

CASE NO.

85



YEAR : 2004 **DATE OF DECISION** : 17/01/2005

CASE NAME : FIRST APPEAL FROM ORDER (ORIGINAL SIDE)

DECIDED BY : Hon'ble Mr/Mrs Justice **B A KHAN & ANIL KUMAR**

PETITIONER / PLAINTIFF NAME : **BHUPINDER SINGH & ANOTHER**

RESPONDENT / DEFENDANT NAME : **TEHKAND ASSOC PVT LTD & OTHERS**

PETITIONER'S / PLAINTIFF'S ADV : **LALIT**

RESPONDENT'S / DEFENDANT ADV : **ABHISHEK AGGARWAL**



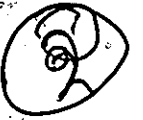
CAUSE TITLE PAO (a) 85/04 OF 20


PARTIES

Shripinder Singh & Co.
VERSUS
Teh Khond Associates Pvt. Ltd & Co.

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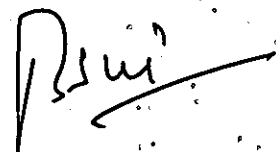
Sr. No.	Date	Orders
		<p>◦ IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ FAO(OS) 85/2004</p> <p>BHUPINDER SINGH & ANR. Petitioner Through: Mr.A.S.Chandihok, Sr.Advocate with Mr.Nalin Tripathi.</p> <p>versus</p> <p>M/S TEHKAND ASSOC.P.LTD. & ORS Respondent</p> <p>CORAM: HON'BLE MR. JUSTICE B.A. KHAN HON'BLE MR. JUSTICE MUKUL MUDGAL</p> <p><u>ORDER</u> 12.05.2004</p> <p>Adjourned at counsel's request to 25.5.2004.</p> <p>B.A. KHAN, J</p> <p>MUKUL MUDGAL, J</p> <p>MAY 12, 2004 'k'</p>



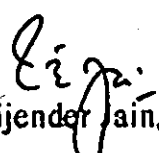
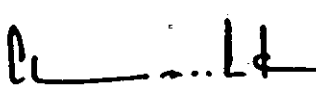
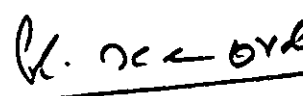
Sr. No.	Date	Orders
		<p data-bbox="411 334 546 377">25.5.2004</p> <p data-bbox="411 409 1050 452">Present: Mr.Sanjeev Mahajan for respondent.</p> <p data-bbox="411 485 672 528"><u>FAO (OS) 85/2004.</u></p> <p data-bbox="579 592 982 636">Hon'ble D.B. did not assemble.</p> <p data-bbox="579 668 823 711">List on 28.5.2004.</p> <div data-bbox="882 743 1176 927"><p data-bbox="966 743 1092 776">By Order</p><p data-bbox="907 883 1176 927">COURT MASTER</p></div> <p data-bbox="411 873 613 916">MAY 25, 2004</p>

Sr. No.	Date	Orders
		<p>* IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ FAO(OS) 85/2004</p> <p>BHUPINDER SINGH & ANR. Petitioner Through Mr.R.M.Bagai</p> <p>versus</p> <p>M/S TEHKAND ASSOC.P.LTD. & ORS Respondent Through Mr.Shren Uppal</p> <p>CORAM: HON'BLE MR. JUSTICE B.A. KHAN HON'BLE MR. JUSTICE MUKUL MUDGAL</p> <p><u>ORDER</u> 28.05.2004</p> <p>%</p> <p>This appeal is directed against ex-parte ad interim order. We are informed that appellant had sought vacation of this order by filing an application under Order 39 Rule 4 of which learned Trial Judge was seized of. To await the outcome of the proceedings in the application under Order 39 Rule 4.</p> <p>List on 20th August, 2004.</p> <p>B.A. KHAN, J</p> <p>MUKUL MUDGAL, J</p> <p>MAY 28, 2004 da</p>

41

Sr. No.	Date	Orders
		<p data-bbox="436 301 638 344">% 20-08-2004</p> <p data-bbox="462 420 1100 463">Present Mr.Nalin Tripathi for the appellant.</p> <p data-bbox="436 495 739 539">+ <u>FAO (OS) 85/2004</u></p> <p data-bbox="436 603 1562 733">Division Bench could not assemble as Hon'ble Mr.Justice Vijender Jain is busy in attending ILA Conference at Berlin, Germany.</p> <p data-bbox="613 765 932 808">Renotify on 28.9.2004.</p> <div data-bbox="1209 916 1503 1153"><p data-bbox="1251 916 1318 948">B.O.</p><p data-bbox="1209 1110 1428 1153">(Court Master)</p></div> <p data-bbox="445 1110 697 1196">August 20, 2004 SA</p>

kindly see order dt. 28.5.04

Sr. No.	Date	Orders
		<p style="text-align: right;">FAO (OS) 85</p> <p>% 28-09-2004</p> <p>Present Mr. Anup Bagai for the appellant.</p> <p>+ <u>FAO (OS) 85/2004 & CMs. 6228-30/2004</u></p> <p>*</p> <p style="text-align: center;">Adjourned in terms of order dated 28.5.2004, to 17.1.2005.</p> <div style="text-align: right;"><p> Vijender Jain, J.</p><p> Anil Kumar, J.</p><p> <u>28/9/04</u></p></div> <p>September 28, 2004 SA</p>

FAO (OS) 85/2004

90 28-09-2004

Present Mr.Anup Bagai for the appellant.

+ FAO (OS) 85/2004 & CMs. 6228-30/2004

Adjourned in terms of order dated 28.5.2004, to 17.1.2005.


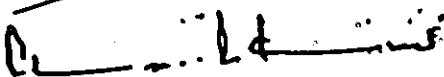
Vijender Jain, J.

11-11-11

September 28, 2004
SA

Ok. new order
28/5/04

6

Sr. No.	Date	Orders
		<p data-bbox="421 260 1328 303">* IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p data-bbox="421 368 757 411">+ FAO(OS) 85/2004</p> <p data-bbox="514 476 1211 551">BHUPINDER SINGH & ANR. Petitioner Through: Mr.Lalit, Advocate.</p> <p data-bbox="707 595 791 616">versus</p> <p data-bbox="514 692 1387 767">M/S TEHKAND ASSOC.P.LTD. & ORS Respondent Through: Mr.Abhishek Aggarwal, Advocate.</p> <p data-bbox="514 842 1093 950">CORAM: HON'BLE MR. JUSTICE B.A. KHAN HON'BLE MR. JUSTICE ANIL KUMAR</p> <p data-bbox="799 1026 950 1090"><u>ORDER</u> 17.01.2005</p> <p data-bbox="413 1166 1530 1349">Learned counsel for appellants prays for withdrawal of this appeal as appellants had already filed an application for vacation of interim stay order under Order 39 Rule 4 CPC. Dismissed as withdrawn.</p> <div data-bbox="950 1338 1396 1640"> B.A. KHAN, J  ANIL KUMAR, J</div> <p data-bbox="413 1640 690 1705">JANUARY 17, 2005 'k'</p>

1557-X
24/1/05

F/D/STAY

(7)

From:

The Registrar,
High Court of Delhi
New Delhi.

To

The Assistant Registrar(O)
High Court of Delhi
New Delhi

C.M. No. _____ in F.A.O. (OS) No. 65/2004

Bhupinder Singh & Anr. Appellant/s
VS.

M/s. Tehkhand Associates (P) Ltd. & Anr. Respondent/s

Appeal against the order dated 9/3/04 passed by

Sh./Hon'ble Mr. Justice R.C. Chopra

in I.A. No. 1476/2004 in Suit No. CS(OS)223/04

Sir,

I am directed to forward herewith for information
and immediate compliance/necessary action one/three copy/copies
of the order dated 17/1/05 passed by Hon'ble
Mr. Justice _____ a Division Bench of
this Court in the above noted case.

Please acknowledge receipt

Yours faithfully,

ADMINISTRATIVE OFFICER C.II
FOR REGISTRAR

Encl. No. _____ dt. _____

Copy alongwith a copy of order dated _____ passed by
Division Bench forwarded to for information & necessary action

Yours faithfully,

ADMINISTRATIVE OFFICER C.II
FOR REGISTRAR

MEMO OF PROCEEDINGS

Present : Mr. Suren Uppal, Advocate, Mr. Abhishek Agarwal, Advocate, Mr. Nalin Tripathi, Advocate, Mr. Ravi Somani, Mr. Sheetal P. Singh [present at P.S. Badarpur] Mr. Himnashu Luthra, Mr. Kanwar Pal Singh, Mr. R. S. Dhaiya, S.H.O. P.S. Badarpur, Mr. Mohinder Singh Poonia, Addl. S.H.O. P.S. Badarpur (around 25-30 persons, un-identified, present at site)

Proceedings prepared at site :

As per order dated 28.04.2004, served on the undersigned by Mr. Suren Uppal Advocate on 05.05.2004, the undersigned was directed to remove his locks from the property in question pursuant thereto, keys deposited in the original suit, were released to the undersigned on 06.05.2004 at around 3:40 p.m. (Between 07.05.2004 to 11.05.2004 noon the undersigned was traveling and was not in town except 07.05.2004 night & 09.05.2004 night) on 11.05.2004 at around 3:00 p.m. along with Mr. Suren Uppal Advocate (who had served the order on 28.04.2004) and Mr. Ravi Somani the undersigned proceeded for removing his locks from the property in question. Mr. Uppal & Mr. Somani expressed their apprehension of law & order situation at site and requested to seek police assistance before going to the site. The undersigned accompanies them to P.S. Badarpur and apprised the SHO Mr. R. S. Dhaiya about the said apprehension of law and order situation. Soon thereafter Mr. Sheetal P. Singh and Mr. Nalin Tripathi Advocate came to the P.S. Badarpur. Thereafter there were heated arguments between the parties and the counsel. Ultimately the parties and counsel proceeded at site alongwith the undersigned and the SHO accompanied by several police personnel on reaching the site there were approx. 25-30 persons stationed at site. There was again heated arguments between the parties and the counsel as to who is to accompany the undersigned and who is take possession of the property in question. Ultimately around 7:30 p.m. the undersigned was requested and advised to hold on the execution of removal of his locks and defer it, by all parties and counsel present, so as to avoid any law & order situation. It was agreed between parties & counsel that the matter was listed before the Hon'ble Division Bench on 12.05.2004 (the next day) and the matter be mentioned and it be prayed and requested for a specific order in the circumstances from the Hon'ble Division Bench. In the circumstances of law & order situation the undersigned deems it proper to defer the execution of removal of locks till further orders of the Hon'ble Court as agreed between the parties and counsel. The execution of removal of locks and complying with the orders dated 28.04.2004 is therefore deferred in order to save the situation turning into law & order problem.

Sd/- 11.5.2004
(Mr. Maneesh Goyal)
Advocate

Copy of this present memo of proceedings has been given to all the parties & counsel.

MEMO OF PROCEEDINGS

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proper Banker-customer relationship and, therefore, would not be in the interest of the Bank. Further, when money was secured a prudent banker would deposit the same in the account of the customer complaining of loss of money and, therefore, non-production of money also would not be of much materiality. When in the course of the domestic enquiry no reliance was placed on the so-called confessional statement made by the first respondent, then non-production of the same is also of no significance. Thus, in our opinion, these circumstances are irrelevant and the Tribunal could not have placed reliance on the same to reach the conclusion it did and, therefore, the learned single Judge was justified in interfering with the same. In the writ appeal the learned Judges on the Division Bench reiterated the view expressed by the Tribunal which we have found to be fallacious.

7. At this stage, it is necessary to notice one argument that was urged on behalf of the first respondent, namely, that in the course of the order dismissing the first respondent from service it is noticed as follows:—

"In summing up after going through the issue raised by Shri Banerjee in detail, I am of opinion that a domestic enquiry like ours does not give any scope for producing all evidences whether having direct bearing in the case or not as is being done in a Court."

8. It is submitted that even if evidence is withheld, the conclusion of the inquiry officer would be correct is a perverse approach. We do not think so. What is stated therein is that when sufficient evidence was produced to conclude one way or the other, the evidence not produced will not be of any significance unless there was such evidence which was withheld would have tilted the evidence adduced in the course of domestic enquiry. No such evidence is forthcoming in this case. Therefore, this argument deserves to be rejected.

9. For the foregoing reasons, we have no hesitation in setting aside the order made by the Division Bench, of the High Court and restore that of the learned single Judge.

10. For the aforesaid reasons, this appeal is allowed as stated above.

Appeal allowed.

AIR 2000 SUPREME COURT 3032

(From : Madras)*

K. T. THOMAS AND R. P. SETHI, JJ.

Civil Appeal No. 5102 of 2000 (arising out of S.L.P. (Civil) No. 19488 of 1999), D/- 19-9-2000.

A. Venkatasubbiah Naidu, Appellant v. S. Chellappan and others, Respondents.

(A) Civil P.C. (5 of 1908), O. 39, R. 1; O. 43, R. 1; S. 104 — Ex parte interim injunction — Order can be passed in exercise of power under O. 39, R. 1 — Order is appealable — Party can move appellate Court or approach same Court for vacation or modification of order.

It cannot be contended that the power to pass interim ex parte orders of injunction does not emanate from O. 39, R. 1. In fact, the said rule is the repository of the power to grant orders of temporary injunction with or without notice, interim or temporary, or till further orders or till the disposal of the suit. Hence, any order passed in exercise of the aforesaid powers in Rule 1 would be appealable as indicated in Order 43 Rule 1 of the Code. The choice is for the party affected by the order either to move the appellate Court or to approach the same Court which passed the ex parte order for any relief.

(Para 11)

(B) Civil P.C. (5 of 1908), O. 39, R. 3 — Ex parte interim injunction — Party who secured such order — Cannot take advantage of it without complying with requisites of Cls. (a) and (b) of R. 3 viz. sending copy of order to opposite party and filing an affidavit stating that copies of aforesaid is delivered.

If a Court which passed the order granting interim ex parte injunction did not record reasons thereof or did not require the applicant to perform the duties enumerated in clauses (a) and (b) of R. 3 of Order 39, such an order can be deemed to contain such requirements at least by implication even if they are not stated in so many words. A party, in whose favour an order was passed ex parte, must 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 application for

*C.R.P. No. 2251 of 1999, D/- 30-9-1999 (Madras).

IR/IR/S100449/2000/BNG/RTT

Injunction together with writ filed in support of the plaint; and on which the applicant has day on which such writ is filed on the day immediately after the filing of an affidavit stating that the applicant has complied with the duties required to be performed as required by the order. Non-compliance with the requisites on his part goes without any consequence to him to have only the consequence of the order (for not complying with the requisites required to perform the order) is not obeyed; disobedient beneficiary be heard to complain of the consequence alleged against it.

(C) Civil P.C. (5 of 1908), O. 39, R. 3 — Ex parte interim injunction not restrictive of the powers of the Court, nonetheless the final orders within the jurisdiction of the Court to finally dispose of the injunction within the jurisdiction of the Court. Pendency of application for temporary injunction.

Rule 3-A does not state that the injunction order shall be valid for thirty days but the Court should pass the order within thirty days from the date when the injunction was granted. It does not *ipso facto* become invalid after thirty days or less. It casts a three-pronged protection against whom the ex parte order was passed. First is that the Court should give him notice before it is only by way of a very special circumstance that the Court is to pass the said protective order. The statutory obligation to pass final orders on the day of the period of thirty days in very exceptional cases by-pass such a rule in the Legislature mandates or

A. I. R.

2000.

A. Venkatasubbliah Naidu v. S. Chellappan

S. C. 3033

IE COURT 3032

adras)*

R. P. SETHI, JJ.

of 2000 (arising out of 88 of 1999). D/- 19-

Naidu, Appellant v. S. Respondents.

1908), O. 39, R. 1; - Ex parte interim order passed in exercise of 39, R. 1 — Order is an order of the appellate Court for vacation of order.

ed that the power to orders of injunction. O. 39, R. 1. In fact, it is the power to grant injunction with or without temporary, or till disposal of the suit. It is in exercise of the power that I would be appealing under 43 Rule 1 of the Code. The party affected by the order of the appellate Court which passed the order for relief.

(Para 11)

1908), O. 39, R. 3 — Section — Party who cannot take advantage of the order of R. 3 viz. sending the party and filing the application for relief.

ed the order granting injunction did not require the duties enumerated in 3 of Order 39, such as to contain such implication even if so many words. A notice was passed to the opposite party, and the order was passed, and the application for injunction was filed.

39, D/- 30-9-1999

INC/RTT

Injunction together with a copy of the affidavit filed in support of the application; a copy of the plaint; and copies of documents on which the applicant relies, and 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. If he fails to comply with the duties which he has to perform as required by the proviso, he must take the risk. Non-compliance with such requisites on his part cannot be allowed to go without any consequence and to enable him to have only the advantage of it. The consequence of the party (who secured the order) for not complying with the duties he is required to perform is that he cannot be allowed to take advantage of such order if the order is not obeyed by the other party. A disobedient beneficiary of an order cannot be heard to complain against any disobedience alleged against another party.

(Para 13)

(C) Civil P.C. (5 of 1908), O. 39, R. 3-A — Ex parte interim injunction — Period of injunction not restricted to thirty days — Court, nonetheless legally obliged to pass final orders within thirty days — Failure of Court to finally dispose of application of injunction within thirty days — Aggrieved party has right of appeal — Pendency of application for grant or vacation of temporary injunction, notwithstanding.

Rule 3-A does not say that the period of the injunction order should be restricted by the Court to thirty days at the first instance, but the Court should pass final order on it within thirty days from the day on which the injunction was granted. Hence, the order does not ipso facto become illegal merely because it was not restricted to a period of thirty days or less. Rule 3-A of Order 39 casts a three-pronged protection to the party against whom the ex parte injunction order was passed. First is that the Court is obliged to give him notice before passing the order. It is only by way of a very exceptional contingency that the Court is empowered to bypass the said protective measure. Second is the statutory obligation cast on the Court to pass final orders on the application within the period of thirty days. Here also it is only in very exceptional cases that the Court can bypass such a rule in which cases the Legislature mandates on the Court to have

adequate reasons for such by-passing and to record those reasons in writing. If that hump is also by-passed by the Court it is difficult to hold that the party affected by the order should necessarily be the sole sufferer. In a case where the mandate of order 39, Rule 3-A of the Code is flouted, the aggrieved party, shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force. In such appeal, if preferred, the appellate Court shall be obliged to entertain the appeal and further to take note of the omission of the subordinate Court in complying with the provisions of Rule 3-A. In appropriate cases the appellate Court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry in his ACRs. Failure to decide the application or vacate the ex parte temporary injunction shall, for the purposes of the appeal, be deemed to be the final order passed on the application for temporary injunction, on the date of expiry of thirty days mentioned in the Rule.

(Paras 15, 17, 18, 19)

(D) Constitution of India, Art. 227 — Civil P.C. (5 of 1908), O. 39, R. 1 — Alternative remedy — Interim ex parte injunction order — Statutory remedy for getting it quashed available — Revision petition filed before High Court — Need not have been entertained and High Court should have directed parties to avail themselves of statutory remedies.

(Para 20)

S. Sivasubramaniam, Sr. Advocate, M. Mohan, R. Nedumaran, Advocates, with him, for Appellant; V. Selvaraj, Advocate for M/s Arputham, Aruna and Co., Advocates, for Respondent Nos. 1-5; M. A. Chinnaswamy, Advocate, for Respondent Nos. 7-9.

THOMAS, J. :— Leave granted.

2. When a plaintiff rushed to the civil Court for an ex parte interim order of injunction against some of the defendants and obtained it, those defendants rushed to the High Court to get that order quashed. Both parties succeeded in their respective endeavour and now both of them accuse each other for the course adopted by the other. This appeal is by special leave of the In-

stance of the plaintiff.

3. The subject-matter of the litigation is a property bearing Door No. 177 to 182 on the Big Street at Triplicane in Madras (now Chennai). At this stage and in this appeal it is unnecessary to narrate the facts pleaded by the plaintiff in the plaint nor by the contesting first defendant in answer thereto regarding the right to the suit property. Suffice it to say that plaintiff claims to be a lessee under one S. Alagu (who is arrayed as 6th defendant in the suit) in respect of the property and on that strength he claimed to be in possession of the property. He alleged that the defendants 1 to 5 have been threatening to dispossess him.

4. Appellant-plaintiff filed the suit on 25-6-1999 for a decree of permanent injunction restraining defendant Nos. 1 to 5 from dispossessing him. Along with the institution of the suit, he moved an application under Order 39, Rules 1 and 2 of the Code of Civil Procedure (for short 'the Code') "to pass an ad interim injunction restraining respondents 1 to 5 or their men or agents, or their representatives or any person claiming through them or under them from evicting the petitioner from the suit property other than by due process of law and to pass such further or other order or orders."

5. On 29-6-1999 the Assistant Judge of the City Civil Court, Chennai passed the following ex parte order on the said application:

"Heard. Documents perused. Rental receipt Document 11 to Document 47 proves that the petitioner is the statutory tenant and in prima facie possession of the suit property. Though the property was leased out by R. 6 on the basis of mortgage document 3, the petitioner is now in continuous possession of the property as tenant. Hence the balance of convenience is in favour of the petitioner. In the interest of justice, it appears that R. 1 to R. 5 are restrained from evicting the petitioner from the suit property, except under due process of law. Notice by 25-8-99. Ad interim injunction till then. Order 39, Rule 3 to be complied with."

6. The first respondent, on behalf of himself and respondent Nos. 2 to 5, filed a revision petition invoking Article 227 of the Constitution before the High Court of Madras alleging that they purchased the property from the owners thereof as per different sale documents executed on 15-3-1996, and

they were in possession and enjoyment of the property. They further alleged that one Ranganathan, MLA and one Hithayatullah together expressed a wish to purchase the property from the respondents, but it was not agreed to and then those two persons exerted threat and pressure on them to capitulate to their demand. As they did not yield to such threats a suit was filed in 1998 by some parties who are now supporting the present plaintiff. The respondents further alleged that the said suit was filed at the instance and instigation of those two named persons. When they failed to get any relief therefrom another suit was caused to be filed through one M. Devasinghamani on the strength of some concocted documents. As no relief was obtained in that suit also the present suit, which is the third one in the series, has been filed at the behest of the above named persons, according to the respondents.

7. Learned single Judge of the High Court of Madras who disposed of the revision made the observation that the trial Court ought not have granted an order of injunction at the first stage itself which could operate beyond thirty days as the Court had then no occasion to know of what the affected party has to say about it. Such a course is impermissible under Order 39, Rule 3-A of the Code, according to the learned single Judge. He, therefore, set aside the injunction order "for the clear transgression of the provisions of law" and noted that this is the third suit filed in reference to the suit property and hence deprecated the grant of ex parte injunction without notice. Though learned single Judge further declined to go into the other allegations, he has chosen to make the following observations also:

"However, prima facie, I am satisfied that these materials are relevant for consideration before granting ad interim injunction. As per the plaint and affidavit averments admit (sic) that the first respondent is occupying a vacant portion of 1670 sq. ft. and running paper business and charcoal. But there is no documents to show that the first respondent is actually in possession and running such a business except the lease deed. Hence the ex parte order is unsustainable. For all these reasons, I am of the view that the order passed by the learned Judge is liable to be set aside and it is accordingly set aside."

8. After he directed the interlocutory application orders on merits expeditiously.

9. Sri Siva Counsel cont should not be der Article 227 respondent h available to hi could have ap vacating, if no Interim ex part an appeal cou against the sal ent to opt eit tended the Sei

10. Section "an appeal orders, and saved in the bo for the time b orders:

(i) any ore which an app rules."

Order 43 Rule

"An appeal orders under ti namely:

(i) An order u Rule 4 or Rule Order 39 Rule

1.1. "Where I affidavit or othe

(a) that any) is in danger of alienated by any fully sold in exe

(b) that the tends to remove with a view to d

(c) that the possess the plai jury to the plain erty in dispute Ir order grant a te strain such act, c the purpose of s wasting, damagli or disposition of of the plaintiff, o to the plaintiff in

8. After holding thus learned single Judge directed the trial Court to take up the interlocutory application for injunction and pass orders on merits and in accordance with law expeditiously.

9. Sri Sivasubramaniam, learned Senior Counsel contended that the High Court should not have entertained a petition under Article 227 of the Constitution when the respondent had two remedies statutorily available to him. First is that the respondent could have approached the trial Court for vacating, if not for any modification, of the interim ex parte order passed. Second is that an appeal could have been preferred by him against the said order. It is open to respondent to opt either of the two remedies, contended the Senior Counsel.

10. Section 104 of the Code says that —
"an appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders :

(i) any order made under rules from which an appeal is expressly allowed by rules."

Order 43 Rule 1 says that :

"An appeal shall lie from the following orders under the provisions of Section 104 namely:

(i) An order under Rule 1, Rule 2, Rule 2A, Rule 4 or Rule 10 of Order 39."

Order 39 Rule 1 says thus :

"Where in any suit it is proved by affidavit or otherwise —

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree or

(b) that the defendant threatens, or intends to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or disposition of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in

dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

11. It cannot be contended that the power to pass interim ex parte orders of injunction does not emanate from the said Rule. In fact, the said rule is the repository of the power to grant orders of temporary injunction with or without notice, interim or temporary, or till further orders or till the disposal of the suit. Hence, any order passed in exercise of the aforesaid powers in Rule 1 would be appealable as indicated in Order 43, Rule 1 of the Code. The choice is for the party affected by the order either to move the appellate Court or to approach the same Court which passed the ex parte order for any relief.

12. Learned Senior Counsel for the respondents then contended that an order granting injunction without complying with the requisites envisaged in Rule 3 of Order 39 be void. Rule 3 reads thus :

"The Court shall in 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:

Provided 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, and require the applicant —

(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

(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."

13. What would be the position if a Court which passed the order granting interim ex parte injunction did not record reasons

thereof, or did not require the applicant to perform the duties enumerated in clauses (a) and (b) of Rule 3 of Order 39. In our view such an order can be deemed to contain such requirements at least by implication even if they are not stated in so many words. But if a party, in whose favour an order was passed *ex parte*, fails to comply with the duties which he has to perform as required by the proviso quoted above, he must take the risk. Non-compliance with such requisites on his part cannot be allowed to go without any consequence and to enable him to have only the advantage of it. The consequence of the party (who secured the order) for not complying with the duties he is required to perform is that he cannot be allowed to take advantage of such order if the order is not obeyed by the other party. A disobedient beneficiary of an order cannot be heard to complain against any disobedience alleged against another party.

14. Learned single Judge stated that the trial Court ought not to have granted *ex parte* injunction beyond thirty days to be in force. The said observation is based on the language contained in Order 39, Rule 3-A of the Code which reads thus :

"Where an injunction has been granted without giving notice to the opposite-party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability."

15. The Rule does not say that the period of the injunction order should be restricted by the Court to thirty days at the first instance, but the Court should pass final order on it within thirty days from the day on which the injunction was granted. Hence, the order does not *ipso facto* become illegal merely because it has not restricted to a period of thirty days or less.

16. Nonetheless, we have to consider the consequence, if any, on account of the Court failing to pass the final orders within thirty days as enjoined by Rule 3-A.

17. The aforesaid Rule casts a three-pronged protection to the party against whom the *ex parte* injunction order was passed. First is the legal obligation that the Court shall make an endeavour to finally dispose of the application of injunction within the period of thirty days. Second is, the legal obligation that if for any valid reasons the

Court could not finally dispose of the application within the aforesaid time the Court has to record the reasons thereof in writing.

18. What would happen if a Court does not do either of the courses? We have to bear in mind that in such a case the Court would have by-passed the three protective humps which the Legislature has provided for the safety of the person against whom the order was passed without affording him an opportunity to have a say in the matter. First is that the Court is obliged to give him notice before passing the order. It is only by way of a very exceptional contingency that the Court is empowered to by-pass the said protective measure. Second is the statutory obligation cast on the Court to pass final orders on the application within the period of thirty days. Here also it is only in very exceptional cases that the Court can by-pass such a rule in which cases the Legislature mandates on the Court to have adequate reasons for such by-passing and to record those reasons in writing. If that hump is also by-passed by the Court it is difficult to hold that the party affected by the order should necessarily be the sole sufferer.

19. It is the acknowledged position of law that no party can be forced to suffer for the inaction of the Court or its omissions to act according to the procedure established by law. Under the normal circumstances the aggrieved party can prefer an appeal only against an order passed under Rules 1, 2, 2A, 4 or 10 of Order 39 of the Code in terms of Order 43, Rule 1 of the Code. He cannot approach the appellate or revisional Court during the pendency of the application for grant or vacation of temporary injunction. In such circumstances the party who does not get justice due to the inaction of the Court in following the mandate of law must have a remedy. So we are of the view that in a case where the mandate of Order 39, Rule 3-A of the Code is flouted, the aggrieved party shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force. In such appeal, if preferred, the appellate Court shall be obliged to entertain the appeal and further to take note of the omission of the subordinate Court in complying with the provisions of Rule 3-A. In appropriate cases the appellate Court, apart from granting or vacating or modifying the order

of such injunction against the party, including recording reasons for making the order, decide the appeal. The appeal shall be passed on the day of the appeal or within thirty days of the date of the appeal or within thirty days of the date of the appeal or within thirty days of the date of the appeal.

20. Now whether the Court has retained the power under the Constitution to pass an alternative order or not, the power to pass an alternative order is not a new power recognized by the Constitution. It is a power which the party affected by the order has to exercise. It is not a power which the Court has to exercise. It is a power which the party affected by the order has to exercise. It is not a power which the Court has to exercise. It is a power which the party affected by the order has to exercise.

21. In the case of the High Court, the order passed by the Court shall be final and shall not be subject to any appeal. It is a power which the party affected by the order has to exercise. It is not a power which the Court has to exercise. It is a power which the party affected by the order has to exercise.

22. This is the view of the majority of the Bench.

AIR 2000

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S. S. MOHA

Civil Appeal
2000.

Kasturchar
Harbilash and

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2000.

Kasturchand v. Harbilash

S. C. 3037

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of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry in his ACRs. Failure to decide the application or vacate the ex parte temporary injunction shall, for the purposes of the appeal, be deemed to be the final order passed on the application for temporary injunction, on the date of expiry of thirty days mentioned in the Rule.

20. Now what remains is the question whether the High Court should have entertained the petition under Article 227 of the Constitution when the party had two other alternative remedies. Though no hurdle can be put against the exercise of the constitutional powers of the High Court it is a well recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies one or the other before he resorts to a constitutional remedy. Learned single judge need not have entertained the revision petition at all and the party affected by the interim ex parte order should have been directed to resort to one of the other remedies. Be that as it may, now it is idle to embark on that aspect as the High Court had chosen to entertain the revision petition.

21. In the light of the direction issued by the High Court that the trial Court should pass final orders on the interlocutory application filed by the plaintiff on merits and in accordance with law, we may further add that all such orders are passed by the trial Court, status quo as it prevailed immediately preceding the institution of the suit would be maintained by the parties.

22. This appeal is disposed of with the above observations and directions.

Order accordingly.

AIR 2000 SUPREME COURT 3037

(From : Madhya Pradesh)

S. S. MOHAMMED QUADRI AND S. N. PHUKAN, JJ.

Civil Appeal No. 5392 of 1990, D/- 14-9-2000.

Kasturchand and another, Appellants v. Harbilash and others, Respondents.

(A) Madhya Bharat Zamindari Abolition Act (Samvat 2008) (Act 13 of 1951).

IR/IR/S100452/2000/BNG/RTT

S. 4(2) — Vesting of land — Proprietor claiming right to continue in possession — Must be in possession which is recorded in Khasra for period earlier to date of vesting — Possession as on date of vesting is not material.

S. A. No. 385 of 1973, D/- 13-3-1987 (Madh Pra), Reversed.

A perusal of sub-section (2) makes it clear that it vest a right in the proprietor to continue to remain in possession of his Khud-kasht land, so recorded in the annual village papers before the date of vesting. This conferment of the right to remain in possession of the khud-kasht land is notwithstanding the vesting of the land in sub-sec. (1) of S. 4. A proprietor claiming the right to continue to remain in possession of the khud-kasht land, has to show that he was in possession of the land as a khud-kasht cultivator and that fact is recorded in the khasra — the annual village papers — before the date of vesting. The date of vesting is October 2, 1951 which falls in Samvat year 2008. Obviously for purposes of sub-section (2) the entries in the khasra for the Samvat year 2007 would be relevant. The legislative policy behind this Section appears to be that when the rights are being conferred on cultivators of land on the principle 'land for the tiller' a proprietor should not be deprived of the same if he is also in personal cultivation of the land and that he should not be conferred the same benefits as are available to other tillers of the soil under the Act. Because the date of vesting falls in the middle of Samvat year 2008 the legislature deemed it fit to place reliance on the records of the annual village papers before the date of vesting. Thus, it follows that for purposes of S. 4(2) of the Abolition Act what is relevant and material is, the entries in the khasra maintained by the Revenue department for the period earlier to the date of vesting.

(Para 8)

Section 4(2) does not put an embargo on the right of the person whose possession of the suit land is recorded in the khasra of the years earlier to the date of vesting to recover possession of the land from a trespasser, if he was subsequently dispossessed from the land.

S. A. No. 385 of 1973, D/- 13-3-1987 (Madh Pra) Reversed.

(Para 9)

with
C. ament

FAO (OS)/EAO _____ 2004

NOT Before R.C. Chopra J.

MR. SUREN
UPPAL for
C. ament

- 1) Current Report should be obtained/Affidavit be attested, etc.
- 2) ~~Appeal is time barred~~ Number of days of delay be given in appropriate application.
- 3) Memo of Parties with complete addresses should be filed duly signed by counsel.
- 4) It should be stated that paper filed in appeal are already before the Trial Court or not.

15424

Order to
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Next on
Court
at P-15

might
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- 5) Correct Provision of Law should be given in the opening sheet and it should be placed before grounds of appeal.
- 6) Appeal should be stamped properly by Rs.5.25 paise.
- 7) Each Lower Court order should be certified copy and stamped @ Rs.1.25 and High Court order should be stamped @ Rs.2.65 paise.
- 8) Appeal orders/annexures be stamped accordingly. Certified copies of annexures before the Court be filed and stamped 65 paise per 300 words.
- 9) Fair typed copies of all annexures be filed.
- 10) It should be stated as to how FAO/FAO(OS) is maintainable against the impugned order which is reversible.
- 11) Annexures be made as true copies. Power of Attorney should be stated by the Counsel and petitioners duly stamped @2.65/- and welfare stamp of Rs.10/- be affixed.
- 12) English Translation of all Vernacular should be filed and translation fee also be deposited.

Listing proforma be filed duly filled in and be filed in both sets.

Marginal of 4 cm be kept on the left hand side of the annexures.

Thus the appeal being not in order, it is for orders whether the same be allowed to be filed within a week.

OR
In view of C. ament's statement given at above the appeal is ~~not~~ The same be registered as FAO(a) /04 and be listed placed before the Honble Court on 12/5/09 for preliminary hearing, subject to office adjournment.

DEALING ASSISTANT
11/5/09

PAO (as) 85/04

(A)

Feb. Const's order alt. 13/1/05
faint sheet is added below may
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AOJ (CU)

Man

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IN THE COURT OF HIGH COURT OF DELHI, BINADELLI
Suit/Appeal No. _____ Of 2004

In re :-

Charpinder Singh & Anr. Pff/ Appt/ Petitioner/ Complainant
VERSUS

M/s. Teekha & Associates Pvt. Ltd. & Anr. Defdt/ Respt/ Accused

KNOW ALL to whom this present shall concern that I/ We Charpinder Singh & Shakti Singh
the above-named Appellants do hereby appoint

NALIN TRIPATHI, Advocate
NT LAW CONSULTANTS & CO.
22-D/C Siddhartha Extn.,
New Delhi-14. Ph. 26348648.



(herein after called the advocate/s) to be my/ our Advocate in the above-noted case authorise him :-

To act, appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the appellate Court including High Court subject to payment of fees separately for each court by me / us.

To sign, file, verify and present pleadings, appeals cross-objections or petitions for executions, review, revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages subject to payment of fees for each stage.

To file and take back documents, to admit and /or deny the documents of opposite party.

To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.

To take execution proceedings.

The deposit, draw and receive money, cash and grant receipts hereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other legal practitioner authorising him to exercise the power and authority hereby conferred upon the advocate whenever he may think fit to do so and to sign, the power of attorney on our behalf.

And I / we undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/ our own acts, as if done by me/ us to all intents and purposes.

And I / we undertake that I / we or my / our duly authorised agent would appear in Court in all hearings and will inform the Advocate for appearance when the case is called.

And I / we undersigned do hereby agree not to hold Advocate or his substitute responsible for the result of the said case. The adjournment costs whenever ordered by the Court shall be of the Advocate which he shall receive and retain for himself.

And I / we the undersigned do hereby agree that in the event of the whole or part of the fee agreed by me / us to be paid to the Advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I / we hereby agree that once the fee is paid, I / we will not be entitled for the refund of the same in any case whatsoever and if the case prolongs for more than 3 years the original fee shall be paid again by me / us.

And I / we the undersigned agree that I / we shall not claim any compensation, nor the Advocate shall be liable for any compensation if he / she fails to appear in the court or fail to conduct or withdraws from the case due to non-payment of fee as per settlement or for reason of request / call given by Bar Association / or Council.

IN WITNESS WHEREOF I / we do hereunto set my / our hand to these presents the contents of which have been understood by me / us on this 10th day of May 2004.

Accepted subjected to the terms of the fees.

Nalin Tripathi
Advocate

[Signature]
Client

[Signature]
Client

