

Order below Exh. 14 in R.C.S.No.32/2025
Gajanan Shete & Ors. Vs. Bhor Nagarpalika
(Passed on 16/04/2025)

Defendant has filed the present application under Order 39 Rule 4 of the Civil Procedure Code, praying to vacate the ex-parte ad-interim status quo order passed below Exh. 5 on 19/03/2025. The case of the applicant, in brief, is that the plaintiff had filed the suit seeking perpetual injunction and obtained an ex-parte status quo order against the defendants. However, the said order was subject to compliance under Order 39 Rule 3 of CPC. It is contended that the plaintiffs have failed to comply with the mandate of Order 39 Rule 3, specifically the requirement of filing an affidavit of service and delivery of pleadings/documents to the defendants. Hence, it is submitted that the ex-parte order is liable to be vacated.

2] The plaintiffs have filed their reply and submitted that on 20/03/2025, the very next day after the order, the plaintiff had communicated the said order to the defendant through a letter along with a copy of the plaint, injunction application, list of documents, and the order passed. The said communication was received and acknowledged by the defendant. However, due to inadvertence, the affidavit under Rule 3(b) was not filed on the next day but has now been filed along with their reply. It is further submitted that substantial compliance has been done and no prejudice has been caused to the defendant.

3] The points for determination alongwith my findings there on are as under.

Sr. No.	Points	Findings
1	Whether the plaintiffs have complied with Order 39 Rule 3 CPC?	Partly affirmative
2	Whether the ex-parte status quo order deserves to be vacated?	In affirmative
3	What order?	As per final Order.

: REASONS :

4] The defendant relied on following case laws -

- a) Hon'ble The Supreme Court of India in *A. Venkatasubbiah Naidu Vs. Chellappan & Ors.* [AIR 2000 SC 3032]
- b) Hon'ble The Bombay High Court in *Vascon Engineers Ltd. Vs. Sansara Hotels India Pvt. Ltd. & Ors* [2009(6) AIR BOM R 401]
- c) Hon'ble The Bombay High Court in *Nagorao & Ors. Vs. The Nagpur Imprement Trust and Ors.* [AIR 2001 BOMBAY 402]

5] The plaintiffs relied on following case laws -

- a) Hon'ble The Jammu & Kashmir High Court in *K. K. Puri & Ors. Va. A. K. Puri & Ors.* [AIR 1994 JAMMU AND KASHMIR 25]
- b) Hon'ble The Delhi High Court in *Ssa International Limited vs Paras Sales Corporation And Ors.* [on 21st September 2004]
- c) Hon'ble The Bombay High Court in *Kewal Ashokbhai Vasoya & Anr Vs. Suarabhakti Goods Pvt. Ltd.* [Commercial Appeal (L) No. 31992 of 2022]
- d) Hon'ble The Delhi High Court in Bank of *Baroda Vs. Union Bank of India & Ors.* [FAO 51/2021 & CM APPL. 4514/2021]. I have gone through the case laws filed by the both parties.

As to point No.1 and 2 :

6] Heard both parties and perused the documents and compliance record on file. The ex-parte ad-interim order dated 19/03/2025 was explicitly made subject to compliance with Order 39 Rule 3 CPC. This rule imposes an obligation on the party obtaining such an order to serve the relevant pleadings and to file an affidavit of such compliance immediately or within a reasonable time.

7] In the case of ***A. Venkatasubbiah Naidu v. S. Chellappan & Ors.*** [AIR 2000 SC 3032] (Supra), the Hon'ble Supreme Court emphasized that although ex-parte orders may be passed in urgent matters, the opposite party must be given a prompt opportunity to respond. If the procedural safeguard under Rule 3 CPC is not observed, the ex-parte order becomes liable to be set aside.

8] In ***Vascon Engineers Ltd. v. Sansara Hotels India Pvt. Ltd.*** [2009 (6) AIR BOM R 401] (Supra), the Hon'ble Bombay High Court held that technical compliance under Order 39 Rule 3 is essential, particularly when the injunction is granted without hearing the opposite party. Delay in filing the affidavit of service can render the ex-parte order voidable.

9] The plaintiffs placed reliance on ***K. K. Puri & Ors. v. A. K. Puri & Ors.*** [AIR 1994 J&K 25] (Supra), and ***SSA International Ltd. v. Paras Sales Corporation & Ors.*** [Delhi High Court, 2004], to argue that substantial compliance and absence of prejudice should be considered. However, these rulings were delivered in different factual

contexts where compliance had been timely or delay was minimal and explained with cogent grounds. So there is no substance in the argument on behalf of plaintiff.

10] In the present case, though the plaintiffs served the documents on 20/03/2025, they failed to file the affidavit of compliance within a reasonable timeframe, and it was submitted belatedly only at the time of reply. There is no satisfactory explanation as to why the affidavit could not be filed earlier when service was admittedly completed.

11] The procedural requirement under Order 39 Rule 3 CPC is not a mere formality. It is the foundation for maintaining fairness in ex-parte reliefs. This view is fortified in *Nagorao v. Nagpur Improvement Trust* [AIR 2001 BOM 402], where the Hon'ble Court stressed the sanctity of such procedural obligations, especially in public interest matters.

12] In light of the aforementioned legal precedents and the factual circumstances of the present case, it is evident that the plaintiffs have failed to fully comply with the mandatory requirements under Order 39 Rule 3 of the Civil Procedure Code. Though the subsequent filing of the affidavit attempts to cure the defect, such delayed compliance does not meet the threshold of timely and bona fide adherence to procedural safeguards. As such, the continuation of the ex-parte status quo order cannot be sustained. The defendant has, therefore, rightly sought relief under Order 39 Rule 4 CPC. Hence, Point No. 1 is answered partly in the

affirmative and Point No. 2 in the affirmative. Consequently, in view of Point No. 3, the following order is passed-

: ORDER :

- 1] The application Exh. 14 is hereby allowed.
- 2] The ex-parte status quo order and ad-interim injunction order passed below Exh. 5 dtd. 19/03/2025 stands vacated.
- 3] The affidavit belatedly filed by the plaintiffs under Order 39 Rule 3(b) CPC is taken on record for future consideration.
- 4] The matter be kept for argument on Exh.5.

**Bhor, Pune.
Date : 16-04-2025**

**[Smt.Meena W. Jadhav]
Jt. Civil Judge, Jr.Div., Bhor**

CERTIFICATE

I affirms that the contents of this P. D. F. file order are same word for word as per original order.

Name of the Court :- Hon'ble Smt. Meena W. Jadhav
C.J.J.D. & J.M.F.C., Bhore, Pune

Name of the Steno :- M. S. Kondhare L.G.

Date of Order :- 16-04-2025

Signed by P.O. :- 17-04-2025

Order uploaded on :- 17-04-2025

