

Court may evolve a principle to meet situation and statutory provisions should be interpreted keeping the principle of Fair Trial

in Mind and trial should be fair not only from the view point of the accused but also from that of the victim and society.

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**A CRITICAL STUDY – WHETHER *EX PARTE AD INTERIM* INJUNCTION ORDER WITH OUT ASSIGNING ANY REASONS AS CONTEMPLATED UNDER S.39 CPC (3) IS *NON-EST***

By

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It is manifest, even a cursory reading of Order 39(3) CPC makes it clear that Court shall record reasons for its opinion as an when *ex parte ad interim* injunction is granted.

Proviso to Order 39(3) CPC clearly lays down that when 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 injunction would be defeated by delay. The general rule is no injection should be granted without notice to the opposite party. The expectation is that it can be granted without notice where the Court felt the object of granting such injunction would be defeated by delay if notice was issued to the opposite party. To apply exemption the Court shall record its reason for its opinion that the object of granting injunction would be defeated by delay which would arise by ordering notice to the opposite party. Hens such *ex parte* orders without assigning reasons violates the mandatory requirements of Order 39(3) CPC.

However may be due to sheer inadvertence or other wise of oblivious of position, the subordinate judiciary is not following the mandate and granting *ex parte ad interim* injunction without assigning reasons, which renders the *ex parte interim injunction void*, as laid down in 1980 (2) ALT 472, 1985 (2) ALT 339 (DB).

Illustrations of some of the orders of subordinate Judges which do not contain the reasons of dispensing with notice.

“Heard, perused the documents in view of the contence of petition 1. The prayer of the petitioner is just proper. Issue interim injunction and notice to the other side call on 20.4.1985”

2. Injunction granted restraining the defendants not to alienate the property till further orders. Comply with Order 39(3) posted to 27.4.2016.

Dealing with the aforesaid order mentioned as No.1 it is held

“The impugned order suffers from the infirmity of want of any reason, making the order illegal and so must be held to be void. The order which lacks reasons which must be assigned as envisaged under Order 39 Rule 3 read with proviso in granting injunction without notice to the opposite party is vitiated and the same cannot seek protection of Section 99 CPC and so the same is held void and unwarranted.”

This Division Bench decision is subsequently followed and reaffirmed in 1988 (2) APLJ 113 in yet another Division Bench Decision 1980 (2) ALT 472 = 1981 (1) APLJ 309 = 1980 APHN 247, it was held

the Court granting *ex parte interim* injunction without recording reasons is non sustainable which extracted as hereunder.

“under Rule 3 it is incumbent on the Court to issue notice before granting injunction. If any reason the Court proposes to grant interim injunction, without issuing notice on account of special circumstances it is necessary that the Court should give reason there for it is the proviso that makes it mandatory on the part of the Court to give reasons with reference to the circumstances that compelled the Court to come to the conclusion that the time taken in serving notice would defeat the very purpose of granting the injunction. “Therefore, any order passed granting the injunction without giving the reasons for invoking the exception is vitiated.

Rule 3 a specially provides that if an injunction was granted without notice the Court shall endeavour to finally dispose of the application within 30 days from the date on which the injunction was granted and if the Court is unable to do so the Court shall record its reasons for such inability. Therefore the emphasis is always on giving reasons mere perusal of the allegations in the affidavit and thinking the issuance of the *ex parte* injunction is necessary, in no way satisfies the mandatory requirement. The order needs to disclose on the face of it that the Court has applied its mind and having been convinced, has issued the *ex parte interim* injunction.”

To a similar effect of the decisions of the Allahabad and Gauhati Division Bench decisions, failure of the Court to record reasons for granting *ex parte* injunction

renders the order invalid and the order cannot be sustained.

Having thus enlightened the mandate of compliance of the reasons let us consider the effect of failure to give reasons and the consequences of the breach which are delineated as follows.

1. The order is to be considered as *non est*
2. However the Court has to pass the final orders within the meaning of Rule 3-A of Order 39-A CPC within 30 days from the date of *ad interim* injunction order.
3. It may be Order 39(3)A CPC does not contain explicit provision as to what would happen if the application is not disposed of within 30 days from the date on which the *ex parte ad interim* injunction is granted. But then the as relief of injunction is of a serious nature and one party or other will suffer consequently which will be at times grave in nature and as such the order is to be disposed of within 30 days to prevent injustice to either of the parties.

On the conspectus of these authorities and in view of the aforesaid legal position depicted by Division Bench decisions of the High Court of Andhra Pradesh, the subject is no more *res integra* and as a corollary it is suggested the subordinate judiciary has to strictly follow the mandate while granting *ex parte ad interim* injunction so as not to render the order *non-est* as injunction is a relief in equity and is based on equitable principles.

Any other sophisticated contra view is worth welcome.