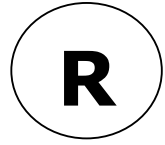




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C/W MFA No. 3478 of 2026
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AND 1 OTHER



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 3477 OF 2026 (CPC)

C/W

MISCELLANEOUS FIRST APPEAL NO. 3478 OF 2026

MISCELLANEOUS FIRST APPEAL NO. 3479 OF 2026

MISCELLANEOUS FIRST APPEAL NO. 3480 OF 2026

IN MFA No. 3477/2026

BETWEEN:

SRI SURESH BABU J N
S/O LATE NAGABHUSHANAM P S
AGED ABOUT 52 YEARS
R/AT NO.41, GROUND FLOOR
SEVENTH CROSS, S R NAGAR
SAMPANGI RAMNAGAR
WILSON GARDEN
BENGALURU - 560 027

...APPELLANT

(BY SRI THANUSH MANCHIL M., FOR
SRI. AKKIMANJUNATH GOWDA K., ADVOCATES)

AND:

1. SRI JAGANMOHAN
S/O LATE RAM REDDY
AGED ABOUT 61 YEARS
2. SMT.HEMALATHA
W/O SRI.JAGANMOHAN
AGED ABOUT 58 YEARS





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MFA No. 3479 of 2026
AND 1 OTHER

RESPONDENT NOS 1 & 2 ARE
R/AT NO.15,
FIRST MAIN, TATA SILK FARM
BASAVANAGUDI
BENGALURU 560 004

3. SRI.T S SANKEERTH
S/O SRI.T M SHIVARAM
AGED ABOUT 34 YEARS
R/AT NO. 117, THIRD MAIN
SIXTH BLOCK, BSK THIRD STAGE
THIRD PHASE
BENGALURU - 560 085
4. SIR M VISVESVARAYA
CO-OPERATIVE BANK LTD
NO 109, SHANKARPURAM
SHANKARMUTT ROAD
BENGALURU - 560 004
REP.BY ITS BRANCH MANAGER
SRI. RAGHAVENDRA RAO K S
5. THE BHAVANI HOUSING
CO-OPERATIVE SOCIETY LTD..
NO 239, UPSTAIRS, BULL TEMPLE ROAD,
CHAMRAJPET
BENGALURU - 560 018
REP. BY ITS SECRETARY

...RESPONDENTS

(BY SRI.N.S.SRIRAJ GOWDA ., ADVOCATE FOR R-3;
NOTICE TO R1 & R2 IS HELD SUFFICIENT V.O.D 25.6.2026;
NOTICE SERVED TO R-4)

THIS MFA IS FILED U/S.43 RULE 1(R) OF THE CPC,
AGAINST THE ORDER DT. 25.04.2026 PASSED ON IA NO. 2 IN
O.S.NO. 2944/2026 ON THE FILE OF THE XXX ADDITIONAL
CITY CIVIL JUDGE, CCH-31 BENGALURU, ISSUING NOTICE ON
IA.NO. FILED U/O.39 RULE 1 AND 2 R/W SEC.151 OF CPC,
1908.



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C/W MFA No. 3478 of 2026
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AND 1 OTHER

IN MFA NO. 3478/2026

BETWEEN:

1. SMT.B.RAJESHWARI
W/O LATE B RAMA MOHAN
AGED ABOUT 77 YEARS
 2. SRI.B RAGHAVENDRA KUMAR
S/O LATE B RAMA MOHAN
AGED ABOUT 51 YEARS
 3. SRI.B RAVINDRA KUMAR
S/O LATE B RAMA MOHAN
AGED ABOUT 49 YEARS
PETITIONER NO.1 TO 3 ARE
R/AT NO.22/29,
MGK MURTHY LAYOUT
GAVIPURAM EXTENTION
BASAVANAGUDI
BENGALURU - 560 019
 4. SRI.B RAJENDRA KUMAR
S/O LATE B RAMA MOHAN
AGED ABOUT 53 YEARS
R/AT NO.48, TWELFTH MAIN
J C NAGAR, KURUBARAHALLI,
MAHALAKSHMIPURAM LAYOUT,
BENGALURU - 560 086
- ...APPELLANTS

(BY SRI THANUSH MANCHIL M., FOR
SRI. AKKIMANJUNATH GOWDA K., ADVOCATES)

AND:

1. SRI JAGANMOHAN
S/O LATE RAM REDDY
AGED ABOUT 61 YEARS



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MFA No. 3479 of 2026
AND 1 OTHER

2. SMT.HEMALATHA
W/O SRI.JAGANMOHAN
AGED ABOUT 58 YEARS

RESPONDENT NO.1 & 2 ARE
R/AT NO.15, FIRST MAIN,
TATA SILK FARM, BASAVANAGUDI
BENGALURU 560 004

3. SRI.T S SANKEERTH
S/O SRI.T M SHIVARAM
AGED ABOUT 34 YEARS
R/AT NO.117, THIRD MAIN
SIXTH BLOCK, BSK THIRD STAGE
THIRD PHASE
BENGALURU - 560 085

4. SIR M VISVESVARAYA CO-OPERATIVE BANK LTD.,
NO109, SHANKARPURAM
SHANKARMUTT ROAD
BENGALURU - 560 004
REP. BY ITS BRANCH MANAGER
SRI. RAGHAVENDRA RAO K S

5. THE BHAVANI HOUSING CO-OPERATIVE
SOCIETY LTD.,
NO239, UPSTAIRS, BULL TEMPLE ROAD
CHAMRAJPET
BENGALURU - 560 018
REP. BY ITS SECRETARY

...RESPONDENTS

(BY SRI.N.S.SRIRAJ GOWDA ., ADVOCATE FOR R-3;
NOTICE TO R1 & R2 IS HELD SUFFICIENT V.O.D 25.6.2026;
NOTICE SERVED TO R-4)

THIS MFA IS FILED U/S.43 RULE 1(R) OF THE CPC,
PRAYING TO SET ASIDE THE ORDER DT. 25.04.2026 PASSED
ON IA NO. 2 IN O.S.NO. 2948/2026 ON THE FILE OF THE XXX
ADDITIONAL CITY CIVIL JUDGE, CCH-31 BENGALURU.



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C/W MFA No. 3478 of 2026
MFA No. 3479 of 2026
AND 1 OTHER

IN MFA NO. 3479/2026

BETWEEN:

SRI. SURESH BABU J N
S/O LATE NAGABHUSHANAM PS
AGED ABOUT 52 YEARS
R/AT NO.41, GROUND FLOOR
SEVENTH CROSS, S R NAGAR
SAMPANGIRAMNAGAR, WILSON GARDEN
BENGALURU - 560 027

... APPELLANT

(BY SRI THANUSH MANCHIL M., FOR
SRI. AKKIMANJUNATH GOWDA K., ADVOCATES)

AND:

1. SRI JAGANMOHAN
S/O LATE RAM REDDY
AGED ABOUT 61 YEARS
2. SMT.HEMALATHA
W/O SRI.JAGANMOHAN
AGED ABOUT 58 YEARS
RESPONDENT NOS.1 AND 2 ARE
R/AT NO.15,
FIRST MAIN, TATA SILK FARM
BASAVANAGUDI
BENGALURU - 560 004
3. SRI.T S SANKEERTH
S/O SRI.T M SHIVARAM
AGED ABOUT 34 YEARS
RESIDING AT NO.117, THIRD MAIN
SIXTH BLOCK, BSK THIRD STAGE
THIRD PHASE
BENGALURU - 560 085
4. SIR M VISVESVARAYA CO-OPERATIVE BANK LTD..
NO.109, SHANKARPURAM



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C/W MFA No. 3478 of 2026
MFA No. 3479 of 2026
AND 1 OTHER

SHANKARMUTT ROAD
BENGALURU - 560 004
REP. BY ITS BRANCH MANAGER
SRI. RAGHAVENDRA RAO K S

5. THE BHAVANI HOUSING CO-OPERATIVE
SOCIETY LTD..
NO.239, UPSTAIRS, BULL TEMPLE ROAD
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REP. BY ITS SECRETARY

... RESPONDENTS

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THIS MFA IS FILED U/S.43 RULE 1(R) OF THE CPC,
AGAINST THE ORDER DT. 25.04.2026 PASSED ON IA NO. 1 IN
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IA.NO.1 FILED U/O.39 RULE 1 AND 2 R/W SEC.151 OF CPC,
1908.

IN MFA NO. 3480/2026

BETWEEN:

1. SMT.B.RAJESHWARI
W/O LATE B RAMA MOHAN
AGED ABOUT 77 YEARS
2. SRI.B RAGHAVENDRA KUMAR
S/O LATE B RAMA MOHAN
AGED ABOUT 51 YEARS
3. SRI.B RAVINDRA KUMAR
SON OF LATE B RAMA MOHAN
AGED ABOUT 49 YEARS
APPELLANT NO.1 TO 3
ARE R/AT NO.22/29, MGK MURTHY LAYOUT



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AND 1 OTHER

GAVIPURAM EXTENTION,
BASAVANAGUDI
BENGALURU - 560 019

4. SRI.B RAJENDRA KUMAR
S/O LATE B RAMA MOHAN
AGED ABOUT 53 YEARS
R/AT NO.48, TWELFTH MAIN
J C NAGAR, KURUBARAHALLI,
MAHALAKSHMIPURAM LAYOUT
BENGALURU - 560 086

... APPELLANTS

(BY SRI THANUSH MANCHIL M., FOR
SRI. AKKIMANJUNATH GOWDA K., ADVOCATES)

AND:

1. SRI JAGANMOHAN
S/O LATE RAM REDDY
AGED ABOUT 61 YEARS
2. SMT.HEMALATHA
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AGED ABOUT 58 YEARS
RESPONDENT NOS.1 AND 2 ARE
R/AT NO.15,
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SIXTH BLOCK, BSK THIRD STAGE
THIRD PHASE
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BENGALURU - 560 018
REP. BY ITS SECRETARY

... RESPONDENTS

(BY SRI.N.S.SRIRAJ GOWDA ., ADVOCATE FOR R-3;
NOTICE TO R1 & R2 IS HELD SUFFICIENT V.O.D 25.6.2026;
NOTICE SERVED TO R-4)

THIS MFA IS FILED U/S.43 RULE 1(R) OF THE CPC,
AGAINST THE ORDER DT. 25.04.2026 PASSED ON IA NO.1 IN
O.S.NO. 2948/2026 ON THE FILE OF THE XXX ADDITIONAL
CITY CIVIL JUDGE, CCH-31 BENGALURU, ISSUING NOTICE ON
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1908.

THESE APPEALS, ARE COMING ON FOR ORDERS, THIS
DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:



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CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

MFA No.3477/2026 is preferred against the orders passed on I.A.No.2 in O.S.No.2944/2026; MFA No.3479/2026 is preferred against the orders passed on I.A.No.1 in O.S.No.2944/2026; MFA No.3480/2026 is preferred against the orders passed on I.A.No.1 in O.S.No.2948/2026 and MFA No.3478/2026 is preferred against the orders passed on I.A.No.2 in O.S.No.2948/2026.

2. In these appeals, the impugned orders arise from two suits, where in each suit two applications numbered as I.A.No.1 and I.A.No.2 were filed. Two impugned orders in each of the suit have emanated in these four appeals preferred by the appellants who are the plaintiffs before the trial Court.

3. Parties shall be referred to as plaintiffs and defendants, for the sake of easy understanding.

4. Brief facts of the case are as under:

The plaintiffs filed the respective suits against the defendants for the relief of declaration and permanent



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injunction and other consequential reliefs. Along with the suits, the plaintiffs filed two applications under Order XXXIX Rule 1 and Rule 2 of CPC seeking to grant of an ad-interim temporary injunction restraining the defendants from alienating or encumbering the suit schedule property to any third party pending disposal of the suits and secondly, for temporary injunction to restrain the defendants from putting up further constructions on the suit schedule property.

4.1. The trial Court, while considering the applications in both the suits filed under Order XXXIX Rule 1 and 2 of CPC for grant of an ad-interim ex-parte temporary injunction order, passed the following order:

"On perusal of the plaint and documents, this Court is of the view that appropriate orders in respect of I.A.No.1 and 2 can be passed only after hearing both the parties. Hence, decided to issue notice on I.As and suit summons."

4.2. It is these orders passed in both the suits that are questioned by the appellants-plaintiffs before this Court.

5. It is the contention of learned counsel Sri Thanush Manichil.M appearing for appellants-plaintiffs that the impugned



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orders are passed blindly without following the process of law and the requirement of grant of an ad-interim order of temporary injunction ex-parte prior to issuance of notice, which has not been done by the learned trial Judge and therefore, the impugned orders are illegal, arbitrary and hence, require to be set aside and the appeals require to be allowed.

5.1. It is the further contention of learned counsel for plaintiffs that the learned trial Judge has not applied his mind by taking into consideration the materials placed on record by way of an affidavit, the submissions and the documents produced along with the plaint to pass an ad-interim ex-parte order as sought for. Whereas the learned trial Judge without taking into consideration all these aspects and in violation of principles governing the grant of ad-interim order of temporary injunction and due to non-application of mind, has passed the impugned orders which are arbitrary, illegal and perverse and hence, the same calls for interference at the hands of this Court.

5.2. Learned counsel for plaintiffs relies upon the provisions of Order XLIII Rule 1(r) of CPC for the purpose of



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invoking the Appellate jurisdiction and contends that any order that is passed under the provisions of Section 104 of CPC and falling within the category of Order XLIII Rule 1 more specifically (r) would be subject to remedy under the Appellate jurisdiction. Therefore, the plaintiffs preferred these appeals and the appeals are sustainable, which requires to be entertained.

5.3 Learned counsel further contends that the trial Court has passed the order under Order XXXIX Rule 1 and 2, which is amenable to an appeal remedy. It is further contended that any order passed under the aforesaid provision is liable for challenge before this Court in first appeal, as the trial Court has not granted the ad-interim temporary injunction sought for by the plaintiff.

5.4. Learned counsel for plaintiffs relies upon the following judgments in support of his case:

- i) ***Sri Raju B.V., vs. Gemini Shares and stocks [W.P.No.13889/2022 (GM-CPC) dated 22.01.2026];***



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- ii) ***Bowring Institute vs. Mr.Sarwik.S and others*** [***MFA No.7641/2024 (CPC)*** dated 20.12.2024]; and
- iii) ***A.Venkatasubbaiah Naidu vs. S.Challappan and others*** reported in ***(2000) 7 SCC 695.***

6. *Per contra*, learned counsel Sri N.S.Sriraj Gowda appearing for respondent No.3-defendant No.3 vehemently objects to the appeals being maintainable before this Court for the following reasons:

6.1. It is his primary contention that the appeals would not be maintainable before this Court as there is no order as such passed by the trial Court on the applications filed under Order XXXIX Rule 1 and 2 of CPC. He contends that what the trial Court has recorded is on the documents that is presented by the appellants-plaintiffs and has come to the conclusion that appropriate orders in respect of I.A.No.1 and I.A.No.2 can be passed only after hearing both the parties and hence, decided to issue notice before passing any orders on the applications.

6.2. It is the further contention of learned counsel for defendant No.3 that the trial Court has in fact not passed any order either granting or refusing the injunction under Order



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XXXIX Rule 1 and 2 of CPC either in favour or against the appellants-plaintiffs. It is his contention that once an application is filed under Order XXXIX Rule 1 and 2 of CPC, the trial Court has the prerogative and discretion to pass orders either issuance of notice or in case where it appears to the Court the object of granting the injunction would be defeated by delay, then it could pass an order under Rule 3 of Order XXXIX without issuance of notice to the opposite party i.e., the defendant. In the present case on hand, the trial Court has neither exercised the option of granting an ad-interim ex-parte injunction prior to issuance of notice as the trial Court felt that there was need to hear both the parties and accordingly, thought it fit to issue notice before passing any order on the application filed under Order XXXIX Rule 1 and 2 of CPC. Therefore, he contends that when the trial Court issues notice on the application filed under Order XXXIX Rule 1 and 2 of CPC, the same does not come within the ambit of an appeal remedy as contemplated under Order XLIII Rule 1 (r) of CPC.

6.3. Learned counsel further contends that the appeals preferred by appellants-plaintiffs is premature as no orders are



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passed on the applications-I.A.No.1 and I.A.No.2 yet by the trial Court. He further contends that there is alternative remedy available to the appellants; but certainly not an appeal falling under the ambit of Order XLIII Rule 1(r) of CPC.

6.4. Learned counsel for defendant No.3 relies upon the following judgments in support of his case:

- i) ***Nisha Raj and anr. vs. Pratap K.Kaula and ors.*** reported in **1995 (32) DRJ (DB);**
- ii) ***Sahil Singh Maniktala and ors. vs. Harpeet Singh and ors.*** reported in **2005 (81) DRJ 183 (DB);**
- iii) ***Perpetual vision LLP and anr. vs. Vaibhav S.Pingale and ors.*** in **FAO (COMM) 316/2025;**
- iv) ***Mr.R.Ravindranath Manvi vs. Mr.K.B.Ramesh*** [MFA No.3837/2018 (CPC) dated 21.12.2018];
- v) ***Sri Raju B.V., vs. Gemini Shares and stocks*** [W.P.No.13889/2022 (GM-CPC) dated 22.01.2026];
- vi) ***Bowring Institute vs. Mr.Sarwik.S and others*** [MFA No.7641/2024 (CPC) dated 20.12.2024]; and



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- vii) ***A.Venkatasubbaiah Naidu vs. S.Challappan and others*** reported in ***(2000) 7 SCC 695.***

7. I have heard learned counsel for appellants and learned counsel for respondent No.3.

8. The point that arises for my consideration are:

"1. Whether the present appeals would be maintainable on the orders passed by the trial Court where it has merely issued notice under Order XXXIX Rule 3 without passing any order of either grant or rejection of the ad-interim order sought for by the appellants-plaintiffs?

2. What order?"

9. The answer to the above point is '**Negative**'.

10. Learned counsel for appellants-plaintiffs has relied upon the judgment of a Co-ordinate Bench of this Court in the case of ***Sri Raju B.V.*** (supra) and contends that in similar situations where notices were ordered by the trial Court, this Court has come to the conclusion that an appeal would be maintainable and the same has been decided in favour of plea that is taken by the appellant. The relevant paragraph in the case of ***Sri Raju B.V.*** (supra) is as under:

*"6. A similar view has been taken by the Supreme Court in the case of **Virudhunagar Hindu***



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Nadargal Dharma Paribalana Sabi and others Vs. Tuticorin Educational Society and others and Mohamed Ali Vs. V.Jaya and Ors. which has specifically stated that, where a petition under Article 227 of the Constitution of India was filed challenging such an order held that the petition is not maintainable. The relevant extract of **Virudhunagar Hindu Nadargal Dharma Paribalana Sabi's** Case is below:

"11. Secondly, the High Court ought to have seen that when a remedy of appeal under Section 104(1)(i) read with Order 43, Rule 1(r) of the Code of Civil Procedure, 1908, was directly available, Respondents 1 and 2 ought to have taken recourse to the same. **It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In A. Venkatasubbiah Naidu v. S. Chellappan [A.Venkatasubbiah Naidu v. S. Chellappan,], this Court held that "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 before he resorts to a constitutional remedy".**

12. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before civil courts in terms of the provisions of Code of Civil Procedure, and (ii) cases where such alternative remedy is available under special



enactments and/or statutory rules and the fora provided therein happen to be quasijudicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which Respondents 1 and 2 invoked the jurisdiction of the High Court. This is why, a 3-member Bench of this Court, while overruling the decision in *Surya Dev Rai v. Ram Chander Rai* [*Surya Dev Rai v. Ram Chander Rai*, pointed out in *Radhey Shyam v. Chhabi Nath* [*Radhey Shyam v. Chhabi Nath*, that "orders of civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts".

13. Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. **Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case**



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where a specific remedy of appeal is provided under the Code of Civil Procedure itself."

[Emphasis Supplied]"

11. Learned counsel for plaintiffs further contends by relying on the case of ***Bowring Institute*** (supra) that an appeal is maintainable when any order is passed on an application filed under Order XXXIX Rule 1 and 2 of CPC and in ***Raju.B.V.'s*** case (supra), the issue of notice under Rule 3 of Order XXXIX was not the subject matter neither was it brought to the notice of the Court with regard to Order XXXIX Rule 3 conspicuously being absent for appeal remedy under Order XLIII Rule 1(r) of CPC.

12. Learned counsel for respondent No.3-defendant No.3 has relied upon the judgment of the Delhi High Court in the case of ***Perpetual vision LLP and anr.*** (supra), which has dealt with exactly the similar issue where the trial Court has exercised the discretion to issue notice under Rule 3 of Order XXXIX and has not passed any order and when the same was questioned before the Delhi High Court, the Court came to the conclusion and held that it would not be amenable to the



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appeal jurisdiction under Order XLIII Rule 1 (r) as Order XXXIX Rule 3 is not contemplated in the appeal remedy provided under Order XLIII Rule 1 (r). The relevant paragraph Nos.11, 13 and 15 reads as under:

"11. On a bare reading of Order XXXIX of the CPC, the submissions of Mr. Upadhyay cannot be accepted. There is no doubt that an order whether of grant of injunction or of denial of injunction would be relatable to Order XXXIX Rule 1 of the CPC. However, a refusal to grant injunction ex parte would not be relatable to Order XXXIX Rule 1 of the CPC as Order XXXIX Rule 3 of the CPC specifically empowers the court in that regard. Order XXXIX Rule 3 of the CPC specifically notes that ordinarily a Court would not pass any order of injunction without issuance of notice of the application to the opposite party. However, the proviso to Order XXXIX Rule 3 of the CPC empowers the Court, in an appropriate case and for reasons to be recorded in that regard, to pass an order of injunction without giving notice to the opposite party.

12. As such, an order which issues notice on the application for injunction to the opposite party, is an order passed in terms of Order XXXIX Rule 3 of the CPC. Equally, were the Court to pass an order of injunction ex parte, without notice to the opposite party, for reasons to be recorded in writing, such an order would also be relatable to Order XXXIX Rule 3 of the CPC, albeit the proviso thereto.

13. The impugned order neither grant nor rejects the appellant's application for injunction. It



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merely issues notice to the opposite party to respond to the application. In doing so, therefore, the learned Commercial Court has exercised the power conferred on it by Order XXXIX Rule 3 of the CPC.

14. The Legislature has consciously excepted Order XXXIX Rule 3 of the CPC from Order XLIII Rule 1(r). The intent is obvious, which is to prevent every innocuous case of issuance of notice being made subject matter of an appeal.

15. We have to respect the mandate of the legislature, and not pass orders which would defeat its intent."

13. Further, learned counsel for defendant No.3 has relied upon the following judgments:

(i) ***Nisha Raj and anr. vs. Pratap K.Kaula and ors.***

reported in **1995 (32) DRJ (DB)**, the relevant paragraphs reads as under:

"8. Coming to the case before us, an application for injunction to restrain the defendants from parting with possession or encumbering the property where 'notice' alone is issued, the said order cannot, by any stretch of imagination, fall within the category of rare exceptions mentioned by us above. Further if in the meantime, possession is lost or alienation is made by the defendant, Section 52 of the Transfer of Property Act protects. Further, at an later stage, restoration of status quo order is possible under Section 144 of 151 CPC while in other cases, compensation can be paid. For example if a



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building is constructed in the meantime on the property after 'notice' and before grant of any injunction,, the Court has the power, if need be, to have it demolished. If possession is lost, it can be restored. If property is encumbered, the same can be held to be subject to result of the ultimate decree.

9. We are therefore of the view that in the present case, that the order of the learned Judge ordering 'notice' under Order 39 Rule 3 CPC is not a judgment under Section 10 of the Delhi High Court Act and hence the appeal is not maintainable. The appeal fails and is dismissed.

(ii) **R.Ravindranath Manvi vs. K.B.Ramesh** in **MFA No.3837/2018 (CPC)**, the relevant paragraph reads as under;

"19. An appeal against an 'Order', which is not a decree, could only lie if provided for under the provisions of the CPC. Section 104 of CPC expressly states that an appeal shall lie only from the orders enumerated therein, or otherwise expressly provided in the body of the Code or by any law for the time being in force, from no other orders. However, though the order either granting or refusing to grant temporary injunction are orders under Order XXXIX Rule 1 and 2 of CPC, and in that sense both orders are of the same genus, the order refusing to grant ad interim ex-parte injunction, because of the aforesaid factors, is a different species. If the exercise of jurisdiction under Order XXXIX Rule 3 of CPC refusing to grant ex-parte ad-interim order of injunction is a separate and distinct "Order" as



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against the same genus order to either grant or refuse temporary injunction, an appeal will lie only if it is permissible under Section 104 of CPC and Order XLIII Rule 1 of CPC. The provisions of Order XLIII Rule 1 of CPC enumerates orders against which appeals will lie under the provisions of Section 104 of CPC. Under Order XLIII Rules 1 (r) of CPC, an appeal would lie only against those orders that are made under Rule 1, Rule 2, Rule 2-A, Rule 4 or Rule 10 of Order XXXIX. As already considered, an order refusing to grant ad interim ex parte injunction, though of the same genus as an order granting, or refusing, temporary injunction after hearing both the applicant and the opposite party, and also traceable to the provisions of Order XXXIX Rules 1 and 2 of CPC, is a different species. In the absence of an order under Order XXXIX Rule 3 of CPC being listed under Section 104 of CPC and Order XLIII Rule 1, an appeal would not lie against such orders, and the question would be, should an appeal nevertheless be construed by interpretation. This question will have to be answered by this Court in the light of the caution that is emphasized by the Division Bench of this Court in. M/s Parijatha and another versus, Kamalaksha Nayak supra, that is not to render the scheme under Order XXXIX of CPC, or any part thereof, redundant or give room to contradictory jurisdictions.

20. A Civil Court in deciding either to grant or not to grant an ad interim ex-parte injunction without issuing a notice, is applying its judicial mind, additionally, to assess, and express a formal decision on, whether the object of grant of injunction would be defeated by delay based on the information gleaned from the plaintiff's pleadings; such



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assessment and decision, though formal, could only be a very nascent order. A Court, even after refusing an order of ad interim ex-parte injunction under Order XXXIX Rule 3 of CPC is still seized of the application for grant of temporary injunction. The Court revisits the question of grant of ad interim injunction once the service of notice is complete. This construction/interpretation of the Scheme would be a harmonious reading of the Scheme under Order XXIX of CPC without giving room for redundancy or conflict of jurisdictions. Of course, if there is any irregularity in the Court assessing and expressing a formal decision on whether the object of grant of injunction would be defeated by delay, the same would be subject to narrower and limited scrutiny under the supervisory jurisdiction available to this Court under Article 227 of the Constitution of India.

21. As regards the ground that the jurisdiction to grant or refuse ad interim ex parte injunction is under the provisions of Rule 1 or Rule 2 of Order XXXIX of CPC, and if the first order is appealable, so must be the second order, it would suffice for this Court to note that an appeal against an order granting ad- interim ex parte injunction is in the context of the scheme as elucidated by the Hon'ble Supreme Court in A. Venkatasubbaiah Naidu Vs. S. Chellappan and Others in the light of the provisions of Order XXXIX CPC, more specifically Rule 3A of Order XXXIX CPC..

22. For the foregoing, it is held that the exercise of discretion by the Civil Court under Order XXXIX 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



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CPC, but no appeal will lie against such Order under Order XLIII Rule 1(r) of CPC."

14. It would be relevant to extract Order XLIII Rule 1 (r), which reads as under:

"(r) an order under rule 1, rule 2 [rule 2A], rule 4 and rule 10 of Order XXXIX."

15. It is also relevant to extract the provisions of Order XXXIX Rule 3, which reads as under:

"3. Before granting injunction, Court to direct notice to opposite party.- *The Court shall in all case, 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:*

16. Further, it is relevant to extract paragraph Nos.20 and 21 of ***A.Venkatasubbaiah Naidu's*** case (supra), which reads as under:

"20. What would happen if a Court does not do either of the courses? We have to bear in mind that in such a case the Court would have by-passed the three protective humps which the legislature has provided for the safety of the person against whom the order was passed without affording him an opportunity to have a say in the matter. First is that the Court is obliged to give him notice before passing the order. It is only by way of a very exceptional contingency that the Court is empowered to by-pass the said protective measure. Second is the statutory



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obligation cast on the Court to pass final orders on the application within the period of thirty days. Here also it is only in very exceptional cases that the Court can by-pass such a rule in which cases the legislature mandates on the court to have adequate reasons for such bypassing and to record those reasons in writing. If that hump is also bypassed by the Court it is difficult to hold that the party affected by the order should necessarily be the sole sufferer.

21. It is the acknowledged position of law that no party can be forced to suffer for the inaction of the court or its omissions to act according to the procedure established by law. Under the normal circumstances the aggrieved party can prefer an appeal only against an order passed under Rules 1,2,2A, 4 or 10 of Order 39 of the Code in terms of Order 43 Rule 1 of the Code. He cannot approach the appellate or revisional court during the pendency of the application for grant or vacation of temporary injunction. In such circumstances the party who does not get justice due to the inaction of the court in following the mandate of law must have a remedy. So we are of the view that in a case where the mandate of Order 39 Rule 3A of the Code is flouted, the aggrieved party, shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force. In such appeal, if preferred, the appellate court shall be obliged to entertain the appeal and further to take note of the omission of the subordinate court in complying with the provisions of Rule 3A. In appropriate cases the appellate court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry in his ACRs. Failure to decide the application or vacate the ex-parte temporary injunction shall, for the purposes of the appeal, be deemed to be the final order passed



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on the application for temporary injunction, on the date of expiry of thirty days mentioned in the Rule."

(Underlines in this paragraph is made by this Court)

17. Having perused the judgments herein stated above, it is seen that when an application is filed under Order XXXIX Rule 1 and 2 of CPC, the trial Court has the following options:

(i) The first option for the Court is to issue notice under Order XXXIX Rule 3 to hear the defendant before passing any order; and

(ii) The second option would be granting an ex-parte ad-interim temporary injunction before issuance of notice to the defendant, where it feels that any delay in issuance of notice will cause hardship, inconvenience to the party and such issuance of notice would defeat the very purpose of grant of injunction as contemplated in the proviso to Rule 3 of Order XXXIX.

These are the two options available to the learned trial Judge while an application is filed and where an order is sought for grant of an ad-interim ex-parte injunction.



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18. In the present case on hand, the learned trial Judge has exercised the discretion to issue notice, but at the same time has neither rejected nor granted the temporary injunction. Therefore, the trial Court, by holding that before passing any orders on the said application it would be appropriate to hear both parties, has issued notice on the said applications and hence, it has kept the applications alive and pending.

19. On bare perusal of the provisions of Order XLIII Rule 1 (r) as extracted herein above, it is crystal clear as to what are the provisions that would attract Order XLIII Rule 1 for an appeal to be maintainable. As can be seen, it is apparently clear and there is no ambiguity that Order XXXIX Rule 1, Rule 2, Rule 2A, Rule 4 or Rule 10 of Order XXXIX is contemplated under Order XLIII Rule 1.

20. Conspicuously, Rule 3 of Order XXXIX is not spelled out and it is evidently not available for an appeal remedy under Order XLIII Rule 1. The Legislature in its wisdom has clearly provided the necessary provisions to attract the relevant appeal or remedy that is available to be challenged before the appropriate forum.



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21. In the present case, when there is a clear remedy available under the Code of Civil Procedure as to what orders could be challenged under the appeal and what cannot be, it is not for this Court to get into the mind of the legislature to infringe into the legislature's forte. Therefore, it would not be appropriate for this Court to infringe into the wisdom of the legislature which conspicuously has not included Rule 3 of Order XXXIX in the appeal provisions provided under Order XLIII Rule 1 (r). Precisely for this reason, the Delhi High Court in its judgment has clearly held that once an order is passed either granting or refusing with any reasons, then certainly an appeal would be maintainable under Order XLIII Rule 1 (r) and when an order is passed merely by issuance of notice to the opposite party, without there being any order of either grant or rejection, then it is merely an order passed for issuance of notice to hear the defendants before passing any order, which apparently means no order is yet passed on the said application.

22. It is also to be seen that the Code of Civil Procedure contains its own remedies available in it for any order if passed



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without grant of relief. The remedy available to the plaintiff would be to either seek for urgent orders on the said application or any other remedy that is available in law. But it can be certainly said that no remedy is available for preferring an appeal under Order XLIII Rule 1. Therefore, I am in agreement with the contentions put forth by learned counsel for respondent No.3 and the judgments relied by him, which are mentioned hereinabove to come to a conclusion that in the present case on hand, there is no order as such either granting or refusing of the ad-interim order sought by the appellants-plaintiffs.

23. I do not agree with the argument put forth by learned counsel for the appellants that on the impugned order, they can approach this Court in an appeal under Order XLIII Rule 1 (r). Therefore, it will not be available for the appellants-plaintiffs to approach this Court when there is no order passed either granting or rejecting the application filed by him under Order XXXIX Rule 1 and 2.



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24. The judgments relied by the learned counsel for appellants are not applicable and helpful to the present facts of this case.

25. Under the circumstances, I pass the following:

ORDER

- i) The appeals are ***dismissed*** as not maintainable.
- ii) However, liberty is reserved to appellants-plaintiffs to either approach the very same Court or to file any other appropriate proceedings, if so advised, in the appropriate forum.
- iii) Liberty is also reserved to appellants-plaintiffs to move the Civil Court for early hearing and if any such application is moved, the learned trial Judge shall consider the same and pass suitable orders on the application within 15 days of such motion made by appellants-plaintiffs.
- iv) Observation made herein are only for the purpose of deciding the maintainability of these appeals.



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- v) It is made clear that this Court has not expressed any opinion on the merits of the matter.

Ordered accordingly.

Sd/-
(PRADEEP SINGH YERUR)
JUDGE

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