
Yogesh Agarwal Vs Rajendra Goyel

Civil Misc. Writ Petition No. 24892 of 2014

Court: Allahabad High Court

Date of Decision: July 10, 2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3, Order 39 Rule 39, 151#Constitution of India, 1950 " Article 226, 227

Citation: (2014) 7 ADJ 260 : (2014) 5 ALJ 343 : (2014) 106 ALR 288 : (2014) 6 AWC 5892 : (2014) 125 RD 535

Hon'ble Judges: Suneet Kumar, J

Bench: Single Bench

Advocate: Rama Goel Bansal, Advocate for the Appellant; Rahul Sahai, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Suneet Kumar, J.

Heard Smt. Rama Goel Bansal, learned counsel for the petitioner as well as Sri Rahul Sahai, learned counsel for the

respondents. The petitioner filed Suit No. 445 of 2013 on 31.5.2013 for permanent prohibitory injunction against the defendant/respondents

alongwith an application for temporary injunction. The plaintiff/petitioner on request got the suit adjourned for 4.7.2013 and again it was adjourned

for 9.7.2013 and on the said date an ex parte injunction was granted. Aggrieved, the respondent/defendants preferred Misc. Appeal No. 93 of

2013 (Rajendra Goel and another v. Yogesh Agarwal and others). The appellate Court by the impugned order dated 16.12.2013 set aside the

temporary injunction order dated 9.7.2013 passed by the trial Court which is assailed in the present petition.

2. It is contended on behalf of the petitioner, that the trial Court has assigned reasons as required under proviso to Order XXXIX Rule 3 while

granting ex parte temporary injunction and it is the discretion of the Court to grant injunction, which ordinarily should not be interfered by the

appellate Court.

3. Learned counsel for the petitioner placed reliance upon the following judgments in support of her submission Smt. Chitra Agrawal v. Jagdish

Saran Goel, 1995 (1) ARC 80; Shiv Saran Goyal and others v. M/s. Kedar Nath Om Prakash and others, 1989 (1) ARC 351; Satya Prakash

and Another Vs. Ist Additional District Judge and Others, M. Gurudas and Others Vs. Rasaranjan and Others, and Akbar Ali and Others Vs.

District Judge and Others,

4. In rebuttal, Sri Rahul Sahai, learned counsel appearing for the respondents, submits that grant of ex parte injunction is exception to the general

rule. The temporary injunction can be granted after notice to defendant inviting objections. No reason whatsoever has been assigned by the trial

Court for granting ex parte injunction, which is mandatory.

5. In support of his submission, learned counsel for the respondents has relied upon Morgan Stanley Mutual Fund Vs. Kartick Das, Road Flying

Carrier and another Vs. The General electric company of India Ltd., Kan Constructions and Colonizers Pvt. Ltd. Vs. Allan Deo Noronha and

Another,

6. Rival submissions fall for consideration.

7. The power to grant temporary injunction is the discretion of the Court. The discretion, however, should be exercised reasonably, judicially and

on sound legal principles; ex parte injunction should not be lightly granted as it adversely affects the other side. The grant of injunction is in the

nature of equitable relief.

8. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him and the Court must be satisfied that

there is a bona fide dispute raised by the applicant, and there is a strong case for trial which needs investigation and a decision on merits and on the

facts before the Court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and

infraction of such right is a condition precedent for grant of temporary injunction.

9. The Courts should not examine the merits of the case closely at that stage or try to restore a conflict of evidence nor decide complicated

question of fact and law which call for detailed arguments and mature considerations. They are matters to be dealt with at trial. The grant or refusal

of temporary injunction is not a mini trial.

10. In deciding a prima facie case, the Court is to be guided by the plaintiff's case as revealed in the plaint, affidavits or other materials produced

by him. Explaining the ambit and scope of the connotation "prima facie" case, in Martin Burn Ltd. Vs. R.N. Banerjee, ; the Supreme Court

observed as follows:

A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support

of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence

led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.

It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own

judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record.

11. The existence of the prima facie case alone does not entitle the applicant for temporary injunction. The applicant must further satisfy the Court

about the second condition by showing that he may suffer irreparable injury if the injunction as prayed is not granted, and that there is no other

remedy open to him by which he can protect himself from the consequences of apprehended injury. The expression irreparable injury however

does not mean that there should be no possibility of repairing the injury. It only means that the injury must be a material one, i.e., which cannot be

adequately compensated by damages.

12. In the leading case of American Cyanamid Co. v. Ethicon Ltd., (1975) 1 All ER 504, the House of Lords has rightly pronounced the principle

thus:

[T]he governing principle is that the Court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right to a

permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the

defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the

measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory

injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage. If, on the other hand, damages would not

provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the Court should then consider whether, on the contrary

hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be

adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so

between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an

adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory

injunction.

13. The third condition of granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the Court

must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing injunction will be

greater than that which is likely to be caused to the opposite party by granting it. If on weighing conflicting probabilities, the Court is of the opinion

that the balance of convenience is in favour of the applicant, it would grant injunction, otherwise refuse to grant it.

14. In *Dalpat Kumar and Another Vs. Prahlad Singh and Others*, the Supreme Court stated as follows:

The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury

which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the

injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit,

the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in

granting or refusing the relief of ad interim injunction pending the suit.

15. In *United Commercial Bank Vs. Bank of India and Others*, the Court observed: (para 50 and 51)

50. No injunction could be granted under Order 39, Rules 1 and 2 of the Code unless the plaintiffs establish that they had a prima facie case,

meaning thereby that there was a bona fide contention between the parties or a serious question to be tried. The question that must necessarily

arise is whether in the facts and circumstances of the case, there is a prima facie case and, if so, as between whom? In view of the legal principles

applicable, it is difficult for us to say on the material on record that the plaintiffs have a prima facie case. It cannot be disputed that if the suit were

to be brought by the Bank of India, the High Court would not have granted any injunction as it was bound by the terms of the contract. What

could not be done directly cannot be achieved indirectly in a suit brought by the plaintiffs.

51. Even if there was a serious question to be tried, the High Court had to consider the balance of convenience. We have no doubt that there is no

reason to prevent the appellant from recalling the amount of Rs. 85,84,456. The fact remains that the payment of Rs. 36,52,960 against the first lot

of 20 documents made by the appellant to the Bank of India was a payment under reserve while that of Rs. 49,31,496 was also made under

reserve as well as against the letter of guarantee or indemnity executed by it. A payment "under reserve" is understood in banking transactions to

mean that the recipient of money may not deem it as his own but must be prepared to return it on demand. The balance of convenience clearly lies

in allowing the normal banking transactions to go forward. Furthermore, the plaintiffs have failed to establish that they would be put to an

irreparable loss unless an interim injunction was granted.

[Refer: *Best Sellers Retail (India) Pvt. Ltd. Vs. Aditya Birla Nuvo Ltd. and Others*,

16. Experience shows that once injunction is granted it is a nightmare for the defendant in getting it vacated. The Court should be very careful in

granting injunction. Ex parte injunction should be granted in case of grave urgency, safe and better course is to give short notice to the other side.

17. Supreme Court in Maria Margarida Sequeria Fernandes and Others Vs. Erasmo Jack de Sequeria (Dead) through L. Rs., held as follows:

83. Grant or refusal of an injunction in a civil suit is the most important stage in the civil trial. Due care, caution, diligence and attention must be

bestowed by the judicial officers and judges while granting or refusing injunction. In most cases, the fate of the case is decided by grant or refusal

of an injunction. Experience has shown that once an injunction is granted, getting it vacated would become a nightmare for the defendant.

84. In order to grant or refuse injunction, the judicial officer or the judge must carefully examine the entire pleadings and documents with utmost

care and seriousness. The safe and better course is to give short notice on injunction application and pass an appropriate order after hearing both

the sides. In case of grave urgency, if it becomes imperative to grant an ex parte ad interim injunction, it should be granted for a specified period,

such as, for two weeks. In those cases, the plaintiff will have no inherent interest in delaying disposal of injunction application after obtaining an ex

parte ad interim injunction.""

18. In Morgan Stanley Mutual Fund case (supra), the Supreme Court indicated the factors which should weigh with the Court in the grant of an ex

parte injunction:

(a) whether irreparable or serious mischief will ensue to the plaintiff;

(b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;

(c) the Court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a

party in his absence is prevented;

(d) the Court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;

(e) the Court would expect a party applying for ex parte injunction to show utmost good faith in making the application.

(f) even if granted, the ex parte injunction would be for a limited period of time.

(g) General principles like prima facie case balance of convenience and irreparable loss would also be considered by the Court.

The Court must weigh one need against another and determine where "the balance of convenience" lies.

19. The same principles/considerations apply to the defendant seeking vacation of injunction order. In M/s. Gujarat Bottling Co. Ltd. and others

Vs. Coca Cola Company and others, ; the Supreme while rejecting the defendant's application for vacating the interim relief held as follows:

Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is

purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party

invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in

nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for

bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking

relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction

under order 39 Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the Court for vacating the ad-interim

or temporary injunction order already granted in the pending suit or proceedings.

20. Rule 1 of Order 39, nowhere provides that no temporary injunction can be granted by the Court unless the case falls within the circumstances

enumerated therein, where the case is not covered by Order 39, interim injunction can be granted by the Court in exercise of inherent powers u/s

151 of the Code (Ref: Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, ; Income Tax Officer Vs. M.K. Mohammed Kunhi,

Tanusree Basu and Others Vs. Ishani Prasad Basu and Others,

21. When the Court proposes to grant ex parte injunction without issuing notice to opposite party, proviso to Rule 3 enjoins the Court to record

reasons for its opinion that the object of granting injunction would be defeated by delay. The requirement of recording of reasons is not a mere

formality but a mandatory requirement.

22. In Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others, the Supreme Court stated as under:

.....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 1, the procedure prescribed

under the proviso has been followed. The party which invokes the Jurisdiction of the Court for grant of an order of restrain 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.

23. Applying the law to the facts of the case at hand. The suit was filed on 31.5.2013 and thereafter it was adjourned at the behest of the

plaintiff/petitioner for 4.7.2013 and again on the said date adjourned was sought and 9.7.2013 was the next date fixed and it is on that date an ex

parte temporary injunction was granted i.e. after a lapse of forty days from the institution of suit.

24. The lower appellate Court, by the impugned order dated 16.12.2013, set aside the ex parte injunction order and the present writ petition was

filed on 29.4.2014 i.e. after a lapse of four months. The trial Court while granting ex parte temporary injunction, has ordered that title prima facie

proved, the matter is of immediate nature, in view of the facts and circumstances the parties to maintain status quo on the spot till the next date"

(translated from hindi). There is no discussion in the entire order as to how the conclusion has been arrived at by the trial Court that the ex parte

injunction be granted without notice to the defendants. The suit admittedly was filed on 31.5.2013 and injunction was granted on 9.7.2014 after a

lapse of 40 days, this time period was sufficient for putting the defendants to notice, rule 3 of Order XXXIX C.P.C. requires that only in case

where it appears to the Court that object of granting injunction would be defeated by the delay, it has power to grant ex parte injunction. In such

circumstances also, the Court has to record reasons for its opinion that the object of granting injunction would be defeated by delay.

25. The contention of learned counsel for the petitioner that the affidavit in support of the injunction application made out a case for grant of ex

parte injunction order which was sufficient for the Court for forming its opinion to grant ex parte injunction order, cannot be accepted for the

simple reason that where law requires recording of reasons for doing a particular act, the mere presence of material or assertions made in the

affidavit is not sufficient, it must also be shown that the Court has applied its mind to the material/assertions and reasons for existence of grave

urgency must find place in the order of the Court. Ex parte injunction order was passed after forty days from institution of the suit and the writ

petition challenging the lower appellate Courts order was filed after 130 days, this clearly demonstrates that there was no grave urgency in granting

ex parte injunction order.

26. It is of utmost importance to note that an ex parte order of injunction is an exception, the general rule is that injunction order be passed only

after notice to the defendant. It is only in rare cases where the Court finds that the object of granting injunction would be defeated by delay, the

Court can grant injunction ex parte but that too only after recording reasons having regard to the mandatory provisions of rule 3 of Order 39, ex

parte injunction is not routine matter and it must be borne in mind by the Courts below. In the facts and circumstances of the present case and for

the reasons and law stated herein above, the lower appellate Court did not commit any illegality or jurisdictional error in vacating the ex parte

injunction order; this Court declines to interfere with the impugned order under Article 226/227 of the Constitution of India.

The writ petition is, accordingly, dismissed.