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2026:UHC:10404

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 3449 of 2026 (M/S)

Graphic Era Educational Society .....Petitioner

Versus

Saurav Giri and Another .....Respondents

Present:-

Mr. B.P. Nautiyal, Senior Advocate assisted by Mr. Arhar Baig, Advocate holding brief of Mr. Mohd. Matlub, Advocate for the petitioner.

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this petition is made to the order dated 12.02.2026, passed in Original Suit No.80 of 2026, Saurav Giri v. Graphic Era Educational Society and Another ("the suit"), by the court of 2nd Additional Civil Judge (Senior Division), Dehradun. By it, an application under Order 39 Rule 1 and 2 of the Civil Procedure Code, 1908 ("the Code") has been allowed and the petitioner and the respondent no.2 have been directed not to raise any construction within 9 meters towards the northern and eastern side of the disputed property.

2. Heard learned counsel for the petitioner and perused the record.

3. It has been the case of the respondent no.1 that the petitioner is raising construction in the northern and eastern side of the property belonging to the respondent no.1, due to which the property of the respondent no0.1 is damaged.

4. Learned Senior Counsel appearing for the petitioner submits that ex parte injunction order was issued by the court on

12.02.2026 in the suit, but compliance of proviso to Rule 3 of Order 39 of the Code has not been made by the respondent no.1.

5. It is argued that, in fact, on 06.03.2026, the petitioner made a claim that they did not get the documents and the court, without considering non compliance of proviso to Rule 3 of Order 39 of the Code, extended time for giving documents, and directed the respondent no.1 to deliver the documents to the petitioner. On 20.03.2026, the proceedings of the record, as filed by the petitioner, reveals that on 20.03.2026, documents were received by the petitioner.

6. Learned Senior Counsel appearing for the petitioner submits that non compliance of proviso to Rule 3 of Order 39 of the Code has serious consequences, as held by the Hon'ble Supreme Court in the case of A. Venkatasubbiah Naidu v. S. Chellappan and others, (2000) 7 SCC 695.

7. In fact, in the case of A. Venkatasubbiah Naidu (supra), the Hon'ble Supreme Court has considered the effect of duties enumerated in clauses (a) and (b) of Rule 3 of Order 39, and in Para 15, observed as follows:-

> "15. What would be the position if a court which passed the order granting interim ex parte injunction did not record reasons thereof did not require the applicant to perform the duties enumerated in clauses (a) and (b) of Rule 3 of Order 39. In our view such an order can be deemed to contain such requirements at least by implication even if they are not stated in so many words. But if a party, in whose favour an order was passed ex parte, fails to comply with the duties which he has to perform as required by the proviso quoted above, he must take the risk. Non-compliance with such requisites on his part cannot be allowed to go without any consequence and to enable him to have only the advantage of it. The consequence of the party (who secured the order) for not complying with the duties he is required to perform is that he cannot be allowed to take advantage of such order if the order is not obeyed by the other party. A disobedient beneficiary of an order cannot be heard to complain against any disobedience alleged against another party."

8. In fact, in the case of A. Venkatasubbiah Naidu (supra), the Hon'ble Supreme Court has also considered the effect of Rule 3-A of Order 39 of the Code, and in Para No.29 observed as follows:-

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

9. Learned Senior Counsel for the petitioner submits that it is a case of non compliance of clauses (a) and (b) of Rule 3 of Order 39 of the Code as well as non compliance of the provisions of Rule 3-A of the Code. He submits that now 20.11.2026 is the date fixed for hearing of the temporary injunction application filed by the respondent no.1. He also submits that objections have already been filed, and it is ready for hearing, but the hearing has been adjourned on one pretext or another.

10. Fact remains that in case ex parte injunction order is granted, certain duties are imposed on the plaintiff, as per proviso to Rule 3 of Order 39 of the Code. Its non compliance is being reported. This fact was never brought to the notice of the court when on 06.03.2026, the suit was taken up. On that date, merely documents were required, which were furnished and received by the petitioner on 20.03.2026.

11. Since 20.11.2026 is the date fixed for hearing of the application under Order 39 Rules 1 and 2 of the Code, the instant petition may be disposed of by directing the court concerned to hear

and decide the application under Order 39 Rules 1 and 2 of the Code filed by the respondent no.1 on 20.11.2026 without further adjournment. In case adjournment is necessitated, it should be heard on an early date.

12. With the above observation, the writ petition stands disposed of.

13. Let a copy of this order be forwarded to the court concerned.

(Ravindra Maithani, J)
16.11.2026

Ravi Bisht