



aforesaid proposition is no longer *res integra*. The Hon'ble Supreme Court in ***A. Venkatasubbiah Naidu vs S.Chellappan and others, (2000) 7 SCC 695,*** held that in case where the mandate of Order 39 Rule 3-A CPC 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. The relevant discussion reads as thus:-

“16. Learned Single Judge stated that the trial court ought not to have granted ex parte injunction beyond thirty days to be in force. The said observation is based on the language contained in Order 39 Rule 3-A of the Code which reads thus:-

“3-A. Where an injunction has been granted without giving notice to the opposite-party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability”.

17. The Rule does not say that the period of the injunction order should be restricted by the Court to thirty days at the first instance, but the Court should pass final order on it within thirty days from the day on which the injunction was granted. Hence, the order does not ipso facto become illegal merely because it was not restricted to a period of thirty days or less.

18. Nonetheless, we have to consider the consequence, if any, on account of the Court failing to pass the final orders within thirty days as enjoined by Rule 3-A.

19. The aforesaid Rule casts a three-pronged protection to the party against whom the ex parte injunction order was passed. First is the legal obligation that the Court shall make an endeavour to finally dispose of the application of injunction within the period of



thirty days. Second is, the legal obligation that if for any valid reasons the Court could not finally dispose of the application within the aforesaid time the Court has to record the reasons thereof in writing.

20. What would happen if a Court does not do either of the courses? We have to bear in mind that in such a case the Court would have by-passed the three protective humps which the legislature has provided for the safety of the person against whom the order was passed without affording him an opportunity to have a say in the matter. First is that the Court is obliged to give him notice before passing the order. It is only by way of a very exceptional contingency that the Court is empowered to by-pass the said protective measure. Second is the statutory obligation cast on the Court to pass final orders on the application within the period of thirty days. Here also it is only in very exceptional cases that the Court can by-pass such a rule in which cases the legislature mandates on the court to have adequate reasons for such bypassing and to record those reasons in writing. If that hump is also bypassed by the Court it is difficult to hold that the party affected by the order should necessarily be the sole sufferer.

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, 2A, 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 who 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 3A 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**



-4-

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 3A. 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.

22. Now what remains is the question whether the High Court should have entertained the petition under Article 227 of the Constitution when the party had two other alternative remedies. Though no hurdle can be put against the exercise of the constitutional powers of the High Court it is a well recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies one or the other before he resorts to a constitutional remedy. Learned single judge need not have entertained the revision petition at all and the party affected by the interim ex parte order should have been directed to resort to one of the other remedies. Be that as it may, now it is idle to embark on that aspect as the High Court had chosen to entertain the revision petition”.

4. In the light of the law laid down by the Apex Court in **A. Venkatasubbiah Naidu’s case** (supra), the present petition is disposed of with liberty to the petitioner to avail his alternative remedy, in accordance with law.

(VIKAS SURI)
JUDGE

July 31, 2025
mohan bimbra

Whether speaking/reasons:	Yes/No
Whether reportable :	Yes/No