

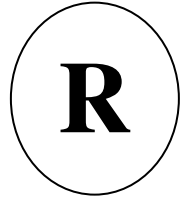
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

MISCELLANEOUS FIRST APPEAL NO.7641/2024 (CPC)



BETWEEN:

BOWRING INSTITUTE,
NO.19, ST.MARK'S ROAD,
BANGALORE-560 001,
REP. BY ITS SECRETARY.

... APPELLANT

(BY SRI MANIAN K.B.S., ADVOCATE)

AND:

- 1 . MR. SARWIK S.,
S/O R. SHIVAKUMAR
AGED 30 YEARS
R/AT NO.12/12A,
RAILWAY PARALLEL ROAD,
NEHRUNAGAR,
SHESHADRI PURAM,
BENGALURU-560 020.
- 2 . BOWRING INSTITUTE
NO.19, ST.MARK'S ROAD
BENGALURU-560 001
BY ITS CHAIRMAN.
- 3 . SANDEEP S., (PS00619)
BOWRING INSTITUTE
NO.19, ST. MARKS ROAD
BENGALURU-560 001.

- 4 . RAGHAVENDDDRA Y.R. (PR00423)
BOWRING INSTITUTE
NO.19, ST. MARKS ROAD
BENGALURU-560 001.
- 5 . RAMAKUMAR R, (LR00119)
BOWRING INSTITUTE
NO.19, ST. MARKS ROAD
BENGALURU-560 001.
- 6 . MR. PATHI DINESH (PP00202)
BOWRING INSTITUTE
NO.19, ST.MARKS ROAD
BENGALURU-560 001.

... RESPONDENTS

(BY SRI VASANTHAPPA, ADVOCATE FOR R1;
VIDE ORDER DATED 28.11.2024,
NOTICE TO R2 TO R6 DISPENSED WITH)

THIS M.F.A. IS FILED UNDER ORDER 43 RULE 1(r) R/W SECTION 151 OF CPC, PRAYING TO SET SIDE THE ORDER DATED 22.11.2024 PASSED ON I.A.NO.1 FILED UNDER ORDER 39 RULE 1 AND 2 OF CPC, IN O.S.NO.8292/2024 ON THE FILE OF THE 41TH ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, ISSUING SUIT SUMMONS AND EMERGENT NOTICE ON IA.NO.1 FILED UNDER ORDER 39 RULE 1 AND 2 OF CPC, ORDERING OF EXPARTE TEMPORARY INJUNCTION TO DEFENDANT 1 TO 6 AND ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 06.12.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV JUDGMENT

This miscellaneous first appeal is filed challenging the order dated 22.11.2024 passed on I.A.No.1 in O.S.No.8292/2024 by the 41st Additional City Civil and Sessions Judge, Bengaluru granting the temporary injunction restraining the appellant from passing any orders based on the resolution dated 25.10.2024 in respect of removal of the plaintiff from the membership of defendant No.1 till the next date of hearing.

2. Heard the learned counsel appearing for the respective parties.

3. The factual matrix of the case of the plaintiff/respondent No.1 before the Trial Court is that the plaintiff is the permanent life member of the defendants Bowring Institute and the plaintiff visited the defendant Bowring Institute on 18.07.2024 along with his friend as a Guest to enjoy the privileges of defendant Institute and he being the permanent member of the defendant Institute used the swimming pool at about 11.45 p.m. by inadvertently and without knowledge of the

plaintiff that he should not use the swimming pool at late night. The security guard and other members of the defendant's Institute scolded the plaintiff saying that the plaintiff should not use the swimming pool during restricted hours. Immediately, the plaintiff orally tendered his apology to the security guard and other members who were present at the spot stating that he will not repeat such incident in future. But the defendants, intentionally, on 19.07.2024 obtained the complaint from the security guard on the very next day of the incident inspite of tendering the plaintiff's apology and issued show cause notice on 20.07.2024 and after the receipt of show cause notice, the plaintiff appeared before the disciplinary committee and tendered his apology letter to the Secretary of the defendants institute. In spite of tendering apology, on 05.10.2024 recommending the plaintiff to be removed from his membership on the ground that he has violated the terms and conditions of the defendant institute. On 07.10.2024, the defendants institute passed an order of removal of the plaintiff from his membership and the same shall not take effect unless same is confirmed in the General Body Meeting. The said resolution was passed

having grudge against the plaintiff. The defendants in order to remove the plaintiff from its permanent membership, called the General Body Meeting to be held on 29.11.2024. Having no other alternative remedy except to file the suit for the relief of declaration and hence, the plaintiff has filed the suit and also filed an application to stop the Special General Body meeting to be held on 29.11.2024. The trial court having considered the application, granted temporary injunction against the appellant herein. Being aggrieved by the order of the Trial Court, the present MFA is filed before this Court.

4. The main contention of the appellant before this court that the trial court committed an error in granting such temporary injunction order. The order dated 22.11.2024 is contrary to the mandatory provisions of Order 39 Rule 3 of CPC and the court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay and then only the court is entitled to grant an *ex parte* injunction order but the Trial Court has not assigned any reasons in the impugned order dated 22.11.2024. The essential ingredient of

Rule 3 of Order 39 of CPC has not been complied. Even otherwise respondent No.1 is not without remedy and the object of granting the injunction as prayed for, would not be defeated if the meeting as scheduled on 29.11.2024 is allowed to be proceeded with and General Body Meeting which is to decide endorsing the recommendation of the Managing Committee to expel respondent No.1 and it was always open for respondent No.1 to seek a stay of any adverse order that may be passed in the General Body Meeting held on 29.11.2024 itself. This is in case speculative and not a case for the grant of an ad-interim *ex parte* order of temporary injunction. The trial court presumption that the Special General Body meeting scheduled on 29.11.2024 would decide against respondent No.1 and endorse the recommendation of the Managing committee to expel respondent No.1 is without any basis and there cannot be any speculation and granting of temporary injunction. This court having considered the grounds urged in the appeal memo, granted the interim injunction of stay of the impugned order dated 22.11.2024 and permitted to hold the General Body meeting on

29.11.2024 and held that the same would be subject to the result of this appeal.

5. The counsel for the appellant would vehemently contend that the order impugned is erroneous and ought not to have passed such an order without compliance of Order 39 Rule 3 of CPC. The counsel also reiterated the grounds urged in the appeal memo contending that the very proviso of Order 39 Rule 3 of CPC is very specific that while granting and dispossessing the notice, the court must assigned the reasons and if the same would be defeated by delay before granting an injunction and no such reasons are assigned.

6. Per contra, the learned counsel appearing for respondent No.1 would vehemently contend that the very appeal itself is not maintainable hence, an *ex parte* order of injunction cannot be questioned in a Miscellaneous appeal. The counsel in support of his arguments, relies upon the judgment dated 29.09.1981 in the case of **M/S PARIJATHA AND ANOTHER vs KAMALAKSHA NAYAK AND OTHERS** wherein this Court held that an *ex parte* interim order of temporary injunction passed

under Order 39 Rule 1 and 2 is not appealable and aggrieved party to take recourse to Order 39 Rule 4. The counsel also relied upon the judgment of this court passed in **MFA NO.3837/2018** decided on **21.12.2018** in the case of **R RAVINDRANATH MANVI vs K B RAMESH AND OTHERS** and brought to notice of this court paragraphs 21 to 23 wherein discussion was made referring the judgment of **A VENKATASUBBAIAH NAIDU vs S CHELLAPPAN AND OTHERS** more specifically Rule 3A of Order 39 of CPC and exercised the discretion of the civil court under Order 39 Rule 3 of CPC not to grant injunction without first issuing Notice to the opposite party would be an order as contemplated under Section 2(14) of the CPC, but no appeal will lie against such order under Order 43 Rule 1(r) of CPC.

7. The counsel also relied upon the judgment of this court reported in **ILR 1994 KAR 1653** in the case of **VOKKALIGARA SANGHA vs PRADEEP** and in this appeal also the maintainability of the appeal is questioned by the respondent and in this judgment also discussed the judgment of

PARIJATHA's case referred supra and the counsel brought to notice of this court paragraph 11 and an observation is made that the appellant shall appear before the trial court and filed their application to vacate the ad-interim order passed on IA 2. The counsel also brought to notice of this Court the order passed in **MFA No.8990/2017** decided on **30.11.2017** in the case of **PROCTER AND GAMBLE HOME PRODUCTS PRIVATE LIMITED vs MARICO LIMITED AND ANOTHER.** The counsel referring this judgment brought to notice of this court paragraphs 9 and 10 wherein discussion was made regarding Order 39 Rule 1 and 2 as well as Order 39 Rule 4 of CPC that if the defendant is able to demonstrate that the court has no jurisdiction, the Court may decide the jurisdiction issue, which is not only a question of law but also question of fact and held that the appeal is not maintainable.

8. Per contra, the learned counsel for the appellant with regard to the maintainability is concerned relies upon the judgment reported in **(1994) 4 SCC 225** in the case of **MORGAN STANLEY MUTUAL FUND vs KARTICK DAS** and

brought to notice of this court paragraph 35 regarding guiding principles in relation to the grant of an ad-interim injunction and also paragraph 36 wherein as a principle, *ex parte* injunction could be granted only under exceptional circumstances and brought to notice of this court clauses (a) to (g) the guiding principles and also brought to notice of this court paragraph 37 wherein also discussion was made with regard to Order 39 Rule 1 and 2. The question that must unnecessarily arise is whether in the facts and circumstances of the case, there is a prima facie case and if so, as between whom? In view of the legal principles applicable, it is difficult for us to say on the material on record that the plaintiffs have a prima facie case. The counsel also brought to notice of this Court paragraph 38 discussed that on occasion to emphasis the need to give reasons before passing *ex parte* orders of injunction particularly in **SHIV KUMAR CHADHA vs MUNICIPAL CORPORATION OF DELHI** reported in **(1993) 3 SCC 161, 176** and extracted paragraphs 34 and 35 of the said judgment.

9. The counsel also relied upon the judgment reported in **(1993) 3 SCC 161** in the case of **SHIV KUMAR CHADHA's** case which has already been referred in the case of **MORGAN STANLEY MUTUAL FUND** and also brought to notice of this court paragraph 32 wherein an observation is made that power to grant injunction is an extraordinary power vested in the court to be exercised taking into consideration the facts and circumstances of a particular case. The courts have to be more cautious when the said power is being exercised without notice or hearing the party who is to be affected by the order so passed. That is why Rule 3 of Order 39 of the Code requires that in all cases the court shall, before grant of an injunction, direct notice of the application to be given to the opposite-party, except where it appears that object of granting injunction itself would be defeated by delay. In the year 1976, a proviso has been added to the said rule saying 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. The counsel also brought to notice of this court

paragraph 35 wherein also a detail discussion was made in the judgment.

10. The counsel also relied upon the judgment reported in **2001 SCC ONLINE CAL 83** in the case of **K C GEORGE vs GOURI SHANKAR MISHRA AND OTHERS** wherein also **SHIV KUMAR CHANDHA's** case and **MORGAN STANELY MUTUAL FUND's** case were discussed and brought to notice of this Court paragraph 17 wherein it is held that the learned trial court did not record its reasons for passing an *ex parte* interim order of injunction till disposal of the application for temporary injunction and such order is squarely covered by decision of this Hon'ble court in the cases of **SHIV KUMAR CHANDHA's** case and **MORGAN STANELY MUTUAL FUND.**

11. The counsel also relied upon the judgment of this court passed in **KLR GROUP ENTERPRISES vs MADHU H V** reported in **2024 SCC ONLINE KAR 65** wherein also a question was raised before this court with regard to filing of an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 and also discussion was made with regard to filing of an appeal.

The counsel brought to notice of this court this court remitted back the matter to the trial court to consider Section 9 of the application in accordance with law extending the interim protection till then. However, it is made clear that the interim order granted by this court should not be construed as an order in favour of the appellant indicating the merit of the appellant's claim and accordingly, the appeal was disposed of. The counsel referring these judgments would vehemently contend that even if *ex parte* order of temporary injunction is granted and if no reasons are assigned, the same can be questioned invoking Order 43 Rule 1(r) of CPC.

12. Having heard the learned counsel appearing for the respective parties and also on perusal of the principles laid down in the judgments referred supra, the points that would arise for consideration of this Court are:

1. Whether an appeal is maintainable under Order 43 Rule 1(r) of CPC if an *ex parte* order of injunction is granted without reasons?

2. Whether the appellant has made out the grounds to set aside the order of temporary injunction granted by the trial court?
3. What order?

Points No.1 and 2:

13. Having taken note of the grounds urged in the appeal memo and scope for granting of temporary injunction, this court considered both the points together. The factual matrix of the case of the plaintiff/respondent No.1 before the trial court is that he utilised the swimming pool in an odd hour and he had regretted for the same. The fact that the complaint was given by the security guard and based on the security guard complaint, decision was taken to expel from his membership and also date is fixed for ratification on 29.11.2024. It is also important to note that the prayer sought in the plaint wherein he sought for declaration to declare that show cause notice dated 20.07.2024 is void *ab-initio* and also recommendation of the disciplinary committee dated 05.10.2024 and the resolution of the managing committee dated 16.09.2024 and the ratification

to be done on 29.11.2024 as null and void. Having taken note of this fact is concerned, the General Body dated 29.11.2024 had not yet taken place but relief is sought to declare as null and void. Hence, it is clear that respondent No.1/plaintiff anticipated that going to ratify the decision of expelling him but as on the date of filing the suit, no cause of action for the said relief since General Body has not yet taken the decision. However, declaration is sought regarding recommendation of the disciplinary committee dated 05.10.2024 and 16.09.2024 and also issuance of show cause notice dated 20.07.2024. It has to be noted that the suit was filed on 22.11.2024 when the General Body meeting was scheduled to be held on 29.11.2024. It has to be noted that the trial court granted the relief of temporary injunction narrating the case of the plaintiff. But on perusal of the order, the trial court given the reason is that perused the material on record and at this stage, the plaintiff has made out a ground to grant an *ex parte* interim order. At this juncture, this court would like to extract the proviso under Order 39 Rule 3 of CPC which reads as follows:

“Before granting injunction, Court to direct notice to opposite party.—The Court shall in all 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.]”

14. The main contention of the appellant before this court that before granting an ad-interim temporary injunction must assign the reason whether it defeats the delay in granting such an order. But no such reason is given while passing an order by the trial court except mentioning that perused the material on record. The proviso Order 39 Rule 3 is clear that the court shall in all 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 clause (a) (i) to (iii) as well as clause (b) is very clear and no such compliance in the case on hand and no such reasons are also assigned.

15. Having taken note of the said fact into consideration, this court, stayed the impugned order. The counsel for respondent No.1 also not argued the matter on main with regard to the non-compliance of Order 39 Rule 3 of CPC is concerned but relied upon the judgment of this Court in the case of **VOKKALIGARA SANGHA** referred supra and so also the judgment of this court passed in **MFA NO.8990/2017** and **MFA NO.3837/2018** and so also the judgment of **PARIJATHA** referred supra. No doubt, the judgment of **PARIJATHA** also taken note of by this court in **VOKKALIGARA SANGHA**'s case. The court taken note of the judgments relied upon by the appellant's counsel in the cases of **MORGAN STANLEY MUTUAL FUND** and **SHIV KUMAR CHADHA** and also the judgment of **K C GEORGE** referred supra. In the case of **K C GEORGE**, the Kolkata High Court relied upon the judgments of **MORGAN STANLEY MUTUAL FUND AND SHIV KUMAR CHADHA** and in this judgment, the Apex Court taken note of the amendment made to CPC in the year 1976. In the case of **MORGAN STANLEY MUTUAL FUND** in paragraphs 35, 36, 37, 38, detail discussion was made with regard to assigning the reasons for

granting ad-interim temporary injunction and particularly in both **SHIV KUMAR CHADHA** and **MORGAN STANLEY MUTUAL FUND** taken note of the very object and wisdom of legislation bringing proviso to Rule 3 of Order 39 of the Code, attracts the principle, that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all. This principle was approved and accepted in well-known cases of **TAYLOR vs TAYLOR** reported in **(1875) 1 CH D 426**.

16. In the case on hand also, no reasons are assigned and non-compliance of Order 39 Rule 3 as contended by the counsel for the appellant, law is settled. No doubt, there is a proviso to file an application under Order 39 Rule 4 and seek for vacating of interim order. But in the case on hand, it has to be noted that General Body meeting was stayed by the Trial Court to be held on 29.11.2024 and interim order was granted on 22.11.2024 and there was only a five days remaining and at that juncture, the appellant approached this court and sought for the relief of staying of the impugned order of *ex parte* ad-interim injunction. When the order of the trial court is in violation of

fundamental principles of Order 39 Rule 3 of CPC, the court must assign the reasons and the word used in Order 39 Rule 3 is the court shall exercise the discretion and when the statute itself requires reasons to be recorded, the Court cannot ignore that requirement by saying that if reasons are recorded, it may amount to expressing an opinion in favour of the plaintiff before hearing the defendant and the same is also held in the judgment of **SHIV KUMAR CHADHA** referred supra in paragraph 32 and also held that courts have to be more cautious when the said power is being exercised without notice or hearing the party who is to be affected by the order so passed. That is why Rule 3 of Order 39 of the code requires that in all cases the court shall, before grant of an injunction, direct notice of the application to be given to the opposite party, except where it appears that object of granting injunction itself would be defeated by delay. The said reasons must be assigned while passing such an order.

17. Having perused the principles laid down in the judgments referred supra and also the judgment of this court recently held in 2024 in the case of **KLR GROUP ENTERPRISES**

referred supra wherein also discussion was made with regard to an appeal under Section 37 of the Arbitration and conciliation Act regarding interim relief exercising under Section 9 also taken note of and also discussed in detail and directed the trial court to decide the application on merits and in the meanwhile interim order granted was continued. However, made it clear that interim order granted by this court shall not be construed as an order in favour of the appellant indicating the merit of the appellant's claim and made it clear that nothing is expressed on the merits of the claim of the appellant seeking interim measure.

18. Having taken note of the principles laid down in the judgments referred supra and also the factual aspects of the case is concerned and there is no compliance of Order 39 Rule 3 of CPC while passing such an order and no such reasons are given by the trial court except stating that perused the material on record and even for dispensing notice also, no such reasons are also made that if notice is issued it would defeat the very object and hence, the contention of the appellant counsel with regard to the violation of Order 39 Rule 3 is concerned is

acceptable. I have already pointed out that respondent No.1 counsel not argued the matter on merits regarding assigning of reasons by the trial court but the order is without in compliance of Order 39 Rule 3 of CPC and the same is liable to be set aside. Regarding first aspect is concerned, whether the appeal is maintainable under Order 43 Rule 1(r) of CPC, no doubt that when the *ex parte* temporary injunction is granted, the defendant has a right to file an application under Order 39 Rule 4 of CPC and seek for vacating the same. The court has to take note of indulgence of the Court while exercising the power under Order 43 Rule 1(r) of CPC. In the present case on hand, when the stay was granted with regard to General Body meeting to be held on 29.11.2024, only four days time was remaining. The court has to take note of exigency in filing an appeal before this court. The appeal is also filed contending that there is a clear violation of Order 39 Rule 3 of CPC. No such reason has been assigned by the trial court while granting such an order of temporary injunction. Apart from that on merits also decision was taken based on the complaint given by the security in the month of July, 2024 and thereafter decision was taken in the

month of September and October, 2024. But the plaintiff had approached the court on the fag end when the date is fixed for General Body meeting and also relief is sought in anticipation that going to be removed and expelled from the membership and he did not wait till taking the decision in the General Body meeting and questioned the same and relief is also sought in anticipation declaring the ratification of expelling him from membership and the same is in anticipation and no cause of action and other relief is sought for issuance of show cause notice. The other relief is sought with regard to issuance of show cause notice and decision is taken for expelling him. Admittedly the same has to be ratified by the General Body meeting and General Body meeting was not held and cannot prevent taking of decision to file a such a suit. The court must have taken note of said fact into consideration. When this court comes to the conclusion that no reasons have been assigned while passing the interim order and the principles laid down in the judgments of the Apex Court in the case of **MORGAN STANLEY MUTUAL FUND** and **SHIV KUMAR CHADHA** is very clear that it is bounden duty of the Court and word is used in Order 39 Rule 3

also 'shall record the reasons' but no such reasons are recorded. When such being the case, the appeal is maintainable under Order 43 Rule 1(r) of CPC, if the order is in violation of Order 39 Rule 3 of CPC. The very contention of the counsel for respondent No.1 that the appeal is not maintainable cannot be accepted. Even though proviso is made under Order 39 Rule 4 of CPC, the Court has to take note of exigency. In the judgment of **M.F.A.No.8990/2017**, the counsel brought to notice of this Court paragraphs 9 and 10 wherein discussed the proviso of Order 39 Rule 4 of CPC and also with regard to the jurisdiction is concerned. In view of the judgment of the Apex Court, the case of **PARIJATHA** is not applicable to the facts of the case on hand so also in the case of **VOKKALIGARA SANGHA** wherein relied upon the judgment of **PARIJATHA**'s case and so also in the judgment of the year 2018 in **MFA No.3837/2018** also will not comes to the aid of the appellant and in paragraph 21 is discussed with regard to filing of an application under Order 39 Rule 1 and 2 and if the first order is appealable, so must be second order, it would suffice for this Court to note that an appeal against an order granting an interim ex parte injunction is

in the context of the scheme as elucidated by the Hon'ble Supreme Court wherein jurisdiction to grant or refuse accused interim ex parte injunction is under the provisions of Rule 1 or Rule 2 of Order 39 of CPC and held that if the first order is appealable and exercising the discretion by the court and not to grant the injunction without first issuing notice to the opposite party would be an order as contemplated under Section 2(14) of CPC. But no appeal will lie against such order and the same is with regard to not to grant injunction. But in the case on hand, relief is granted without assigning any reasons. When such being the case, the same is not applicable to the facts of the case on hand. Hence, I answer the above points accordingly. Accordingly, the appeal is maintainable.

Point No.3

19. In view of the discussions made above, I pass the following:

ORDER

The Miscellaneous First Appeal is allowed.

The impugned order dated 22.11.2024 passed on I.A.No.1 in O.S.No.8292/2024 is set aside.

The trial court is directed to consider the application on merits within a period of 30 days from the date of receipt of copy of this order.

Registry is directed to communicate this order to the concerned trial court forthwith.

The order passed by this Court is in force, till disposal of the IA on merits.

Sd/-
(H.P. SANDESH)
JUDGE

SN