CMAMP.No.164 of 2015 filed by the appellants for interim relief is disposed of as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

*11th March, 2015
DR*