

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.105 of 2021.

Date of decision: 24.04.2021.

MeenaPetitioner.

Versus

Mohit Kumar Gupta and anotherRespondents.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting?¹ Yes

**For the Petitioner : Mr. Romesh Verma,
Advocate.**

For the Respondents: Nemo

(Through Video Conferencing)

Tarlok Singh Chauhan, Judge (Oral)

Heard. It appears that the plaintiff had obtained an ex-parte ad-interim order dated 17.03.2021 in her favour despite a caveat petition having been filed by the respondent/defendant on 09.03.2021 prior to passing of such order.

2. In ***G.C. Siddalingappa vs. Veeranna, AIR 1981 Karnataka 242***, it was held as under:-

¹***Whether the reporters of the local papers may be allowed to see the Judgment?Yes***

“Section 148-A (3) of Civil Procedure Code is a condition precedent for serving an application on caveator before passing interim order etc.”

3. In **C. Seethaiah vs. Government of Andhra Pradesh and others, AIR 1983 Andhra Pradesh 443**, it was held that:-

“also, when a caveat is lodged it becomes not only the duty of the Court but also of the petitioner and his counsel to bring to the notice of the Court that caveat has been lodged and the matter may not be heard *ex parte* etc.”

4. In **M. Krishnappa Chetty and another vs. P.E. Chandrasekaran @ Chandran, 1993 1 MLJ 18**, it was observed as follows:-

“The proper procedure to be adopted in all cases where caveat has been filed is for the plaintiff/petitioner to serve copies of the plaint and application on the caveator's counsel or the caveator before filing them in court. He must inform the caveator or his counsel as the case may be, the date on which he will move the application before court. He must also file acknowledgments of the receipt of copies obtained from the caveator's counsel or the caveator as the case may be, in court along with the application. On receiving such papers the office of the Court shall, while fixing the date for the first hearing of the application prepare a note and bring it

to the notice of the presiding officer concerned that caveat has been entered and the caveator's counsel or the caveator has been served with copies of plaint and the application. Then the presiding officer shall direct the office of the court to issue notice to the caveator's counsel or the caveator, as the case may be, specifying the date on which the matter will be heard in the first instance. The court shall inform the petitioner's counsel also of the said date and on that date both sides shall be heard before any interim order is passed. This procedure shall strictly be followed by all the subordinate courts. There shall be no lapse in following this procedure.

5. The Gauhati High Court in ***M/S Contemporary Target Pvt. Ltd. and others vs. M/S M.B. Enterprises and others, AIR 1994 Gauhati 7*** in paragraphs 18 and 19 held that the purpose and intend of introducing the new provision for a caveat by authorising a party to intimate to the Court of his intention to have notice of an intended application by the adverse party so that ex parte order on an application may not be obtained by an adverse party without such notice. Therefore, he sought to quash the impugned order passed by the Trial Court allowing the writ petition.

6. Obviously, in such circumstances, the learned first appellate Court before whom the appeal was filed by the respondent committed no irregularity much less illegality in vacating the ex-parte ad-interim order that had been passed in favour of the petitioner.

7. Record reveals that the learned first appellate Court had passed the order on 08.04.2021 and directed the parties to appear before the learned trial Court on 09.04.2021, but the certified copy of the order was made available to the petitioner only on 20.04.2021.

8. It is stated by learned counsel for the petitioner that this order was not even got uploaded on the official website by the learned first appellate Court. Let the learned first appellate Court explain its position regarding this aspect of the matter.

9. As observed above, the learned first appellate Court was absolutely right in setting aside the ex-parte ad-interim order passed by the learned trial Court on 17.03.2021, but then it was also required to ensure that the order so passed directing the parties to appear before the learned trial Court on the next date of hearing i.e. 09.04.2021 was made available to the parties.

10. Construction, if any, raised during the pendency of the litigation is always a serious matter where everyday counts and it may be extremely difficult to balance the equities at later stage.

11. Therefore, in the given circumstances, this Court directs the learned trial Court to list the matter forthwith on 26.04.2021 when it would proceed to hand over notices for effecting service upon the respondents/defendants directly under Order 5 Rule 9-A CPC and then proceed to fix the matter for consideration on 30.04.2021 when arguments on the application for ad-interim relief shall be heard by the Court afresh.

12. The petition stands disposed of in the aforesaid terms, so also the pending application, if any.

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24th April, 2021.
(krt)

(Tarlok Singh Chauhan)
Judge