Reserved on : 29.07.2025
Pronounced on : 01.08.2025

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 01ST DAY OF AUGUST, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.22528 OF 2025(GM - CPC)

BETWEEN:

KUDLA RAMPAGE
REPRESENTED BY ITS EDITOR-IN-CHIEF,
MR. AJAY
S/O BALAKRISHNA POOJARI
AGED ABOUT 32 YEARS
HAVING ITS REGISTERED ADDRESS AT:
KODIALBAIL, MANGALORE,
DAKSHINA KANNADA DISTRICT – 575 003.

... PETITIONER

(BY SRI A.VELAN, ADVOCATE A/W
SRI VISHWAS N.B., ADVOCATE)

AND:

1 . SRI HARSHENDRA KUMAR D.,
S/O LATE RATHNAVARMA HEGGADE,
AGED ABOUT 70 YEARS,
R/AT APARTMENT BEARING T.NO.16
CDE BLOCK, GOLDEN ORCHID APARTMENT,

KASTURBA ROAD, SHANTALA NAGAR,
ASHOK NAGAR,
BENGALURU – 560 001.

2 . GOOGLE LLC
HAVING ITS OFFICE AT:
NO.3, 3RD , 4TH AND 5TH FLOOR
RMZ INFINITY TOWER-E,
OLD MADRAS ROAD,
SWAMI VIVEKANANDA ROAD,
BENGALURU – 560 08.

3 . META PLATFORMS INC.
REPRESENTING FACEBOOK AND
INSTAGRAM PLATFORMS,
HAVING ITS OFFICE AT:
UNIT NOS. 1203 AND 1204,
LEVEL-12, BUILDING NO.20,
RAHEJA MINDSPACE, CYBERABAD,
MADHAPUR,
HITECH CITY, HYDERABAD,
KURNOOL – 500 081.

4 . X-CORP (FORMERLY TWITTER INC.)
HAVING ITS REGISTERED OFFICE AT:
C-20, G BLOCK, NEAR MCA
BANDRA KURLA COMPLEX,
BANDRA (E), MUMBAI,
MUMBAI CITY – 400 013.

5 . REDDIT, INC.
HAVING ITS ADDRESS AT:
548 MARKET ST. NO16093,
SAN FRANCISCO,
CALIFORNIA 94104, USA.

6 . WHATSAPP LLC
HEAD OFFICE NO.1601,

WILLOW ROAD, MENLO PARK,
CALIFORNIA - 94025,
UNITED STATES OF AMERICA.

... RESPONDENTS

(BY SRI UDAYA HOLLA, SR.ADVOCATE A/W
SRI S.RAJASHEKAR, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO (A) ISSUE A WRIT IN THE NATURE OF CERTIORARI, OR ANY OTHER APPROPRIATE WRIT, ORDER, OR DIRECTION, CALLING FOR THE ENTIRE RECORDS PERTAINING TO O.S. NO. 5185/2025 FROM THE COURT OF THE LEARNED X ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, AND UPON PERUSING THE SAME, BE PLEASED TO QUASH AND SET ASIDE THE IMPUGNED EX-PARTE AD-INTERIM INJUNCTION ORDER DATED 18.07.2025 PRODUCED AT ANNEXURE-D AT IN ITS ENTIRETY, DECLARING IT TO BE ILLEGAL, ARBITRARY, UNCONSTITUTIONAL, VIOLATIVE OF FUNDAMENTAL RIGHTS, PASSED IN BREACH OF THE PRINCIPLES OF NATURAL JUSTICE, PROCEDURALLY FLAWED, AND A PRODUCT OF A NON-APPLICATION OF JUDICIAL MIND; (B) ISSUE A WRIT IN THE NATURE OF PROHIBITION, OR ANY OTHER APPROPRIATE WRIT, ORDER, OR DIRECTION, PERMANENTLY RESTRAINING THE RESPONDENTS, THEIR SERVANTS, AGENTS, OR ANY PERSON ACTING UNDER THEIR AUTHORITY, FROM TAKING ANY COERCIVE OR PRECIPITATIVE STEPS TO ENFORCE OR IMPLEMENT THE IMPUGNED ORDER DATED 18.07.2025, WHICH IMPOSES AN UNCONSTITUTIONAL PRIOR RESTRAINT ON SPEECH AND CONSTITUTES AN ABUSE OF THE JUDICIAL PROCESS AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 29.07.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner is before this Court calling in question an order dated 18-07-2025 passed by the X Additional City Civil and Sessions Judge, Bengaluru on I.A.Nos.I and II in O.S.No.5185 of 2025 and has sought other consequential reliefs.

2. **Factual prelude**: -

The genesis of the *lis* lies in a complaint that shook the public conscience, a former sanitation worker alleged that, he was compelled under mortal threat to clandestinely bury a multitude of human remains over a span of nearly two decades within the sacred precincts of Dharmasthala. The period was between 1995 to 2014. The plaintive narrated extended to allegations of rape and murder, implicating members linked to the administration of the temple, a institution long held in reverence by devotees and public alike. This becomes a crime in Crime No.39 of 2025 registered at

Dharmasthala Police Station for offences punishable under Sections 211(a) of the Bharatiya Nyaya Sanhita ('BNS'), 2023.

2.1. The petitioner, in his capacity as a digital media journalist, undertook reportage of these disturbing developments. Subsequently, another complaint surfaced from a former stenographer one Sujatha Bhat working at the CBI, alleging that her daughter Ananya Bhat had mysteriously disappeared from the vicinity of the temple premises in 2003. The allegation made was laced with sinister undertones.

2.2. In response, the plaintiff/1st respondent institutes O.S.No.5185 of 2025 not against one or two, but against a staggering 338 defendants alleging defamation and seeking to muzzle any further dissemination of the allegations found in the complaint or proceedings of investigation. **Simultaneously an application under Order XXXIX Rule 1 and 2 CPC is moved, culminating on the very same day, wherein the impugned ex parte interim order, a sweeping injunction restraining publication of any defamatory content against the plaintiffs,**

its family, the temple administration and its affiliated institutions and further directing the removal and de-indexing of over 8842 web links, is passed. It is order that the petitioner-defendant No.66 in the suit becomes aggrieved of. The aftermath of the complaint is, that on 19-07-2025, the Government of Karnataka constituted a Special Investigating Team to investigate into the crime in FIR No.39 of 2025, based upon huge furor in the media or the public, as the case may be. It is the order dated 18-07-2025 which has driven the petitioner/defendant No.66 to this Court in the subject petition.

3. Heard Sri A.Velan, learned counsel appearing for the petitioner and Sri Udaya Holla, learned senior counsel appearing for caveator/respondent No.1.

4. The learned counsel Sri A.Velan appearing for the petitioner would vehemently contend that interim injunction in the nature of a mandatory injunction, that is doubtful to be granted even at the final hearing stage of the suit, is granted at the interlocutory stage. It is in blatant violation of Order XXXIX Rule

3(a) of the CPC. The order contains bereft of reasons for passing a drastic gag order on the media of taking down URLs and to stop making any statements against the family which runs Dharmasthala temple. He would submit that it is a virtual death sentence on the media even before hearing the petitioner or any other person. Who is who of the media have all been directed to take down and stop airing any content about the family that runs the temple. It is his submission that the order, on the face of it is unsustainable, as it constitutes an unconstitutional restraint on freedom of speech and expression and is in direct violation of Article 19(1)(a) of the Constitution of India. The order does not contain any reason for even passing a John Doe order, which extends prohibition to undefined and potentially infinite class of future speakers creating a perpetual and boundless gag order on a matter involving public importance. The learned counsel would submit that the order, on the face of it being illegal, be set aside and the concerned Court be directed to hear the parties and pass orders on the application.

5. Per contra, the learned senior counsel Sri Udaya Holla representing the 1st respondent/plaintiff would project a threshold

bar of maintainability of the subject petition, on the score that an appeal under Order XLIII Rule 1 CPC should be preferred before the Court hearing Miscellaneous First Appeal and the subject petition filed under Article 227 of the Constitution of India is not entertainable. On merit of the matter as well, the learned senior counsel would take this Court through the statements made by the petitioner which are derogatory and not once but twice this Court has directed banning of the channel of the petitioner, but he opens new channel and goes on printing derogatory statements upon all and sundry including the plaintiff and his family members.

5.1. Learned senior counsel would submit that the crime is being investigated into. Even before the investigation, the petitioner is printing such material that would hold the plaintiff guilty. Therefore, the defamatory content that the petitioner and others are freely printing must be stopped. It is, therefore, the concerned Court has passed the impugned order, which is in consonance with law. He would further contend that few of the respondents have filed applications for vacating the interim order before the concerned Court. The matter was listed on 29-07-2025 and is

adjourned to a different date. The petitioner also can avail of the same remedy of filing an application under Order XXXIX Rule 4 CPC seeking vacation of the interim order. Having not done that, the petitioner cannot maintain the subject petition.

6. The learned counsel for the petitioner would join issue to contend that an appeal would have been maintainable if the order passed by the concerned Court was after hearing both the parties. What is challenged is an ex parte order. What is sought is interim injunction, but what is granted is interim mandatory injunction. It is in blatant violation of Order XXXIX Rule 3 CPC, as it does not contain any reason for granting such a drastic order. He would submit that if on hearing the parties the Court were to pass the order, he would undoubtedly file an appeal as necessary in law on the rights of the petitioner and several others. He would further contend that what is being reported is what is in public domain. Complaint is filed, FIR pursuant to the complaint is registered and investigation being conducted by the Special Investigating Team are all matters of public importance. They are public documents. If the petitioner is speaking about public document, it is

ununderstandable as to how it would become defamatory. He would seek the order to be set aside on the aforesaid grounds.

7. I have bestowed my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts are borne out from the pleadings. A suit is instituted in O.S.No.5185 of 2025. The prayer in the suit is as follows:

"…. …. ….

94. WHEREFORE, the plaintiff prays that this Hon'ble Court may kindly be pleased to:

(a) Pass a decree of mandatory injunction directing defendant Nos. 1 to 338 to remove/delete/deindex unverified, false, frivolous, baseless and vexatious video contents made, aired, shared, uploaded, transmitted, forwarded detailed in Schedule hereinbelow and the identified URLs/Weblinks which contain or purport to contain the at issue content and not to upload any at issue contents in future as stated above in respect of Crime No.39 of 2025 or any other similar issues.

(b) Pass a decree for permanent prohibitory injunction restraining the Defendant Nos. 1 to 338 their men, servants, agents, administrators assignees etc. or any persons claiming through or under them from making false, baseless and reckless and defamatory allegations against the plaintiff, Shri Manjunathaswamy Temple, Sri

Kshetra Dharmasthala, the institutions run by the Kshetra/ Educational Society, the organizations established by Dharmasthala Temple, elder brother of plaintiff Dr. D.Veerendra Heggade and his family members or any such other names to link him and his family members on the basis of false, fabricated and concocted stories prepared or created by them in respect of Crime No.39 of 2025 of Dharmasthala Police Station or any other similar issues.

(c) Pass a Decree for permanent prohibitory injunction restraining the Defendant Nos. 1 to 338 from making/telecasting/publishing/circulating/transmitting any false, baseless, reckless and defamatory allegations against the plaintiff, Shri Manjunathaswamy Temple, Sri Kshetra Dharmasthala, the Institutions run by the Kshetra/ Educational Society, the organizations established by Dharmasthala Temple, elder brother of plaintiff Dr. D. Veerendra Heggade and his family members on the basis of false, fabricated and concocted stories prepared or edited by defendant Nos.1 to 329 in respect of Crime No.39 of 2025 of Dharmasthala Police station or any other similar issues.

(d) Pass a decree of permanent injunction restraining the Defendant Nos. 1 to 338 their men, servants, agents, administrators, assignees, etc. or any other persons claiming through or under them from uploading, forwarding, sharing and transmitting in any other media on the strength of concocted, fabricated, created news items or any similar content, any statements or news reports which are defamatory in nature against the plaintiff Shri Manjunathaswamy Temple, Sri Kshetra Dharmasthala, the Institutions run by the Kshetra/Educational Society, the organizations established by Dharmasthala Temple, elder brother of plaintiff Dr. D. Veerendra Heggade and his family members in respect of Crime No.39 of 2025 of Dharmasthala Police station or any other similar issues.

(e) Grant such other and further reliefs as this Hon'ble Court deems fit and proper under."

(Emphasis added)

The prayer sought is to pass a decree of mandatory injunction directing defendants 1 to 338 to remove/delete/deindex certain URLs/weblinks and not to upload any contents in respect of Crime No.39 of 2025. Along with the plaint an application under Order XXXIX Rule 1 and 2 CPC is preferred. The affidavit filed in support of the application reads as follows:

"AFFIDAVIT

I, Rakshith Kumar, S/o Sri Yuvaraj Jain, Aged about 40 years, the S.P.A. Holder of the complainant, R/at GummadaBangara Mane, Thumbe Gudde, Naravi, Belthangady Taluk, D.K. District-574 109, to-day at Bengaluru, do hereby solemnly affirm and state on oath as follows:-

1. I submit that I am the SPA Holder of the Plaintiff in the above suit and I am well acquainted with the facts of the case and as such I am swearing this affidavit.

2. I submit that the plaintiff has filed the above suit seeking a decree of mandatory injunction directing defendant Nos. 1 to 338 to remove/delete/deindex unverified, false, frivolous, baseless and vexatious video contents made, aired, shared, uploaded, transmitted, forwarded detailed in Schedule hereinbelow and the identified URLs/Weblinks which contain or purport to contain the At issue content and not to upload any at issue contents in future as stated above in respect of Crime No.39 of 2025 or any other similar issues; Pass a decree for permanent prohibitory injunction restraining the Defendant Nos. 1 to 338 their men, servants, agents, administrators, assignees etc. or any persons claiming through or under them from making false, baseless and reckless allegations against the plaintiff, Shri Manjunathaswamy Temple, Sri Kshetra Dharmasthala, the institutions run by the Kshetra/educational Society, the organizations established by Dharmasthala Temple, elder brother of plaintiff Dr. D.Veerendra Heggade and his

family members or any such other names to link him and his family members on the basis of false, fabricated and concocted stories prepared or created by them in respect of Crime No.39 of 2025 or any other similar issues; Pass a Decree for permanent prohibitory injunction restraining the defendant Nos. 1 to 338 from making / telecasting / publishing / circulating / transmitting any false, baseless, reckless allegations against the plaintiff, Shri Manjunathaswamy Temple, Sri Kshetra Dharmasthala, the institutions run by the Kshetra/Educational Society, the organizations established by Dharmasthala Temple, elder brother of plaintiff Dr. D. Veerendra Heggade and his family members on the basis of false, fabricated and concocted stores prepared or edited by defendant Nos. 1 to 338 in respect of Crime No.39 of 2025 or any other similar issues: Pass a decree of permanent injunction restraining the defendant Nos. 1 to 338 their men, servants, agents, administrators, assignees, etc. or any other persons claiming through or under them from uploading, forwarding, sharing and transmitting in any other media on the strength of concocted, fabricated, created news items or any similar content, any statements or news reports which are defamatory in nature against plaintiff, Shri Manjunathaswamy Temple, Sri Kshetra Dharmasthala, the institutions run by the Kshetra/Educational Society, the organizations established by Dharmasthala Temple, elder brother of plaintiff Dr. D. Veerendra Heggade and his family members in respect of Crime No.39 of 2025 of Dharmasthala Police Station or any other similar issues: and for such other and further reliefs as this Hon'ble Court deems fit and proper under. I submit that the averments made in the memorandum of plaint may kindly be read as part and parcel of this affidavit to avoid repetition of facts.

3. I further submit that the defendant Nos. 1 to 338 are making false allegations against the plaintiff, his elder and his family members, the temple and the institutions run by them and they will continue the same backed by a false video trying to tarnish the image, reputation, goodwill, prominence and publicity. It is well established principles of law that "A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property". I further submit that the reputation is a part of fundamental right and personal liberty as guaranteed

under Article 21 of India Constitution. Every person has got right to defend his reputation being criticized.

4. I further submit that in view of the allegations made by the defendant No.1 to 338 reputation and of the plaintiff, his elder brother and his family members, the temple and the institutions run by them is prejudicially affected. The Defendant Nos. 1 to 338 are acting with mala fide due to some vendetta against the plaintiff, his elder and his family members, the temple and the institutions run by them and are trying to defame us. Hence it is just and necessary to restrain said defendant Nos. 1 to 338 from making false, baseless reckless allegations against the plaintiff, his elder and his family members, the temple and the institutions run by them, the news segment being threatened to be aired and restrain the Defendant Nos. 1 to 338 from publishing and printing the defamatory remarks and allegations against us on the basis of the concocted, fabricated and manipulated stories. I submit that the invaluable good reputation of the plaintiff, his elder and his family members, the temple and the institutions run by them will be affected if any reckless allegations are made against them without any basis. The Defendant Nos. 1 to 338 are trying to upload false, baseless and reckless video contents which are defamatory in nature and if the same is published, the same will cause permanent irreparable damage to the plaintiff, his elder and his family members, the temple and the institutions run by them. I submit that unfortunately, there is no yardstick and effective controlling authority in the matter of publishing false, baseless and reckless video contents. There is need of balancing the freedom of speech and expression and right to reputation. The sole object of the Defendant Nos. 1 to 338 is to humiliate the plaintiff, his elder and his family members, the temple and the institutions run by them and make unlawful gains in the eye of general public. There is a need for direction by this Hon'ble Court from abuse of freedom of speech and control from uploading false, frivolous and reckless defamatory video contents. I further submit that if the defendants are not restrained from making, telecasting, publishing, circulating, forwarding, sharing, uploading or transmitting the videos of making reckless, frivolous, vexatious and baseless allegations against the entire system, the same would cause irreparable injury, loss and hardship to the plaintiff, his elder and his family members, the temple and the institutions run by them. If the

defendants are allowed to continue with their unethical work, the same would lead to multiplicity of proceedings and the same would dent the reputation of the entire system. I further submit that the defendant Nos. 1 to 338 solely with an intention to overreach the order passed by this Hon'ble Court and the Hon'ble High Court of Karnataka are making allegations against the plaintiff, his elder brother and his family members, the temple and the institutions run by them at the behest of one Mr. Mahesh Shetty Thimmarody and Girish Mattannanavar and other vested interested persons who are inimical towards Dr. D.Veerendra Heggade for no reason out of vengeance and vendetta.

5. I further submit that though specific orders are passed by this Hon'ble Court and by the Hon'ble High Court of Karnataka, in order to overreach the orders passed by this Hon'ble Court as well as the Hon'ble High Court of Karnataka, some of the unknown persons or parties are cropping up and started to make allegations against the plaintiff, his elder and his family members, the temple and the institutions run by them. The orders passed by this Hon'ble Court are not being adhered to by the vested interested persons by continuously violating the Court orders. I have no other option but to seek for John Doe/Ashok Kumar order so as to protect the right of plaintiff. I submit that I believe that rights of plaintiff are being infringed by unknown persons solely with an intention to defeat the orders passed by the Hon'ble Courts. In spite of passing of the injunction orders, the defendant Nos.1 to 338 are trying to infringe rights of plaintiff and cause irreparable harm and injury as stated supra. I submit that the defendant Nos. 1 to 338 and other unknown entities and persons have been continuously making an attempt to cause dent to the plaintiff, his elder brother and his family members, the temple and the institutions run by them. The documents produced would clearly show that all the subsequent videos and comments and contents are made pursuant to the orders passed by this Hon'ble Court in order to overreach the orders solely with an intention to overreach the orders of the Courts of law. I submit that such conduct on the part of the unknown persons is contrary to the orders passed by this Hon'ble Court. In

that view of the matter, it is just and necessary to pass a John Doe order so as to protect and adhere to the orders passed by this Hon'ble Court. I further submit that a John Doe order is an order passed by a Court against the world at large. A John Doe order is a type of legal order that allows a person or entity to take legal action against an unknown party or parties.

6. I further submit that if the unidentified defendant No.339 are unaware of the orders or unwilling to abide by the Court order and continue with the said violation, no remedy if left with plaintiff and the entire process of obtaining such orders go waste leaving me without any benefit and losing its entire impact. Granting of John Doe order would avoid multiplicity of proceedings. I submit that in the present conditions going to courts again and again is not the most feasible option, the John Doe/Ashok Kumar order with its prospective application helps individuals enforce their rights more conveniently and efficiently.

7. I submit that in the instant case, vested interested persons are continuing to make false, frivolous, baseless and vexatious video contents against the plaintiff, his elder and his family members, the temple and the institutions run by them resulting in causing loss to reputation and integrity of the plaintiff. I submit that in view of the facts and circumstances, it is just and necessary to grant John Doe/Ashok Kumar order in my favour against the unknown entities and therefore, the unknown persons or entities have been arrayed as defendant No.339 as John Doe/Ashok Kumar in the instant suit.

8. I further submit that under the peculiar facts and circumstances of the case, this Hon'ble Court may kindly be pleased to invoke the inherent powers under Section 151 of CPC to evolve a fair and reasonable procedure to meet the exigencies of the present situation. I further submit that a Court of Equity is free to fashion whatever remedies will adequately protect the rights of the parties before it. In the light of above narrated facts and circumstances, it is just and necessary to protect the

interests of the plaintiff and so as to meet the ends of justice to pass John Doe/Ashok Kumar order.

9. I submit that the defendant No.339 are unknown identities who are continuously and unauthorizedly and illegally making videos and uploading the same in the social media platforms. In that view of the matter, it is just and necessary to pass John Doe/Ashok Kumar orders. I further submit that I have approached this Hon'ble Court seeking protection of valuable rights against unwarranted unauthorized and illegal actions of the defendant Nos. 1 to 338 as well as Doe/Ashok Kumar arrayed as defendant No.339. I submit that in that view of the matter, it is just and necessary to pass an injunction order against unnamed and undisclosed persons who may be likewise committing breach of the rights of the plaintiff in the similar manner.

10. I submit that the plaintiff has made out a prima facie case for grant of an order of injunction. The balance of convenience is also lies in favour of plaintiff for grant of an order of injunction. If an order of injunction is not granted, irreparable loss, hardship and injury will be caused to the plaintiff. On the other hand if an order of injunction is granted, no prejudice would be caused to the defendants.

WHEREFORE, I pray that this Hon'ble Court may be pleased to grant an order of injunction as prayed for in the accompanying application in the interest of justice and equity."

(Emphasis added)

The Special Power of Attorney holder of the 1st respondent files the affidavit and seeks issuance of gag order. If the prayer that is sought under Order XXXIX Rules 1 and 2 in the affidavit quoted

herein and the prayer in the plaint are seen, the effect of it is verbatim similar, though it may be worded slightly different.

9. The plaint was presented on 18-07-2025. Based upon the aforesaid pleadings in the plaint and the application, order is passed by the concerned Court, which reads as follows:

> **"Interim Orders on I.A.No.I& II**
>
> Heard learned counsel appearing for the plaintiff on I.A.No.I & 2. In I.A.No.1 plaintiff has sought an ex-parte temporary injunction order restraining the defendants or any other persons claiming on behalf of them making, telecasting, publishing, circulating, forwarding, uploading, transmitting, sharing false or defamatory information during the pendency of the suit. In IA-2 plaintiff has sought an ex-parte ad-interim mandatory injunction to direct the defendants to delete/deindex defamatory contents specified in the schedule from their digital media.
>
> **The Court has examined the pleadings and also the documents produced along with the plaint. Court is conscious of the fact that an ex-parte temporary injunction can be granted only in extraordinary cases and under exceptional circumstances.** The Court is also conscious of the fact that Court shall strike a balance between the right to speech and expression guaranteed by the Constitution and also the rights of the persons who alleges defamation. But, as per the case of the plaintiff, this is an exceptional case wherein some Media and Individuals started making false and defamatory allegations against the plaintiff and his family members and also against Sri Manjunathaswamy Temple along with various Institutions run by it without any basis.

The pleading indicates that in respect of a criminal incident of rape and murder taken place on 09.10.2012 allegations are made against the plaintiff, his family members and Institutions for which plaintiff is a Secretary. It was a case registered in crime 250/2012 of Belthangadi PS against one Mr.Santhosh Rao wherein the investigation was handed over to CBI and after investigation, the charge sheet was filed against one Mr.Santhosh Rao, which is stated to have ended in acquittal and even confirmed by the Hon'ble High Court of Karnataka. It is contended by the learned counsel appearing for the plaintiff that the entire allegation made against the plaintiff, the institutions and his family members were proved to be false by investigation conducted by the CBI.

Now it is stated that another FIR is registered in Crime No.39/2025 and pursuant to the registration of this FIR, false, baseless, reckless and defamatory allegations are made against the plaintiff, his family members, the institutions under their charge and the temple also. The copy of the FIR produced before the Court shows that the first informant was a sanitation worker under the Village Panchayath. In the FIR, the first information merely stated that he has buried various dead bodies within the limits of Dharmastala. In the entire FIR, there is no allegation against the plaintiff, his family members or any of the institutions run by the temple administration. It is contended that though there is no allegation against the plaintiff and his family members in the FIR or in the investigation so far made, the defendants are making defamatory and false allegations without any basis and such allegations are seriously affecting the reputation of the plaintiff, his family members and also the temple.

It is also pleaded that there are more than 75 thousand employees under the plaintiff and the institutions for which he is a Secretary. It is further stated that more than 45 thousand students are studying in various schools and colleges administered by the Society in which the plaintiff is a Secretary.

The Court cannot ignore the fact that though the reputation of every citizens is very important, when an allegation is made against the institution, and temple, it

affects wider range of people including the employees and students who are studying in various colleges and schools. Therefore, even a single false and defamatory publication would seriously affect the functioning of the institutions. No doubt the defendants are entitled to prosecute the culprits and they are entitled to take suitable legal recourse if any of the offences are committed. But, the reputation of a person or institution cannot be marred without any basis by making defamatory allegations. It Is contended that defamatory statements are made without any basis. If the defendants are allowed to make such defamatory statements, the damage likely to be caused to the plaintiff, temple and the institutions cannot be quantified. Even if the suit is decreed or an order of injunction is passed after hearing the defendants, the damage likely to be caused in the interregnum period cannot be compensated in any way.

Learned counsel appearing for the plaintiff has also placed reliance of the Hon'ble Supreme Court rendered in the case of Hammad Ahmed v/s Abdul Majeed and others (2019)14 SCC 1 and also Dorab Cawasji Warden v/s Coomi Sorab Warden and others (1990)2 SCC 117 and contended that the URL links through which false, defamatory contents circulated by the defendants already reached one million people and if they are allowed to continue, it would cause further damage on minute to minute basis. In the aforesaid decisions, the Hon'ble Supreme Court has held that ad interim mandatory injunction can be granted if the court is satisfied that withholding of it would prick the conscious of the court and do violence to the sense of justice. This is an exceptional case wherein there are warranting circumstances to pass an exparte ad-interim mandatory injunction directing the defendants to delete and deindex all the defamatory contents as specified in the schedule to the plaint and IA No.2 to prevent further damages.

The court has fully satisfied that the plaintiff has made out a strong prima-facie case for grant of ex-parte orders. Further, the balance of convenience lie in favour of the plaintiff and irreparable loss and hardship would be caused to the plaintiff if an order of ex-parte TI is not

granted. On the other hand, if ex-parte TI is granted, no hardship or inconvenience would be caused to the defendants. The Court has also satisfied that if an ex-parte TI is not granted, the very object of IA No.1 & 2 would be defeated by delay.

Accordingly, the following order is passed:

ORDER

Defendants, their men, officials, anchors, representatives or any persons claiming on behalf of them are restrained from publishing, circulating, forwarding, uploading, transmitting and telecasting any defamatory contents and information against the plaintiff, his family members, institutions run by the family of the plaintiff and Sri Manjunathaswamy temple, Dharmastala either in the digital media including You Tube channels, all social medias or print media of any kind until the next date of hearing.

Further, the defendants are directed by way of ad-interim mandatory injunction to delete/de-index all the defamatory contents and information against the plaintiff, his family members, institutions run by the family of the plaintiff and Sri Manjunathaswamy temple, Dharmastala either in the digital media or print media of any kind until further orders.

The plaintiff shall comply under Order XXXIX Rule 3(a) of CPC. The plaintiff is permitted to comply by forwarding the plaint, IA copies and documents through e-mail and whatsapp. In view of the urgency, the plaintiff is also permitted to forward the uploaded copy of this order to the defendants.

Further, issue John Doe Order as sought in I.A.No.1 & 2.

The plaintiff shall issue a paper publication in two English newspapers and two Kannada newspaper having wide circulation.

Issue T.I order, suit summons and notice on I.A.No.1& 2, returnable by 05.08.2025."

(Emphasis added)

The impugned order, quoted hereinabove, while ostensibly couched as an interim measure, in truth and effect, partakes the character of a final determination. The concerned Court, at the threshold and without the benefit of adversarial hearing, has ventured to grant a sweeping mandatory injunction, a relief which ordinarily ought to await the culmination of the trial, a *caveat*, the observation cannot be construed to be that the competent civil Courts do not have power to grant mandatory injunction, it is only the cautious approach and a reasoned order that is what is expected of a civil Court while granting temporary injunction of the kind that is granted in the case at hand. Not stopping at that, the Court also issues a John Doe – Ashok Kumar order, as sought in the application.

10. **The mandate of the law unequivocally demands that where injunction is granted ex parte, the Court must articulate reasons demonstrating why notice to the opposite**

party would frustrate the very object of the injunction. The case at hand alleges violation of Order XXXIX Rule 3 CPC. Therefore, it becomes necessary to notice Order XXXIX Rules 1 to 4 CPC. They read as follows:

> "**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.
>
> **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.

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:

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.

4. Order for injunction may be discharged, varied or set aside.—Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order:

Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a

> material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interest of justice:
>
> Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party."
>
> (Emphasis supplied)

The fulcrum of the entire *lis* revolves round Order XXXIX Rule 3 CPC. Order XXXIX Rule 3 mandates that before granting injunction, Court to direct notice to the opposite party. The Court shall, in all cases except where it appears that the object of granting injunction would be defeated by the delay, before granting injunction direct notice on the application for the same given to the opposite party. Provided where it is proposed to grant injunction without giving notice on the application to the opposite party, the Court shall record reasons for its opinion that the object of granting injunction would be defeated by delay. Therefore, the crux of the issue is that the Court should record reasons, as to why it is imperative to grant temporary injunction in a case filed for mandatory injunction.

11. What is granted by the Court is quoted hereinabove. While issuing notice, mandatory injunction kind of an order is passed. The postulates of such grant is considered by the Apex Court in the case of **DORAB CAWASJI WARDEN v. COOMI SORAB WARDEN**[1], wherein the Apex Court has held as follows:

> "…. …. ….
>
> **10. The trial court gave an interim mandatory injunction directing respondent 4 not to continue in possession. There could be no doubt that the courts can grant such interlocutory mandatory injunction in certain special circumstances. It would be very useful to refer to some of the English cases which have given some guidelines in granting such injunctions.**
>
> **11.** In *Shepherd Homes Ltd.* v. *Sandham* [(1970) 3 All ER 402: (1970) 3 WLR 348] Megarry J. observed:
>
> > "(*iii*) On motion, as contrasted with the trial, the court was far more reluctant to grant a mandatory injunction; in a normal case the court must, inter alia, feel a high degree of assurance that at the trial it will appear that the injunction was rightly granted; and this was a higher standard than was required for a prohibitory injunction."
>
> **12.** In *Evans Marshall & Co. Ltd.* v. *Bertola SA* [(1973) 1 All ER 992: (1973) 1 WLR 349] the Court of Appeal held that:
>
> > "Although the failure of a plaintiff to show that he had a reasonable prospect of obtaining a permanent injunction at the trial was a factor which would normally weigh heavily against the grant of an interlocutory injunction, it was not a factor which, as a matter of law, precluded its grant;"

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[1] (1990) 2 SCC 117

The case law on the subject was fully considered in the latest judgment in *Films Rover International Ltd.* v. *Cannon Film Sales Ltd.* [(1986) 3 All ER 772], Hoffmann, J. observed in that case: (All ER pp. 780-81)

> "But I think it is important in this area to distinguish between fundamental principles and what are sometimes described as 'guidelines', i.e. useful generalisations about the way to deal with the normal run of cases falling within a particular category. The principal dilemma about the grant of interlocutory injunctions, whether prohibitory or mandatory, is that there is by definition a risk that the court may make the 'wrong' decision, in the sense of granting an injunction to a party who fails to establish his right at the trial (or would fail if there was a trial) or alternatively, in failing to grant an injunction to a party who succeeds (or would succeed) at trial. A fundamental principle is therefore that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been 'wrong' in the sense I have described. The guidelines for the grant of both kinds of interlocutory injunctions are derived from this principle."

Again at page 781 the learned Judge observed:

> "The question of substance is whether the granting of the injunction would carry that higher risk of injustice which is normally associated with the grant of a mandatory injunction. The second point is that in cases in which there can be no dispute about the use of the term 'mandatory' to describe the injunction, the same question of substance will determine whether the case is 'normal' and therefore within the guideline or 'exceptional' and therefore requiring special treatment. If it appears to the court that, exceptionally, the case is one in which withholding a mandatory interlocutory injunction would in fact carry a greater risk of injustice than granting it even though the court does not feel a 'high degree of assurance' about the plaintiff's chances of establishing his right, there cannot be any rational basis for withholding the injunction."

and concluded that: (All ER p.782)

> "These considerations lead me to conclude that the Court of Appeal in *Locabail International Finance Ltd.* v. *Agroexport* [(1986) 1 All ER 901, 906: (1986) 1 WLR

> 657, 664] was not intending to 'fetter the court's discretion by laying down any rules which would have the effect of limiting the flexibility of the remedy', to quote Lord Diplock in the *Cyanamid case* [*American Cyanamid Co.* v. *Ethicon Ltd.*, (1975) 1 All ER 504, 510: 1975 AC 396, 407] . Just as the *Cyanamid* [*American Cyanamid Co.* v. *Ethicon Ltd.*, (1975) 1 All ER 504, 510: 1975 AC 396, 407] guidelines for prohibitory injunctions which require a plaintiff to show no more than an arguable case recognise the existence of exceptions in which more is required (compare *Cayne* v. *Global Natural Resources plc* [(1984) 1 All ER 225]), so the guideline approved for mandatory injunctions in *Locabail* [(1986) 1 All ER 901, 906: (1986) 1 WLR 657, 664] recognises that there may be cases in which less is sufficient."

On the test to be applied in granting mandatory injunctions on interlocutory applications in *Halsbury's Laws of England*, 4th edn., Vol. 24, para 948 it is stated:

> **"A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempts to steal a march on the plaintiff, such as where, on receipt of notice that an injunction is about to be applied for, the defendant hurries on the work in respect of which complaint is made so that when he receives notice of an interim injunction it is completed, a mandatory injunction will be granted on an interlocutory application."**

13. The law in United States is the same and it may be found in 42 *American Jurisprudence* 2d page 745 et seq.

14. As far the cases decided in India we may note the following cases.

15. In one of the earliest cases in *Rasul Karim* v. *PirubhaiAmirbhai* [ILR (1914) 38 Bom 381: 16 Bom LR 288: 24 IC 625] , Beaman, J. was of the view that the courts in India have no power to issue a temporary injunction in a

mandatory form but Shah, J. who constituted a bench in that case did not agree with Beaman, J. in this view. However, in a later Division Bench judgment in *Champsey Bhimji & Co.* v. *Jamna Flour Mills Co. Ltd.* [(1914) 16 Bom LR 566: 28 IC 121] two learned Judges of the Bombay High Court took a different view from Beaman, J. and this view is now the prevailing view in the Bombay High Court. In *M. Kandaswami Chetty* v. *P. Subramania Chetty* [ILR (1918) 41 Mad 208: 1917 MWN 501: 41 IC 384] , a Division Bench of Madras High Court held that courts in India have the power by virtue of Order XXXIX Rule 2 of the Code of Civil Procedure to issue temporary injunctions in a mandatory form and differed from Beaman J.'s view accepting the view in *Champsey Bhimji & Co.* v. *Jamna Flour Mills Co.* [(1914) 16 Bom LR 566: 28 IC 121] In *Israil* v. *Shamser Rahman* [ILR (1914) 41 Cal 436: 18 CWN 176] , **it was held that the High Court was competent to issue an interim injunction in a mandatory form. It was further held in this case that in granting an interim injunction what the court had to determine was whether there was a fair and substantial question to be decided as to what the rights of the parties were and whether the nature and difficulty of the questions was such that it was proper that the injunction should be granted until the time for deciding them should arrive. It was further held that the court should consider as to where the balance of convenience lies and whether it is desirable that the status quo should be maintained. While accepting that it is not possible to say that in no circumstances will the courts in India have any jurisdiction to issue an ad interim injunction of a mandatory character, in *Nandan Pictures Ltd.* v. *Art Pictures Ltd.* [AIR 1956 Cal 428] , a Division Bench was of the view that if the mandatory injunction is granted at all on an interlocutory application it is granted only to restore the status quo and not granted to establish a new state of things differing from the state which existed at the date when the suit was instituted.**

16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the

undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

(Emphasis supplied)

The Apex Court, in the afore-quoted judgment, which is followed even to this day, holds certain parameters to be looked into while granting temporary injunction, which is mandatory in nature. The Apex Court holds that the plaintiff must have a strong case for trial

that is, it shall be of a higher standard than a *prima facie* case normally required for a prohibitory injunction. **The grant or refusal of interlocutory and mandatory injunction shall ultimately rest in sound judicial discretion.**

12. The Apex Court in the case of **MORGAN STANLEY MUTUAL FUND v. KARTICK DAS**[2], has held as follows:

> "…. …. ….
>
> **36.** As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are—
>
> **(*a*) whether irreparable or serious mischief will ensue to the plaintiff;**
>
> **(*b*) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;**
>
> **(*c*) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;**

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[2] (1994) 4 SCC 225

(*d*) the court will consider whether the plaintiff had acquiesced for some time and in such circumstances it will not grant ex parte injunction;

(*e*) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.

(*f*) even if granted, the ex parte injunction would be for a limited period of time.

(*g*) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court.

37. In *United Commercial Bank* v. *Bank of India* [(1981) 2 SCC 766], this Court observed: (SCC pp. 787-88, paras 52-53)

> "No injunction could be granted under Order 39, Rules 1 and 2 of the Code unless the plaintiffs establish that they had a prima facie case, meaning thereby that there was a bona fide contention between the parties or a serious question to be tried. The question that must necessarily 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. It cannot be disputed that if the suit were to be brought by the Bank of India, the High Court would not have granted any injunction as it was bound by the terms of the contract. What could not be done directly cannot be achieved indirectly in a suit brought by the plaintiffs.
>
> Even if there was a serious question to be tried, the High Court had to consider the balance of convenience. We have no doubt that there is no reason to prevent the appellant from recalling the amount of Rs 85,84,456. The fact remains that the payment of Rs 36,52,960 against the first lot of 20 documents made by the appellant to the Bank of India was a payment under reserve while that of Rs 49,31,496 was also made under reserve as well as against the letter of guarantee or indemnity executed by it. A

> payment 'under reserve' is understood in banking transactions to mean that the recipient of money may not deem it as his own but must be prepared to return it on demand. The balance of convenience clearly lies in allowing the normal banking transactions to go forward. Furthermore, the plaintiffs have failed to establish that they would be put to an irreparable loss unless an interim injunction was granted."

38. This Court had occasion to emphasise the need to give reasons before passing ex parte orders of injunction. In *Shiv Kumar Chadha* v. *Municipal Corpn. of Delhi* [(1993) 3 SCC 161, 176], it is stated as under: (SCC pp. 176-77, paras 34-35)

> **"... the court shall 'record the reasons' why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex parte injunction, cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule 3, the procedure prescribed under the proviso has been followed. The party which invokes the jurisdiction of the court for grant of an order of restrain against a party, without affording an opportunity to him of being heard, must satisfy the court about the gravity of the situation and court has to consider briefly these factors in the ex parte order. We are quite conscious of the fact that there are other statutes which contain similar provisions requiring the court or the authority concerned to record reasons before exercising power vested in them. In respect of some of such provisions it has been held that they are required to be complied with but non-compliance therewith will not vitiate the order so passed. But same cannot be said in respect of the proviso to Rule 3 of Order 39. The Parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side, under exceptional circumstances. Such ex parte orders have far-reaching effect, as such a condition has been imposed that court must record reasons before passing such order. If it is held that the compliance with the proviso aforesaid is optional and not obligatory, then the introduction of the proviso by the Parliament shall be a futile exercise**

> **and that part of Rule 3 will be a surplusage for all practical purposes. 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 all. This principle was approved and accepted in well-known cases of *Taylor* v. *Taylor* [(1875) 1 Ch D 426 : 45 LJ Ch 373] , and *Nazir Ahmed* v. *Emperor* [AIR 1936 PC 253(2) : 63 IA 372 : 37 Cri LJ 897] . This Court has also expressed the same view in respect of procedural requirement of the Bombay Tenancy and Agricultural Lands Act in the case of *Ramchandra Keshav Adke* v. *Govind Joti Chavare* [(1975) 1 SCC 559].**
>
> As such whenever a court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an ex parte order is not passed."

13. Following **DORAB CAWASJI WARDEN'**s case the Apex Court in the case of **MOHD. MEHTAB KHAN v. KHUSHNUMA IBRAHIM KHAN**[3], has held as follows:

"…. …. ….W

> **17.** While the bar under Section 6(3) of the SR Act may not apply to the instant case in view of the initial forum in which the suit was filed and the appeal arising from the interim order being under the letters patent issued to the Bombay High Court, as held by a Constitution Bench of this Court in *P.S. Sathappan* v. *Andhra Bank Ltd.* [(2004) 11 SCC 672] , what is ironical is that the correctness of the order passed in respect of the interim entitlement of the parties has reached this Court under Article 136 of the Constitution. Ordinarily and in the

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[3] (2013) 9 SCC 221

normal course, by this time, the suit itself should have been disposed of. Tragically, the logical conclusion to the suit is nowhere in sight and it is on account of the proverbial delays that have plagued the system that interim matters are being contested to the last court with the greatest of vehemence and fervour. Given the ground realities of the situation it is neither feasible nor practical to take the view that interim matters, even though they may be inextricably connected with the merits of the main suit, should always be answered by maintaining a strict neutrality, namely, by a refusal to adjudicate. Such a stance by the courts is neither feasible nor practicable. Courts, therefore, will have to venture to decide interim matters on consideration of issues that are best left for adjudication in the full trial of the suit. **In view of the inherent risk in performing such an exercise which is bound to become delicate in most cases the principles that the courts must follow in this regard are required to be stated in some detail though it must be made clear that such principles cannot be entrapped within any straitjacket formula or any precise laid down norms. The courts must endeavour to find out if interim relief can be granted on consideration of issues other than those involved in the main suit and also whether partial interim relief would satisfy the ends of justice till final disposal of the matter. The consequences of grant of injunction on the defendant if the plaintiff is to lose the suit along with the consequences on the plaintiff where injunction is refused but eventually the suit is decreed has to be carefully weighed and balanced by the court in every given case. Interim reliefs which amount to pre-trial decrees must be avoided wherever possible. Though experience has shown that observations and clarifications to the effect that the findings recorded are prima facie and tentative, meant or intended only for deciding the interim entitlement of the parties have not worked well and interim findings on issues concerning the main suit has had a telling effect in the process of final adjudication it is here that strict exercise of judicial discipline will be of considerable help and assistance. The power of self-correction and comprehension of the orders of superior forums in the proper perspective will go a long way in resolving the dangers inherent in deciding an interim**

matter on issues that may have a close connection with those arising in the main suit.

18. There is yet another dimension to the issues arising in the present appeal. The interim relief granted to the plaintiffs by the appellate Bench of the High Court in the present case is a mandatory direction to hand over possession to the plaintiffs. Grant of mandatory interim relief requires the highest degree of satisfaction of the court; much higher than a case involving grant of prohibitory injunction. It is, indeed, a rare power, the governing principles whereof would hardly require a reiteration inasmuch as the same which had been evolved by this Court in *Dorab Cawasji Warden* v. *Coomi Sorab Warden* [(1990) 2 SCC 117] has come to be firmly embedded in our jurisprudence.

19. Paras 16 and 17 of the judgment in *Dorab Cawasji Warden* [(1990) 2 SCC 117] extracted below, may be usefully remembered in this regard: (SCC pp. 126-27)

> "*16.* The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. **Generally stated these guidelines are:**
>
> **(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.**
>
> **(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.**

> **(3) The balance of convenience is in favour of the one seeking such relief.**
>
> ***17.*** **Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."**
>
> (Emphasis supplied)

The Apex Court, in the latter two judgments would follow the judgment in the case of **DORAB CAWASJI WARDEN** and hold that the factors that should weigh with the Court for grant of ex parte injunction are, whether irreparable or serious mischief will ensue to the plaintiff; whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve; the Court will also consider the time at which the plaintiff first had notice of the act complained, so that the making of improper order against a party in his absence is prevented; the court will consider whether the plaintiff had acquiesced for some time and in such circumstances, it will not grant ex parte injunction; the Court would expect a party applying for ex parte injunction to show

utmost good faith in making the application; even if granted, the ex parte injunction, it would be for a limited period of time; and general principles like *prima facie* case, balance of convenience and irreparable loss should also be considered by the Court.

14. The aforesaid principles are reiterated by the Apex Court in the case of **BLOOMBERG TELEVISION PRODUCTION SERVICES INDIA (P) LIMITED v. ZEE ENTERTAINMENT ENTERPRISES LIMITED**[4], wherein the Apex Court holds as follows:

> "…. …. ….
>
> **5.** In addition to this oft-repeated test, there are also additional factors, which must weigh with courts while granting an ex parte ad interim injunction. Some of these factors were elucidated by a three-Judge Bench of this Court in *Morgan Stanley Mutual Fund* v. *Kartick Das* [*Morgan Stanley Mutual Fund* v. *Kartick Das*, (1994) 4 SCC 225: (1994) 81 Comp Cas 318], in the following terms: (SCC pp. 241-42, para 36)
>
> **"*36*. As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are—**
>
> **(*a*) whether irreparable or serious mischief will ensue to the plaintiff;**

[4] 2024 SCC OnLine SC 426

> **(*b*) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;**
>
> **(*c*) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;**
>
> **(*d*) the court will consider whether the plaintiff had acquiesced for some time and in such circumstances it will not grant ex parte injunction;**
>
> **(*e*) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.**
>
> **(*f*) even if granted, the ex parte injunction would be for a limited period of time.**
>
> **(*g*) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court."**

(Emphasis supplied)

Though the Apex Court in **BLOOMBERG TELEVISION PRODUCTION SERVICES's** case was hearing an appeal filed under Order XLIII Rule 1(r), the observations with regard to ex parte interim injunction would become applicable to the facts of the case.

15. On a blend of the judgments quoted hereinabove, what would unmistakably emerge is **the well-settled tenet of civil**

jurisprudence, that the power to grant mandatory injunctions, particularly of the kind that is granted in the case at hand, should be exercised with judicial circumspection and in rarest of rare cases. The Apex Court, in the afore-quoted judgments, has unequivocally held that such injunctions must be predicated on the gravest of urgencies fortified by compelling reasoned, justification. This is the mandate of order XXXIX Rule 3 of the CPC.

16. Proviso to Order XXXIX Rule 3 of CPC statutorily mandates recording of reasons when notice is dispensed with. Interpretation of Rule 3 need not detain this Court for long or delve deep into the matter. The Apex Court, in the case of **SHIV KUMAR CHADHA v. MUNICIPAL CORPORATION OF DELHI**[5], has held as follows:

"…. …. ….

> **32. 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**

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[5] (1993) 3 SCC 161

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. By the Civil Procedure Code (Amendment) Act, 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...".

33. It has come to our notice that in spite of the aforesaid statutory requirement, the courts have been passing orders of injunction before issuance of notices or hearing the parties against whom such orders are to operate without recording the reasons for passing such orders. It is said that if the reasons for grant of injunction are mentioned, a grievance can be made by the other side that court has prejudged the issues involved in the suit. According to us, this is a misconception about the nature and the scope of interim orders. It need not be pointed out that any opinion expressed in connection with an interlocutory application has no bearing and shall not affect any party, at the stage of the final adjudication. Apart from that now in view of the proviso to Rule 3 aforesaid, there is no scope for any argument. 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.

34. The imperative nature of the proviso has to be judged in the context of Rule 3 of Order 39 of the Code. Before the proviso aforesaid was introduced, Rule 3 said "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". The proviso was introduced to provide a condition, where court proposes to grant an injunction without giving notice of the application to the opposite-party, being of the opinion that the object of granting

injunction itself shall be defeated by delay. The condition so introduced is that the court "shall record the reasons" why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex parte injunction, cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule 3, the procedure prescribed under the proviso has been followed. The party which invokes the jurisdiction of the court for grant of an order of restraint against a party, without affording an opportunity to him of being heard, must satisfy the court about the gravity of the situation and court has to consider briefly these factors in the ex parte order. We are quite conscious of the fact that there are other statutes which contain similar provisions requiring the court or the authority concerned to record reasons before exercising power vested in them. In respect of some of such provisions it has been held that they are required to be complied with but non-compliance therewith will not vitiate the order so passed. But same cannot be said in respect of the proviso to Rule 3 of Order 39. The Parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side, under exceptional circumstances. Such ex parte orders have far-reaching effect, as such a condition has been imposed that court must record reasons before passing such order. If it is held that the compliance with the proviso aforesaid is optional and not obligatory, then the introduction of the proviso by the Parliament shall be a futile exercise and that part of Rule 3 will be a surplusage for all practical purposes. 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 all. This principle was approved and accepted in well-known cases of *Taylor* v. *Taylor* [(1875) 1 Ch D 426: 45 LJ Ch 373] and *Nazir Ahmed* v. *Emperor* [AIR 1936 PC 253 (2): 63 IA 372: 37 Cri LJ 897]. This Court has also expressed the same view in respect of procedural requirement of the Bombay Tenancy and Agricultural Lands Act in the case of *Ramchandra Keshav Adke* v. *Govind Joti Chavare* [(1975) 1 SCC 559: AIR 1975 SC 915].

35. As such whenever a court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an ex parte order is not passed. But any such ex parte order should be in force up to a particular date before which the plaintiff should be required to serve the notice on the defendant concerned. In the *Supreme Court Practice* 1993, Vol. 1, at page 514, reference has been made to the views of the English Courts saying:

> "Ex parte injunctions are for cases of real urgency **where there has been a true impossibility of giving notice of motion….**
>
> **An ex parte injunction should generally be until a certain day, usually the next motion day…."**

36. Accordingly we direct that the application for interim injunction should be considered and disposed of in the following manner:

(*i*) The court should first direct the plaintiff to serve a copy of the application with a copy of the plaint along with relevant documents on the counsel for the Corporation or any competent authority of the Corporation and the order should be passed only after hearing the parties.

(*ii*) If the circumstances of a case so warrant and where the court is of the opinion, that the object of granting the injunction would be defeated by delay, the court should record reasons for its opinion as required by proviso to Rule 3 of Order 39 of the Code, before passing an order for injunction. The court must direct that such order shall operate only for a period of two weeks, during which notice along with copy of the application, plaint and relevant documents should be served on the competent authority or the counsel for the Corporation. Affidavit of service of notice should be filed as provided by proviso to Rule 3 of Order 39

aforesaid. If the Corporation has entered appearance, any such ex parte order of injunction should be extended only after hearing the counsel for the Corporation.

(*iii*) While passing an ex parte order of injunction the court shall direct the plaintiff to give an undertaking that he will not make any further construction upon the premises till the application for injunction is finally heard and disposed of."

(Emphasis supplied)

The Apex Court holds that the power to grant injunction is an extraordinary power and should be exercised taking into consideration the whole gamut of facts. The amendment to the Civil Procedure Code comes about in the year 1976, by adding a proviso to Rule 3, thereby statutorily mandating the concerned Court to record reasons for its opinion. The recording of reasons must be discernible from the order.

17. The learned senior counsel for the plaintiff/1st respondent vehemently argues that the order of the concerned Court is reasoned, as it runs into five pages. **The impugned order though spanning multiple pages, conspicuously lacks the foundational reason required for grant of such extraordinary**

relief. Mere volume cannot substitute judicial evaluation; nor can length masquerade legal necessity. The reasons are discernible when they are recorded in writing in the order, which would depict application of mind, to grant the extraordinary relief. The order may span pages, but spanning pages has not depicted application of mind. **It is application of mind that is required, in a reasoned order, and not application of ink.** A coordinate Bench of this Court in the case of **PARAMVAH STUDIOS PRIVATE LIMITED v. LAHARI RECORDING COMPANY**[6], has held as follows:

"…. …. ….

> **15.** By a plain reading of the impugned order passed by the Trial Court, it is clear that the Trial Court has not followed the procedure as contemplated under the proviso to Rule 3 of Order XXXIX of the Code of Civil Procedure which reads as under:
>
> ***"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:*
>
> *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*

[6] 2017 SCC OnLine Kar. 2302

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,"

(emphasis supplied)

16. The provisions of Order XXXIX Rule 3 proviso of the Code of Civil Procedure clearly depicts that before granting ex-parte temporary injunction, the Trial Court should record the reasons as to why the notice to the defendants has been dispensed with. In the present case, no such reasons are assigned by the Trial Court for dispensation of notice/summons to defendants/petitioners before passing the impugned order which is erroneous and contrary to the provisions of Order XXXIX Rule 3 of the Code of Civil Procedure. The requirement of giving reasons for the opinion of the Court that the object of granting the injunction would be defeated by delay, as laid down in the proviso, is mandatory and if it is not complied with, the order is illegal.

17. The Hon'ble Supreme Court in the case of *Morgan Stanley Mutual Fund* v. *Kartick Das* [(1994) 4 SCC 225.], while considering the principles which govern the grant of exparte injunction by a Court, as follows:

"36. As a principle, ex-parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the Court in the grant of exparte injunction are:—

(a) whether irreparable or serious mischief will ensue to the plaintiff;

(b) whether the refusal of ex-parte injunction would involve greater injustice than the grant of it would involve;

(c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;

(d) the Court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex-parteinjunction;

(e) the Court would expect a party applying for ex-parte injunction to show utmost good faith in making the application.

(f) even if granted, the ex-parte injunction would be for a limited period of time.

(g) General principles like primafacie case, balance of convenience and irreparable loss would also be considered by the Court."

18. The Hon'ble Supreme Court while considering the provisions of Order XXXIX Rule 3 of Code of Civil Procedure in the case of *Shiv Kumar Chadha* v. *Municipal Corporation of Delhi* (supra), at para Nos. 34 and 35 has held as under:

> *"34. The imperative nature of the proviso has to be judged in the context of Rule 3 of Order 39 of the Code. Before the proviso aforesaid was introduced, Rule 3 said "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". The proviso was introduced to provide a condition, where Court proposes to grant an injunction without giving notice of the application to the opposite-party, being of the opinion that the object of granting injunction itself shall be defeated by delay. The condition so introduced is that the Court "shall record the reasons" why an ex-parte order of injunction was being passed in the facts and circumstances*

of a particular case. In this background, the requirement for recording the reasons for grant of exparte injunction, cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule 3, the procedure prescribed under the proviso has been followed. The party which invokes the jurisdiction of the Court for grant of an order of restraint against a party, without affording an opportunity to him of being heard, must satisfy the Court about the gravity of the situation and Court has to consider briefly these factors in the ex-parte order. We are quite conscious of the fact that there are other statutes which contain similar provisions requiring the Court or the authority concerned to record reasons before exercising power vested in them. In respect of some of such provisions it has been held that they are required to be complied with but non-compliance therewith will not vitiate the order so passed. But same cannot be said in respect of the proviso to Rule 3 of Order 39. The Parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side, under exceptional circumstances. Such ex-parte orders have far-reaching effect, as such a condition has been imposed that Court must record reasons before passing such order. If it is held that the compliance with the proviso aforesaid is optional and not obligatory, then the introduction of the proviso by the Parliament shall be a futile exercise and that part of Rule 3 will be a surplusage for all practical purposes. 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 all. This principle was approved and accepted in well-known cases of Taylor *v.* Taylor *and* Nazir Ahmed *v.* Emperor, *This Court has also expressed the same view in respect of procedural requirement of the Bombay Tenancy and Agricultural Lands Act in the case of* Ramchandra Keshav AdkeVgovindjotiChavare.

35. As such whenever a Court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an ex-parte order is not

> *passed. But any such ex parte order should be in force up to a particular date before which the plaintiff should be required to serve the notice on the defendant concerned. In the Supreme Court Practice 1993, Vol. 1, at page 514, reference has been made to the views of the English Courts saying:*
>
> *"Ex-parte injunctions are for cases of real urgency where there has been a true impossibility of giving notice of motion……*
>
> *An ex-parte injunction should generally be until a certain day, usually the next motion day……."*
>
> **19. The defendants (now represented by the Learned Counsel before this Court) are directed to file written statement on or before the next date of hearing i.e., 06.02.2017. For the reasons stated above, the point raised in the present writ petitions is answered in the negative, holding that the impugned Order dated 28.12.2016 passed on I.A. No. 3 is contrary to the mandatory provisions of Order XXXIX Rule 3 proviso of the Code of Civil Procedure."**
>
> (Emphasis supplied)

The issue before the coordinate Bench was concerning Order XXXIX Rule 3 CPC. The coordinate Bench holds that ex parte interim injunction was unsustainable, as there was no reason specified for grant of injunction. There, screening of movie had been stopped.

18. Several High Courts also have considered the purport of Order XXXIX Rule 3 CPC. The High Court of Himachal Pradesh in the

case of **SYNERGY TECHNOLOGIES v. ALVIUM LIFE SCIENCES**[7], has held as follows:

"…. …. ….

> **22. Thus, from the above stated exposition of law, it is clear that though this Court has restrictive and limited jurisdiction to interfere under Article 227 of the Constitution of India, yet even after such restriction, the same can be extended to set right the grave dereliction of duty or flagrant abuse or violation of fundamental principle of law or justice. Such power can also be used in appropriate cases where there is no material to justify the findings or findings are so perverse that no reasonable person can possibly come to a conclusion that a Court has arrived at. Additionally, the aforesaid jurisdiction can also be exercised to ensure that there is no miscarriage of justice.**
>
> **23. Keeping in view the aforesaid dictum in mind, I have no hesitation to say that the present is a fit case for interference by exercise of jurisdiction under Article 227 of the Constitution.**
>
> **24.** Learned trial Court did not afford any of the defendants any opportunity to contest the prayer made in the application bearing CMA No. 168/6 of 2023. Despite the fact that a prayer has been made on behalf of defendant No. 4 to file reply, learned trial Court proceeded to pass the impugned order on the same date. The bare minimum time was not granted to defendant No. 4 to file its reply. On the date of passing of impugned order, the stand of defendant No. 4 to the extent that it was opposing the prayer of the plaintiff in original suit was clearly evident before the learned trial Court. Defendant No. 4 had already been impleaded as defendant No. 4 on its application in which it had clearly been stated that there was a dispute inter se the plaintiff and defendant No. 4 with respect to validity of tenancy claimed by plaintiff.

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[7] 2024 SCC OnLine HP 1367

25. Rule 3, Order 39 of the Code of Civil Procedure 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:

***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."*

26. Thus, it is mandatory for the Court to direct notice of the application filed under Rules 1 and 2 of Order 39 to be given to the opposite party except where it appears to the Court that object of granting injunction would be defeated by delay. The notice mandated under Rule 3 (supra) cannot be a mere formality. It has to be reasonable notice and the opposite party is entitled to make itself response within reasonable period. In the instant case, not only that reasonable time was not afforded to the opposite party to oppose the prayer made in the application for interim relief, learned trial Court

hastened to pass an interim order in mandatory form which in fact is peri-materia to the prayer as made in the main suit. The plaint was instituted on 06.04.2023 and along with the plaint there was no application for interim relief. On 16.06.2023, the application for interim relief was filed and as noticed above, prayer in interim form was also the same as was prayed in the main suit. The impugned order does not record any reason as to what urgency was seen by the learned trial Court in passing the impugned order on the same day on which the application was filed. Thus, there is serious non-compliance of Rule 3, Order 39 of the Code of Civil Procedure and the manner in which learned trial Court has conducted itself definitely is not confirming to the basis principles of judicial procedure and propriety. The impugned order, for the reasons stated hereinabove, cannot be sustained."

(Emphasis supplied)

If the order impugned is considered on the bedrock of the principles laid down by the Apex Court, this Court and other High Court, in all the aforesaid judgments, what would unmistakably emerge is that, the impugned order is unsustainable, as the order passed which has sweeping effect, on all 338 defendants could not have been passed as an interim measure, by an ex parte interim injunction. This is exactly the final relief that is sought in the suit. Therefore, the final relief in the suit, is ostensibly handed over at the interim stage.

19. The learned senior counsel for the 1st respondent has projected that an appeal ought to be preferred and not a petition under Article 227 of the Constitution of India. Since the issue is considered on the touchstone of the principles laid down by the Apex Court as to whether mandatory injunction could be granted at an interim stage, and due to lack of reasons in the order impugned, those reasons would undoubtedly entail entertainment, of the petition under Article 227 of the Constitution of India. Jurisprudence is replete with constitutional Courts all over the nation considering the issue of entertainment of a petition under Article 227 of the Constitution of India, when the order impugned runs afoul of Order XXXIX Rule 3 of the CPC. It becomes apposite to refer to those judgments of the respective High Courts of Madras, Himachal Pradesh and Uttarakhand. The High Court of Madras in the case of **LATHA ILANGOVAN v. USHA RAJARAM**[8] has held as follows:

> "…. …. ….
>
> 9. The Hon'ble Supreme Court in the decision in **Surya Dev Rai Vs. Ram Chander Rai and others**, reported in **2003 (6) SCC 675** considered the nature of jurisdiction under Article 227 of the Constitution of India with reference to the decided cases and held as follows:

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[8]CRP (MD) No.1363 of 2019 decided on 27-09-2019

"22. Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power the High Court has been conferred with certain specific powers by clauses (2) and (3) of Article 227 with which we are not concerned hereat. It is well settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar.

25. Upon a review of decided cases and a survey of the occasions, wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate, revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High

> **Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, maybe, by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court.** In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well."

The circumstances under which the Hon'ble High Court can exercise its extraordinary jurisdiction under Article 227 of the Constitution of India has been summed up in the decision cited supra. The relevant portion is extracted hereunder:

> **"(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.**
>
> **(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: <u>(i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.</u>**

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to a act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English. courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction, the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court

> may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the Court should have made in the facts and circumstances of the case.
>
> Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. Not less than often the High Court would be faced with dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where 'a stitch in time would save nine'. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience ce and practical enriched by judicial wisdom of the Judge."

(emphasis supplied)

10. In the decision in **Kishore Kumar Khaitan Vs. Praveen Kumar Singh** reported in **2006(2) SCALE 304 = (2006) 3 SCC 312)**, the Hon'ble Supreme Court indicated the extent of jurisdiction under Article 227 of the Constitution of India thus:

> **"13. The jurisdiction under Article 227 of the Constitution may be restrictive in the sense that it is to be invoked only to correct errors of Jurisdiction. But when a court asks itself a wrong question or approaches the question in an improper manner, even if it comes to a finding of fact, the said finding of fact cannot be said to be one rendered with jurisdiction and it will still be amenable to correction at the hands of the High Court under Article 227 of the Constitution. <u>The failure to render the necessary</u>**

> **findings to support its order would also be a jurisdictional error liable to correction."**
>
> (emphasis supplied)

11. In the decision in Southern and Rajamani Transport Private Limited v. R.Srinivasan, reported in 2010 (4) C.T.C. 690, this Court has held that the alternative remedy under C.P.C. is not a bar to invoke the jurisdiction under Article 227 of the Constitution of India and the same could be invoked:-

(a) to prevent abuse of process of law;

(b) to prevent miscarriage of justice:

(c) to prevent grave injustice:

(d) to establish both administrative as well as judicial power of High Court.

12. From the above decisions, it is clear that in the ordinary circumstances, when there is an alternative remedy, the Court should not interfere with the ex parte interim order passed by the Court below. However, in exceptional cases, when error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, the High Court may step in to exercise of its supervisory jurisdiction.

13. For better appreciation and understanding, Order 39 Rule 3 of the Civil Procedure Code is extracted hereunder:

> "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:

> [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]" veben so delivered or sent!

14. The above proviso makes it clear that when a Court proposes to grant an interim order of injunction, without giving notice of the application to the opposite party, being of the opinion that the object of granting injunction itself would be defeated by delay, it shall record the reasons as to why an ex parte order of injunction is being passed. Therefore, it is mandatory for a Court to record reasons for granting an ex parte interim order.

15. In the case of **Morgan Stanley Mutual Fund vs. Kartick Das**, **(1994) 4 SCC 225**, the Hon'ble Apex Court has enunciated the principles which govern the grant of ex parte injunction by a Court. The principles which have been laid down are:

> "36. As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are-

(a) whether irreparable or serious mischief will ensue to the plaintiff,

(b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;

(c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;

(d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;

(e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.

(f) even if granted, the ex parte injunction would be for a limited period of time.

(g) General principles like prima facie case balance of convenience and irreparable loss would also be considered by the court."

16. In the T case of **Shiv Kumar Chadha Vs. Municipal Corporation of Delhi and others**, reported in **(1993) 3 SCC 161**, in the matter of grant of ex parte injunction, the Hon'ble Apex Court has held as follows:

34. The imperative nature of the proviso has to be judged in the context of Rule 3 of Order 39 of the Code. Before the proviso aforesaid was introduced, Rule 3 said "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". The proviso was introduced to provide a condition, where court

proposes to grant an injunction without giving notice of the application to the opposite-party, being of the opinion that the object of granting injunction itself shall be defeated by delay. The condition so introduced is that the court "shall record the reasons" why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex parte injunction, cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule 3, the procedure prescribed under the proviso has been followed. The party which invokes the jurisdiction of the court for grant of an order of restraint against a party, without affording an opportunity to him of being heard, must satisfy the court about the gravity of the situation and court has to consider briefly these factors in the ex parte order. We are quite conscious of the fact that there are other statutes which contain similar provisions requiring the court or the authority concerned to record reasons before exercising power vested in them. In respect of some of such provisions it has been held that they are required to be complied with but non-compliance therewith will not vitiate the order so passed. But same cannot be said in respect of the proviso to Rule 3 of Order 39. The Parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side, under exceptional circumstances. Such ex parte orders have far-reaching effect, as such a condition has been imposed that court must record reasons before passing such order. If it is held that the compliance with the proviso aforesaid is optional and not obligatory, then the introduction of the proviso by the Parliament shall be a futile exercise and that part of Rule 3 will be a surplusage for all practical purposes. 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 all. This principle was approved and accepted in well-known cases of Taylor v. Taylor [(1875) 1 Ch D 426 : 45 LJ Ch 373] and Nazir Ahmed v. Emperor [AIR 1936 PC 253 (2) : 63 IA 372 : 37 Cri LJ 897] . This Court has also expressed the same view in respect of procedural requirement of the Bombay Tenancy and Agricultural Lands Act in the case of Ramchandra Keshav Adke v. Govind Joti Chavare [(1975) 1 SCC 559 : AIR 1975 SC 915] .
>
> 35. As such whenever a court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an ex parte order is not passed. But any such ex parte order should be in force up to a particular date before which the plaintiff should be required to serve the notice on the defendant concerned."
>
> (emphasis supplied)

17. When an ex parte interim order came to a challenge on the ground that there was no reason assigned, a learned Single Judge of this Court in an unreported decision in **NLC India Limited, Chennai and another Vs. M/s.SICAL Logistics Limited, Chennai**, (C.R.P.(MD).Nos. 2429 to 2432 of 2018) dated 31.10.2018, has held as follows:

> "14.Since in the very nature of things, the opposite party will be affected, the Court will have to state the reason as to why it is dispensing with the requirement to issue notice in that particular case. Recording reasons is the very soul of nature justice. It is a fundamental postulate of natural justice that no one shall be condemned unheard. No order to the prejudice of a party shall be passed without hearing him. Of course, no Court will pass the final order without serving notice on the opposite party. But, one cannot deny that an interim order also has an impact on the rights of the opposite party. That is why, it is stipulated that even an interim order cannot be passed without notice to

> the opposite party. But, then there can be occasions where insistence on issuance of notice would render the interim application itself infructuous. Therefore, Courts are empowered to pass interim orders on an exparte basis, that is without notice to the other side. But, then, it is a departure from the standard approach. In order to ensure that this power is not abused and that the Court applies its mind, it is insisted that reasons must be recorded as to why passing of an ex parte order is warranted. This is a requirement apart and over the above the triple tests of prima facie case, balance of convenience and irreparable injury.
>
> 15.In this case, the Court below has no where recorded the reasons as to why it did not order notice to the opposite party before granting interim relief. The Court below has not stated as to why it felt constrained to grant ex parte relief. When there is a departure from the general approach, the reasons must be set out justifying such a departure. Reasons are the only key to unlocking the mind of the Court. Since in this case admittedly no reasons have been assigned as to why an ex parte interim order is being passed, this Court has to necessarily come to the conclusion that there was non application of mind.
>
> 16. I hold that the principles underlying Rule 3 to Order 39 of C.P.C. will have to be borne in mind while considering an application under Section 9 of the 1996 Act. Since in this case the same has been lost sight of totally, I have no hesitation to set aside the orders impugned in these civil revision petitions. Accordingly, the orders impugned in these civil revision petitions are set aside."

18. Now, let us analyse the present impugned order. For better appreciation, the impugned order is extracted hereunder:

> "There is serious triable issue involved. between female legal heirs. Prima facie case made out, documents verified, balance of convenience is in favour of this petitioner, considering the nature of the property, if the same is alienated, it will cause irretrievable injury to this petitioner, hence ad interim injunction granted till 14.08.2019. Order 39 Rule 3A complied with today. Issue notice to the respondents. Call on 14.08.2019."

19. A bare perusal of the impugned order shows that though the Court below granted an ex parte order of interim injunction for a limited period, it has failed to assign reasons for granting such an order. The requirement for recording reasons for grant of ex parte injunction cannot be held to be a mere formality. Failure to give reasons in a case of this nature amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at. If the statute requires a thing to be done in a particular manner, it should be done in that manner. But, in this case, the Court below has failed to do so. The opposite party against whom such an ex parte order passed without even put on notice must know the reasons on which such an order is passed.

20. Mere mentioning of the words in the ex parte interim order to the effect that "Prima facie case made out", "balance of convenience is in favour of the petitioner" and "If the interim order is not granted, it will cause irretrievable injury to this petitioner" are are not not sufficient to hold that the mandatory requirements of Order 39 Rule 3 of C.P.C. has been complied with. Recording of reasons for such conclusions in the order can only be treated as strict compliance of Order 39 Rule 3 of C.P.C. In this case, the Court below, without reference to any material, has assumed that the first respondent/plaintiff has a prima facie case and that the balance of convenience is in favour of the first respondent/plaintiff and mechanically, granted an ex parte order of interim injunction. As the impugned order has been passed in violation of Order 39 Rule 3 of C.P.C. and the failure of the Court below to render the necessary findings to support its order is nothing but a jurisdictional error, this Court has no hesitation to interfere with the order passed by the Court below."

(Emphasis supplied)

The High Court of Himachal Pradesh in the case of **ULINK AGRITECH PRIVATE LIMITED v. SML LIMITED**[9] has held as follows:

"…. …. ….

> **49. We do not agree with the contention of the learned Senior Counsel for the 1st respondent/plaintiff that Para 12 of the impugned order contains reasons for grant of ad-interim injunction or that such reasons are presumed to be implied in the said order.**
>
> **50. Merely recording the contentions of the counsel for the 1st respondent without any cursory discussion of the merits of such contentions even cursorily, would not amount to compliance with the requirement of giving reasons under proviso to Order 39 Rule 3 CPC. It thus falls within the exception mentioned in Wander Limited (9 Supra) that the impugned order was passed ignoring the principle contained in proviso to Rule 3 of Or.39 CPC."**

(Emphasis supplied)

The High Court of Uttarakhand in the case of **SHUBHAVNA SINGH v. DILIP JAWALKAR**[10], has held as follows:

"…. …. ….

> **17. Perusal of the impugned order dated 26.03.2024 would reflect that the temporary injunction was granted on the first date itself when the suit for permanent injunction was filed i.e. on 26.03.2024. It is stated in the impugned order that temporary injunction application was heard ex parte but the impugned order is**

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[9] OSA No.5/2024 decided on 20-08-2024

[10] Writ Petition (M/S) No.1651 of 2024 decided on 26-06-2024

silent on the point that what were the reasons for hearing the temporary injunction application ex parte on the very first date without issuing notice to the petitioner/defendant.

18. Order XXXIX Rule 3 of CPC stipulates that the Court shall in all cases before granting injunction, issue notice to the opposite party except where it appears that the object of granting the injunction would be defeated by the delay. Proviso to this Rule however provides 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 to deliver to the opposite party or to send to him by registered post immediately after the order granting the injunction has been made.

19. In the impugned order, the court of Assistant Collector, 1st Class, Vikasnagar has not recorded any reasons for granting temporary injunction in favour of the respondent/plaintiff without giving notice to the petitioners/defendants nor did it direct the respondent/plaintiff to do the compliance of proviso to Rule 3 of Order XXXIX CPC. That being the position, this is an error apparent on the face of the proceedings based on utter disregard of the provisions of law. The court of Assistant Collector, 1st Class, Vikasnagar, Dehradun has exercised the jurisdiction which it does not have. Section 331 of the U.P.Z.A. & L.R. Act does not confer any jurisdiction on the revenue court to entertain any suit for permanent prohibitory injunction and the present instance prima facie seems to be usurpation of jurisdiction of the civil court by the revenue court."

(Emphasis supplied)

The Courts all over the nation have held that a petition under Article 227 of the Constitution of India is maintainable challenging

an ex parte mandatory injunction, granted without compliance with Order XXXIX Rule 3 of CPC without hearing the opposite party.

20. **As observed hereinabove, the concerned Court issues a John Doe order. A John Doe order, a placeholder name, traditionally used in the United States legal system for unknown defendants. "Ashok Kumar" is the adaptation of the Indian legal system, as a term equivalent of John Doe. While the concept of "John Doe" or "Ashok Kumar" order finds recognition in Indian jurisprudence, it must be wielded with great care and judicious foresight. Such orders, by their very nature, extend to unidentified persons and carry the risk of overbreadth. Such orders of preemptive injunction is granted by a Court against unknown persons, who are likely to infringe upon someone's rights, usually related to copyright, trademarks, media leaks and piracy. In the case at hand, the Court for the asking, has issued the said order. The order has now cast its net so wide that it threatens to ensnare any voice against the plaintiff, the family or the place. This could not have been issued on**

bereft of reasons. The order speaks of prohibition of defamatory statements. Not one word of what kind of statements are defamatory for the Court to pass the afore-quoted order is found in the order. There is no semblance of reason for the ultimate relief that is granted.

21. Several other submissions are made with regard to what would be defamatory and whether on the alleged defamatory content, a gag order can be passed or otherwise. Those submissions of the learned counsel for the petitioner or its rebuttal by the learned senior counsel for the 1st respondent/plaintiff need not bear consideration at this juncture, as this Court has only considered procedural aberration in passage of the order impugned. In view of the preceding analysis, the Court is left with no option, but to invoke its supervisory jurisdiction under Article 227 of the Constitution of India, to undo the miscarriage of procedural justice that has occurred and therefore, the order is rendered unsustainable. The unsustainability of it would lead to its obliteration.

22. The learned senior counsel for the 1st respondent/plaintiff has contended that several of the defendants have filed applications under Order XXXIX Rule 4 CPC and the matter is heard at that stage. In the light of the aforesaid reasons, I deem it appropriate to direct the concerned Court to hear, not the application under Order XXXIX Rule 4 CPC, but the application under Order XXXIX Rule 1 and 2 CPC and pass necessary orders in accordance with law, bearing in mind the observations made in the course of the order. Since present petition is preferred by the petitioner, it is open to him to appear before the Court on a given date and the Court shall regulate its procedure thereon.

23. For the aforesaid reasons, the following:

O R D E R

(i) Writ Petition is allowed in part.

(ii) The impugned ex parte order dated 18-07-2025 passed by the X Additional City Civil and Sessions Judge, Bengaluru on I.A.Nos.I and 2 in O.S.No.5185 of 2025 stands quashed *qua* defendant No.66/petitioner herein.

(iii) The matter is remanded to the concerned Court, with a direction to consider the interlocutory applications

afresh, bearing in mind the observations made in the course of the order.

(iv) The concerned Court shall expeditiously adjudicate the applications so filed under Order XXXIX Rule 1 and 2 of CPC.

(v) It is made clear that this Court has not expressed any opinion on the merits of the civil suit, the criminal proceedings or the veracity of the allegations and the counter allegations.

(vi) All contentions, except the one considered in the course of the order between the parties, shall remain open.

(vi) It is needless to observe that the petitioner and other parties shall extend their full cooperation to the concerned Court in passing of necessary orders, in the light of the observations made in the course of the order.

Sd/-
(M.NAGAPRASANNA)
JUDGE

bkp
CT:MJ