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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO (COMM) 316/2025 and CM APPLs. 69747-748/2025

PERPETUAL VISION LLP & ANR. .....Appellants

Through: Mr. Anshuman Upadhyay, Mr. Naseem Sheikh, Mr. Rahul Singh, Ms Shubhangi Shaswat, Advocates

versus

VAIBHAV S PINGALE & ORS. .....Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% 13.11.2025

C. HARI SHANKAR, J.

1. This appeal under Section 13 of the Commercial Courts Act, 2015 is directed against the following order passed by the learned District Judge (Commercial Court)-01, Saket.

> "03.11.2025
>
> Present: Counsel for plaintiff, Sh. Naseem and Sh. Rahul Singh.
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> Submission heard. Record perused.
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> Summons of the suit as well as notice to the application U/o 39 Rule 1 and 2 CPC be issued to the defendants on taking steps within a week by all permissible modes including electronic mode, returnable by 19.11.2025. For service to be affected through electronic mode i.e. Whats App, e-mail address etc. of defendant, affidavit with regard to correctness of the same, be filed on record.

Further, it be specifically mentioned on the summons that this is a commercial suit and the defendant is required to file the written statement alongwith statement of truth and affidavit of admission and denial of documents within the mandatory period of 30 days of service."

2. We have heard Mr. Anshuman Upadhyay, learned counsel for the appellants at length on whether such an order would be appealable.

3. Mr. Upadhyay has, with all the persuasion at his command, attempted to convince us that the answer to the query has to be in the affirmative. He has placed reliance on the judgment of the Supreme Court in **A. Venkatasubbiah Naidu v S. Chellappan and Ors**[1]. to convince us that an order either granting or refusing an application for interim injunction under Order XXXIX Rules 1[2] and 2[3] of the Code of Civil Procedure, 1908[4] is relatable to the said provisions and therefore, an appeal would lie against the said order.

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[1] **(2000) 7 SCC 695**

[2] **1. Cases in which temporary injunction may be granted. —** 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 by 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 dispossession 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.

[3] **2. Injunction to restrain repetition or continuance of breach**.—

(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

[4] "CPC", hereinafter

4. Appeals under Section 13(1-A)[5] of the Commercial Courts Act lie against the orders passed under Section 37 of the Arbitration and Conciliation Act, 1996[6] or under Order XLIII Rule 1 of the CPC.

5. We are not concerned, in the present case, with the 1996 Act.

6. In order to satisfy us on the maintainability of the present appeal, therefore, the appellants would have to pigeonhole the order under challenge within one of the clauses of Order XLIII Rule 1 of the CPC. Mr. Upadhyay's contention is that the impugned order is appealable as it has been passed under Order XLIII Rule 1(r)[7] of the CPC.

7. Order XLIII Rule 1 (r) of the CPC covers orders passed under Order XXXIX Rules 1, 2, 2A, 4 or 10 of the CPC.

8. Mr. Upadhyay's contention, predicated, *inter alia*, on the judgment of the Supreme court in **A. Venkatasubbiah Naidu** is that the impugned order by merely issuing notice on the petitioner's application under Order XXXIX of the CPC has, effectively rejected the petitioner's prayer for *ex parte ad interim* relief and that such a

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[5] (1-A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and Section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]

[6] "1996 Act", hereinafter

[7] **1. Appeals from orders.—**An appeal shall lie from the following orders under the provisions of Section 104, namely:—

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(*r*) an Order under Rule 1, Rule 2, [Rule 2-A], Rule 4 or Rule 10 of Order XXXIX;

rejection would necessarily be relatable to Order XXXIX Rule 1 of the CPC. Ergo, he submits that the order would be one of the orders envisaged under Order XLIII Rule 1(r) of the CPC and would, therefore, be appealable under Section 13 of the Commercial Courts Act.

9. The issue stands covered against the appellants by the judgments of Division Benches of this Court in **Sahil Singh Maniktala v Harpreet Singh**[8], and **Nisha Raj v Pratap K. Kaula**[9], from which the relevant paragraphs may be culled out thus:

> From **Sahil Singh Maniktala**
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> "7. The grant of a notice in an application for ad interim relief is covered by provisions of Order 39 Rule 3[10] CPC. This, however, is not appealable under Order 43 Rule 1(r) under which an appeal lies only against an order passed under Order 39 Rule 1, 2, 2A, 4 and Rule 10. Rule 3 is specifically excluded and since no appeal is provided against an order under this rule, no appeal would consequently lie against the grant of notice in an ancillary application seeking temporary injunction.
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> 8. Such an appeal would also not lie under Section 10 of the Delhi High Court Act, 1966 which provides for an appeal to the Division Bench of the High Court against any judgment passed by the learned Single Judge while exercising original jurisdiction because an order issuing notice could not be said to be a judgment within the meaning of that word. The word "judgment" as is well established refers to adjudication which has the concept of finality attached to it and has also a direct and immediate adverse effect on the party. Every order, thus, is not a judgment, though there may be interlocutory orders which may have trappings and characteristics of a judgment and yet may not be covered by the provisions of Order 43 Rule (1)(a) to (w).

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[8] **118 (2005) DLT 350 (DB)**
[9] **57 (1995) DLT 490 (DB)**
[10] **3. 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:

9. An appeal would surely lie against such orders, even though they are interim and interlocutory in nature and in respect of which right of appeal is not created under the CPC, because being a judgment these would be covered under Section 10 of the Delhi High Court Act. The same would hold good under Letters Patent also which again provides for the requirement of "judgment"."

From **Nisha Raj**

"5. In the present, case before us we are not, however, concerned with procedural orders at the trial. We are here concerned with an interlocutory application under Order 39 Rule 1 CPC by which the property or rights claimed in the suit are sought to be protected pending suit so that in case the suit is decreed in favour of the party claiming interim relief, the decree, can be effective and is not rendered otiose. In other words, matters arising under Order 39 Rule 1 are not procedural steps, in the trial. The test here is, as stated in **Shah Babulal's case**[11] [para 112(3)], whether the order is an 'intermediary' or 'interlucotry judgment' which affects a valuable right of the property. Before such an order can be a judgment, the adverse effect on the party must be direct and immediate, rather than indirect or remote, as stated by the Supreme Court in the same case.

If that be test laid down by the Supreme Court in **Shah Babulal's case** in 1981, the question is whether an order of the trial Judge ordering 'notice' under Order 39 Rule 3 can be a 'judgment'. A Division Bench of the Andhra Pradesh High Court consisting of Alladi Kuppuswami (as he then was) and P.A. Choudhary J. held in **Dr. Gouri Shankar v Dy. Commissioner. Municipal Corporation of Hyderabad**[12] that an order of the learned Single Judge ordering 'notice' is not a 'judgment' under clause 15 of the Letters Patent. The same view was held by another Division Bench consisting of P. A. Choudhary and K. Ramaswamy, J; (as he then was) in **K. Subba Rao v P. Nagaratoamma**[13]. The Bench held:

> "Clearly, ordering, notice does not involve any adjudication of the rights of the parties, nor does it put an end to the proceedings.....". Ordering of notice can be nothing more than a step towards obtaining the final adjudication. Even where it might cause prejudice, it cannot be described as a judgment. It is a step in aid and such a step in aid is not a judgment within the meaning of Letters Patent."

[11] **Shah Babulal Khimji v Jayaben D. Kania, (1981) 4 SCC 8**
[12] **1980 (1)ALT 5 (NRC)**
[13] **AIR 1982 AP 443**

We shall next deal with certain further observations made in the last mentioned case. It was argued there that:

> "it is the substances of an order that must be looked into and not the form and that even ordering of notice can, at times amount to a rejection of the petitioner's prayer for relief."

On that basis, it was held. that an order of the learned Single Judge, ordering 'notice' is not a 'judgment'. We are in entire agreement with this view, subject to the following exceptional class of cases. In the last case, the Andhra Pradesh High Court referred to another aspect relating to the possibility or otherwise of a retrieval or restitution, as follows:

> "There is scope for retrieving of the situation and there is scope for restituting. That would exclude the possibility of any adverse effects being produced. In our view, this substance theory of adverse effects has, therefore, no substance."

6. We want to explain this aspect a little more in detail which concerns some rare situations. *There may be cases where there is absolutely no scope of retrieving the situation or no scope for restitution. Such cases, according to us, may be rarest of the rare but in those cases an order ordering 'notice' may indeed be a 'final' order. We are having in mind cases where a person is being deported to a foreign country and seeks an injunction and where in such a situation, the Court orders 'notice'. Again, goods might be in the process of being exported beyond the territorial waters. In these cases the Court may not be having any power to restitute. Take again a case of execution by a death sentence and an affected party seeking an injunction and the court ordering 'notice'. Here too, restitution is impossible. There could also be other rare cases falling in this category. We are mentioning these rare category of cases for here the impact of the order is not only 'direct' or 'immediate' as stated in* **Shah Babulal's case** *but there is no chance of any kind of restitution or retrieval. Nor is case of monetary compensation help. In this class of cases, the order issuing 'notice' in our opinion clearly amounts to a total refusal of relief and such orders alone could be appealable as 'judgments'. Here we may make it clear that cases of demolition of buildings do not fall in this category. There monetary compensation is possible. Subject to the above reservation applicable only in very rare cases, we are in entire agreement with the decision of the Andhra Pradesh High Court.*

> 7. 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 or 151 CPC while in other cases, compensation can be paid. For example if a 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.
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> 8. We are therefore of the view that in the present case, that the order of the learned Judge ordering 'notice' under Order 43 Rule 1(r) 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."
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> (Emphasis supplied)

10. We are in respectful agreement with the above decisions.

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 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.

16. Mr. Upadhyay also sought in concluding to advance a faint submission that the use of the words "submissions heard" in the impugned order would make the impugned order appealable.

17. We fail to understand how this can be so. This submission is rejected.

18. As such, for the aforesaid reasons, and also following the judgments of the earlier Division Benches in **Sahil Singh Maniktala** and **Nisha Raj**, which are binding on us as a Coordinate Division Bench, we decline to entertain this appeal, which is not maintainable in terms of Section 13 of the Commercial Courts Act.

19. The appeal is, accordingly, dismissed as not maintainable without entering into merits.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

NOVEMBER 13, 2025/yg