

Miscellaneous Appeal No. 08 of 2024
(C.N.R. - WBHG05-000321-2024)

Present: Smt. Ratna Roy
(J.O. Code - WB00914)

Order No. 17 dated 21.11.2024

Today is fixed for passing order over the petition under Order 39 Rule 4 and Order 39 Rule 3(a) and (b) read with section 151 C.P.C.

Accordingly, the record is taken up for passing order.

The contention of the petition under Order 39 Rule 4 and Order 39 Rule 3(a) and (b) read with section 151 C.P.C., which has been filed by the respondent / defendant is that vide order No. 2 dated 24.02.2024 this court had passed an order of ad interim injunction against the respondent from blocking the passage of foul water through the drain from the house of the appellant. A direction was given to the appellant to comply with the provisions under Order 39 Rule 3(a) and (b) of C.P.C. In order to comply with the provisions under order 39 Rule 3(a) and (b) of C.P.C., the Ld. Advocate for the appellant had served a copy of petition under Order 39 Rule 1 and 2 read with section 151 C.P.C., copies of representations written by the appellant Pradip Chandra Das addressing B.D.O., Chanditala-II Block and to the Hon'ble Chief Minister, West Bengal, a copy of deed No. 4528, three copies of photographs and a copy of memorandum of appeal and no other documents.

No copy of the plaint was supplied to the respondent. As no copy of plaint had been supplied to the respondents, the provisions of Order 39 Rule 3(a) and (b) of C.P.C. had not be complied with. So, the ad interim order of injunction was liable to be vacated.

Ld. Advocate for the appellant while moving the petition reiterated the facts stated in the application under Order 39 Rule 4 and Order 39 Rule 3(a) and (b) read with section 151 C.P.C. and prayed for vacating the ex parte order of ad interim injunction passed by the Ld. Court on 23.02.2024. In support of his submission Ld. Advocate referred to the judgment of the Hon'ble High Court at Calcutta in a case being No. G.A. No. 2475/2009, G.A. No. 2437/2009, C.S. No. 256/2009, passed in Karnani Properties Ltd. versus Kailas Prasad Jhunjunwala and another.

Ld. Advocate for the respondents opposed the submission of Ld. Advocate for the appellant and stated that the provisions of Order 39 Rule 3(a) and (b) had been complied with in all respects. The appellant had filed postal receipts along with affidavit showing compliance of the provisions of Order 39 Rule 3(a) and (b) of C.P.C. which is reflected in order No. 3 dated 26.02.2024. The respondents being influential person of the locality only for the purpose of getting the ad interim order of injunction passed against them vacated had filed the application. He thus prayed for rejection of the application under Order 39 Rule 4 and Order 39 Rule 3(a) and (b) read with section 151 C.P.C.

It is fact that the provisions of Order 39 Rule 3(a) and (b) provides that copy of the plaint has to be supplied. On going through the application filed by the

respondents, I find that the respondents had contended that in compliance of the provisions of Order 39 Rule 3(a) and (b) of C.P.C., the appellant had sent copy of the petition under Order 39 Rule 1 and 2 read with section 151 C.P.C., copy of memorandum of appeal, copy of deed No. 4528 and copies of two letters.

The ad interim injunction, I find, has been passed in the instant Misc. Appeal. The Memorandum of Appeal is the plaint of this Appeal. The admitted fact remains that the copy of Memorandum of Appeal was sent to the respondent / defendant in compliance of provision of Order 39 Rule 3(a) and (b) of C.P.C. So, the provisions of Order 39 Rule 3(a) and (b) of C.P.C. has been duly complied with by the appellant. The Misc. Appeal, I find, has arisen out of Title Suit No. 51/2024. The plaint of that Title Suit is not required to be sent to the respondents in compliance of Order 39 Rule 3(a) and (b) of C.P.C. in respect of the injunction order passed in the Misc. Appeal. I, thus, find no violation of the Order 39 Rule 3(a) and (b) of C.P.C.

Hence, it is ordered that the application under Order 39 Rule 4, Order 39 Rule 3(a) and (b) read with section 151 C.P.C. praying for vacating the ad interim order of injunction, dated 23.02.2024 stands rejected.

To **01.02.2025** for hearing of misc. appeal. Call for L.C.R.

Dictated & corrected by me.

Sd/- (Smt. Ratna Roy)

A.S.J.

Sd/- (Smt. Ratna Roy)

Additional Sessions Judge,
1st Court, Serampore