

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Miscellaneous Appeal No. 1860/2025

Shivgyan Developers Private Limited

----Appellant

Versus

Smt. Narmada Devi W/o Shri Pawan Umar Saraswat

----Respondent

For Appellant(s) : Mr. Sandeep Pathak

For Respondent(s) :

HON'BLE MR. JUSTICE GANESH RAM MEENA

Order

30/05/2025

This appeal is listed for orders under the heading of "defect category".

Learned counsel appearing for the appellant submits that the Registry has pointed out the defect that the present Civil Misc. Appeal has been filed against the order dated 28.03.2025 which is an interim order passed by the learned Additional Sessions Judge No.9, Jaipur Metro I, District Jaipur under Order 39 Rule 1 & 2 CPC. Hence, the present appeal seems not proper.

Learned counsel further submits that the interim order passed in exercise of powers under Order 39 Rule 1 & 2 CPC can be challenged by filing Civil Misc. Appeal in view of the provisions under Order 43 Rule 1 CPC. He relied upon the judgment of the Hon'ble Apex Court passed in the case of ***A Venkatasubbiah Naidu Vs. S. Chellappan & Ors.*** reported in ***(2000) 7 SCC 695.***

Learned counsel further submits that in view of observations of the Hon'ble Apex Court, the defect pointed out by the Registry deserves to be overruled.

Considered the submissions.

Section 104 of CPC says that:

"104. (1) An appeal shall lie from the following orders, and save an 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 -

(r) an order under Rule 1, Rule 2, Rule 2-A, Rule 4 or Rule 10 of Order XXXIX;"

Order 39 Rule 1 says that:

"1. 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 be 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."

If we reads the aforesaid provisions conjointly, it will be revealed that any order passed under Order 39 Rule 1 & 2 CPC either it may be an interim order or final order of temporary injunction, can be challenged by availing remedy of appeal under the provisions of Order 43 Rule 1 CPC. Order 43 Rule 1 CPC does not bifurcate that an appeal cannot be entertained against interim order passed in exercise of powers under Order 39 Rule 1 & 2 CPC.

The Hon'ble Apex Court in case of **A Venkatasubbiah Naidu (supra)** has observed as under:-

"13. 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.

22. 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-recognised 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."

In view of the above, this Court is of opinion that against an interim order passed in exercise of powers under Order 39 Rule 1 & 2 CPC, the affected party can prefer an appeal under Order 43 Rule 1 CPC.

Accordingly, the defect No.1 pointed out by the Registry is overruled.

List after one week.

(GANESH RAM MEENA),J