

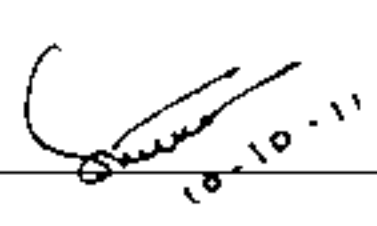
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अपील 6459/2011/राजगट

तारीख हुकम	हुकम या कार्यवाही इनिशियल्स जज	नम्बर व तारीख अहकाम जो इस हुकम की जारी में जारी हुए
10.10.2011	<p style="text-align: center;"><u>D.B.</u> Shri Pramil Kumar Mathur, Member Shri Moolchand Meena, Member</p> <p><u>Present:</u> Shri Jasraj Jaipal, counsel for the appellants.</p> <p style="text-align: center;">---</p> <p>Present appellants have approached to Board of Revenue by way of this appeal under section 225 of the Rajasthan Tenancy Act, 1955 (hereinafter to be called "the Act") against the order passed by the learned Revenue Appellate Authority, Nagaur on 13.9.2011 by which learned Revenue Appellate Authority has refused to issue the ex-parte injunction against the present respondents on the ground of principle of natural justice.</p> <p>At the admission stage, learned counsel for the appellants submits that learned Revenue Appellate Authority has disclosed his mind by not issuing the injunction. It could be in the fitness of things to issue the ex-parte injunction as prima facie case & other necessary ingredients exist in favour of appellants. As respondents are large in numbers, so the service of process will consume much time, meanwhile the order of ex-parte injunction was justified in the given circumstances. Therefore, the present appeal be admitted and the injunction be issued against the present respondents. Learned counsel for the appellants has invited our attention towards the judgments reported in AIR 2003 Bombay page 392 and RRD 1985 page 351.</p>	

(W.R.)

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Appeal No. 6459/2011/TA/Nagaur
Arjun Ram (deceased), through LRs Mst. Sunki & ors.
Vs. Niyamal (deceased), through LRs Safi & ors.

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	<p>We have carefully considered the arguments advanced by learned counsel for the appellants and examined the record.</p> <p>This fact is not disputed that Section 212 of "the Act" provides for grant of temporary injunction, appointment of receiver and deposit of cash security and is akin to Order 39 & Order 40 of the Code of Civil Procedure. This is also undisputable position that by virtue of section 208 of "the Act", the provisions of the Civil Procedure Code are made applicable subject to certain exceptions and exceptions enumerated in section 208 of "the Act" does not exclude the applicability of Order 39 of the Code of Civil Procedure and as such provisions of Order 39 CPC are applicable to proceedings u/s 212 of "the Act".</p> <p>Before analyzing legal position in the above scenario, it appears that present appellants prayed for an ex-parte injunction forthwith without notice to the other side, the learned R.A.A., Nagaur did not accede to their request and passed the following order:-</p> <p>“आज यह पत्रावली अपीलान्त-प्रार्थी के अभिभाषक द्वारा प्रस्तुत की गयी एकपक्षीय बहस पर एकपक्षीय स्थगन आदेश अन्तर्गत धारा 212 राज. काश्तकारी अधि. प्रस्तुत हुयी। प्रार्थना-पत्र के तथ्यों, प्रकरण तथा योग्य वकील की एकपक्षीय बहस का अवलोकन कर विचार किया गया। प्रार्थना-पत्र के साथ ऐसा कोई भी तथ्य प्रस्तुत नहीं किया गया है जिसके आधार पर एकपक्षीय सुनवाई पर आधारित तत्काल ही एकपक्षीय अस्थायी निषेधाज्ञा जारी करनी अत्यन्त ही आवश्यक बन जाती हो। धारा 212 के प्रार्थना-पत्र का निस्तारण सम्बन्धित पक्षों को सुने बिना किया जाना नैसर्गिक न्याय के सिद्धान्त के विरुद्ध होगा। अतः अपील के रेस्पोंडेन्टगण को समन जारी कर पत्रावली दिनांक 11-10-11 को पेश की जाये।”</p>	

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	<p>It transpires from the impugned order that learned Revenue Appellate Authority has considered the urgency as requested by the present appellants but recorded that no case of urgency is made out; hence instead of issuing ex-parte injunction, issued the notice to the present respondents relying on the principle of natural justice.</p> <p>On careful reading of the provision of Order 39 Civil Procedure Code, it is crystal clear that Rule 1 of Order 39 empowers the court to grant temporary injunction until the disposal of the suit or until further orders. Similarly, under Rule 2 the court may issue a temporary injunction to restrain repetition or continuance of breach on such terms as it thinks fit. Rule 3 which is relevant & important runs as follows :</p> <p>"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."</p> <p>Under this Rule, the normal procedure is to issue a notice of the injunction application to the opposite party before the injunction is granted, but if in the opinion of court "where the object of granting the injunction could be defeated by the delay", ex-parte injunction can be granted.</p> <p>In the present case, the learned Revenue Appellate Authority on the material placed before him, did not find a case of grant of ex-parte injunction and therefore directed issue of notice, mere issuing a notice to the opposite party does not</p>	

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	<p>dispose of the injunction application made under Rule 1 or Rule 2 of the Order 39 (as akin to Section 212 of "the Act"). That injunction application is still pending and will be disposed of after hearing the opposite party in pursuance of the notice issued to them, meaning thereby no order as are mentioned in section 212 of "the Act" was passed by the learned R.A.A.</p> <p>Section 225 of "the Act" makes provision of appeal also from such other orders as are mentioned in Section 212 of "the Act" and in Section 104 of the Code of Civil Procedure.</p> <p>As per Order 43 Rule 1 of the Code of Civil Procedure, an appeal shall lie from the following orders under the provisions of Section 104 namely :-</p> <p>(i) (a) to (q) xx xx xx xx</p> <p>(ii) (r) :- an order under Rule 1, Rule 2, Rule 2A, Rule 4 or Rule 10 of Order 39</p> <p>(iii) (s) to (w) xx xx xx xx</p> <p>A bare reading of Order 43 Rule 1 (r) shows that an appeal lies from an order, if the order is passed in any of the rules specified in clause (r).</p> <p>It is apparent from the impugned order that it is passed under Rule 3 of Order 39 but Rule 3 is not one of the rules specified in clause (r) of Order 43 Rule 1, therefore, an order refusing to issue an ex-parte injunction as allowed by the Rule 3 of Order 39 CPC is not appealable.</p> <p>Though in the cited judgment AIR 2003 Bombay page 392, it has been held that words used</p>	

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	<p>like "no case of urgency made out for grant of ex-parte ad interim injunction issue notice to the defendants", real substance of these orders is that the court declined to grant an ex-parte ad interim relief; therefore, these type of orders are appealable under Order 43 Rule 1(r) CPC. But in view of the what has been discussed above and judicial pronouncements in judgment reported in</p> <p>(i) AIR (38) 1951 Allahabad page 8 (Larger Bench)</p> <p>(ii) AIR 1992 M.P. page 316 (Division Bench)</p> <p>(iii) judgment pronounced by Division Bench of High Court of Judicature at Allahabad in Civil Miscellaneous Writ Petition No.49152 of 2006 on May 5th, 2011.</p> <p>An order refusing to issue an ex-parte injunction is not appealable. Hence, this appeal moved entirely on the ground to refuse to issue ex-parte injunction is not maintainable because no appeal could be preferred under the provisions of the Order 43 Rule 1(f) against the order refusing to issue ex-parte injunction under Order 39 Rule 3 CPC. Therefore, we are of the considered view that this appeal is liable to be dismissed at the admission stage as not maintainable. Consequently dismissed accordingly.</p> <p>Pronounced.</p> <p> (Moolchand Meena) Member</p> <p> (Pramil Kumar Mathur) Member</p>	

Noted