

TEMPORARY INJUNCTION

1] The law relating to injunction has been provided in the Specific Relief Act. Injunction may be Permanent Injunction or Temporary Injunction. Section 37 of Specific Relief Act provides that "temporary Injunction are such as are to continue until a specified time, or until the further order of the court, and they may be granted at any stage of a suit." Section 94(c) and (e) of the Code of Civil Procedure contains provisions under which the Court may in order to prevent the ends of justice from being defeated grant a temporary injunction or make such other interlocutory orders as may appears to the Court to be just and convenient. The procedure for seeking temporary injunction has been provided under O. 39 of the Code of Civil Procedure. However, an injunction being discretionary equitable relief cannot be granted when equally efficacious relief is obtainable in any other usual mode or proceeding.

Object of Temporary Injunction :

2] The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. **Gujarat Bottling Co. Ltd. vs. Coca Cola Company** 1995(5) SCC 545.

Ingredients

3] It is well settled that for grant of temporary injunction three factors have to be satisfied which are prima facie case, balance of convenience and irreparable loss. In **Dalpat Kumar V/s Pralhad Singh, AIR 1993 SC 276**, Hon'ble Apex Court explained these three factors as follows:-

i] There is a serious disputed question to be tried in the court and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant.

ii] The Court's interference is necessary to protect the party from the species of injury. In other words irreparable injury or danger would ensue before the legal right would be established at trial and

iii] That the comparative hardship on mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to acted from granting it.

Prima facie case

4] Prima facie case does not mean that the plaintiff should have a cent percent case which will in all probability succeed in trial. Prima facie case means that the contentions which the plaintiff is raising, require consideration in merit and are not liable to be rejected summarily

{ **Prakash Singh V/s State of Haryana 2002 (4) Civil L.J. 71 (P.H.)** }

Balance of Convenience :

5] To see balance of convenience, it is necessary to compare case of parties, comparative mischief or inconvenience which is likely to sue from withholding the injunction will be grater than which is likely to arrive from granting it.

Irreparable loss :

6] There are many injuries incapable of being repaired but a court of equity does not regard them as 'irreparable'. For example cause which outrage the feeling or loss of things of sentimental value. On the other hand there are injuries which in their nature may be repaired but still treated as irreparable. For

example a person who is inflicting or threatening them is insolvent or unable to pay damages. Ordinarily injury is irreparable when without fair and reasonable address of Court, it would be denial of justice. Very often an injury is irreparable where it is continuous and repeated or where it is remediable at law only by a multiplicity of suits. Sometime the term irreparable damage refers to the difficulty of measuring the amount of damages inflicted. However, a mere difficulty in proving injury does not establish irreparable injury.

7] A temporary injunction can be granted only if the person seeking injunction has a concluded right, capable of being enforced by way of injunction (**Agricultural Produce Market Committee Vs. Girdharbhai Ramjibhai Chhaniyara - AIR 1997 SC 2674**)

Ad-Interim Injunctions:-

8] Ad-interim injunctions only reflects that court either passed order ex-parte or even if the defendant is present, he was not heard fully for want of pleading etc. In **Morgan Stanley Mutual Fund Vs. Kartick Das - (1994) 4 SCC 225**, it was observed as follows:-

- Where irreparable or extremely serious injury will be caused to the applicant, ex-parte order can be passed;
- The court shall examine the time when the plaintiff got notice of the act complained;
- If the plaintiff has acquiesced to the conduct of the respondent then ex-parte temporary injunction shall not be passed;
- The applicant shall be acting in utmost good faith; and
- Such an order shall be for a temporary period.

Status-quo -

9] Status-quo and injunction are not identical, however, primary purpose of injunction is to preserve the matter in status-quo. Therefore, status-quo should not be granted where there is no prima facie cas (**Nagorao ..vs.. Nagpur Improvement Trust, AIR 2001 Bombay, 402**). Generally, when Court orders for status-quo, Court should specify the context in which or condition subject to which, such statusquo direction is issued.

Care for Ad-interim Order

10] Due care and cautions should be taken for granting or refusing injunctions. Safer course would be to give short notice to other side and then to pass order after hearing both the sides. In case of need, ad-interim injunction should be for short period with condition to give undertaking to pay realistic costs and to pay mesne profits etc. (**Maria Margadia Sequaria v/s Erasmo Takl De Sequaria 2012(5) SCC 370: AIR 2012 SC 1727**).

Equity -

11] Injunction is an equitable remedy as well as it is governed by law. Therefore, equitable principles are of very much importance in granting or rejecting injunction. Equitable principle is that, he who seeks equity must come with clean hands. In an authority, **2003(2) ALL M.R. 254 Bom.** , it was held that, one must come with clean hands to claim the discretionary relief of injunction. In the authority of **Harcharanjit Singh Thind..vs.. Diksha Thind 2008 (3) Mah.L.J. 587**, it was held that relief of temporary injunction is a discretionary and equitable and so the party who suppressed the material fact from the Court, does not deserve to get any

discretionary relief much less an order of temporary injunction. The principle of equity that, he who seeks equity must do equity. This principle is to be borne in mind while deciding the application for temporary injunction. Equitable principle, "Delay defeats equity" is very much important while deciding the ad-interim ex-parte injunction. Equitable principle of 'party cannot take disadvantage of his own wrong' is also very important. Another important principle of equity is that, 'where there is right, there is a remedy'. This very much useful while invoking Sec. 151 of C.P.C. Of inherent power of Court. Where permanent injunction has not been sought for in the suit itself, no interim preventive injunction can be granted.

Discretionary relief

12] Injunction is a discretionary remedy. The court is not bound to grant such relief merely because it is lawful to do so. But the discretion of the court is not arbitrary but sound and reasonable guided by judicial principles . (**Ganesh Daivajna Vs prakash 2000(3) Mh. L.J. 347**). The exercise of discretion must be in a judicial manner depending on the circumstances of each case. No hard and fast rule can be laid down for the guidance of courts as regards the exercise of such discretion. (**Harcharanjit Vs Deeksha 2008(3)Mh.L.J. 587 Bombay High Court**)

Imposition of terms :

13] After perusal of Order 39 and rule thereunder, no where it is specifically stated that, while granting temporary injunction, court may impose some conditions. However, the court may impose terms in exercise of its discretionary jurisdiction. Injunctive relief is of discretionary nature and the court passing an order for a temporary injunction, could regulate its exercise of discretion by imposing terms for protecting

legitimate right of the parties. Court can take undertaking from either party or take security to comply the undertaking. While exercising discretionary power, the court should also adopt the procedure of calling upon the plaintiff to file a bond to the satisfaction of the court that in the event of his failing in the suit to obtain the relief asked for in the plaint, he would adequately compensate the defendant for the loss ensued due to the Order of injunction granted in favour of plaintiff. Court can impose suitable conditions while granting ad-interim injunctions (**Vascon Engineers Ltd. v/s Sansara Hotels Indra Pvt. Ltd 2009 (4) Mh.L.J. 859**)

Time Limit to dispose off -

14] When court grant ad-interim injunction it should be finally decided within thirty days. However, if that application is not decided within thirty days then also order of ad-interim injunction remain in force. However court should passed order in writing as to cause of delay failing which it becomes appealable. Then appellate court can change that order with further direction to take appropriate action against that presiding judge of trial court (**Venkatsubbiah Naidu v/s S. Chellappan and ors AIR 2000 SC 3032**).

Short Duration

15] Court should be careful in granting ad-interim injunction as there can be danger of fake pleading or concealment of material facts and even forged documents being relied on to get relief of ad-interim injunction. So it is desirable to give effects of ad-interim injunction up to a week and court can impose conditions that in case suit is dismissed, the plaintiff or the defendants will have to pay full restitution, actual or realistic costs or mesne profits (**Rameshwari Devi V/s Nirmala Devi and Others 2011 AIR SCW 4000**). Similar is the ratio in

Subhash Kirshna Kanitkar Vs Bhiwandi Nizampura Municipal Council & Others, 2001(1) Bom.CR. 251,

Cases in which temporary Preventive injunction may be granted.

16] Order 39 Rule 1 of the Code of Civil Procedure.- 1) When any property in dispute is in danger, 2) When any property in dispute is being wasted, 3) When any property in dispute is damaged, 4) When any property in dispute is alienated by any party, 5) When any property in dispute is wrongfully sold in execution of a decree, 6) when defendant threatens, 7) when defendant intends to remove, 8) when defendant dispose of his property with a view to defrauding his creditor, 9) when defendant threatened to dispossess the plaintiff, 10) when defendant otherwise cause injury to the plaintiff in relation to any property in dispute in a suit, 11) where defendant is about to commit a breach of contract or other injury of any kind, 12) where a court is of the opinion that in the interest of just so requires.

17] Section 38 of Specific Relief Act shows that perpetual injunction can be granted to the plaintiff to prevent breach of an obligation existing in his favour, 2) when any such an obligation is arises from contract, 3) Defendants invades or threatens to invade the plaintiff right to enjoyment of property, a) in case of a) defendant is trustee of plaintiff b) where there is no standard to ascertain actual damage caused or likely to be caused by the invasion, c) where invasion is such that compensation in money would not afford adequate relief d) where injunction is necessary to prevent multiplicity of judicial proceedings.

Injunction when cannot be granted -

18] An injunction cannot be granted to- **(a)** restrain any person from prosecuting a judicial proceeding at the institution of the suit, in which injunction is sought, unless restraint is necessary to prevent multiplicity of proceeding. **(b)** to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that, from which injunction is sought. **(c)** to restrain any person from applying to any legislative body, **(d)** to restrain any person from instituting or prosecuting any proceeding in a criminal matter, **(e)** to prevent the breach of a contract the performance of which could not be specifically enforced. **(f)** to prevent on the ground of nuisance, and act of which it is not reasonably clear that it will be a nuisance. **(g)** to prevent a continuing breach in which the plaintiff has acquiesced, **(h)** when equally efficacious relief can be certainly be obtained by any other usual mode of proceeding except in case of breach of trust, **(i)** when conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court. **(j)** when the plaintiff has no personal interest in the matter.

Injunction against alienation and creation of third party interest

19] A injunction against alienation is a court order which prevents a party from disposing of or dealing with its assets. Usually an application for such injunction is made when the applicant fears that the other party will dispose of its assets before judgment can be obtained and enforced. However, a freezing injunction can be sought at any time - during the course of proceedings and after judgment has been obtained (to prevent the disposal of assets before the judgment is enforced).

20] In the case of **Shobha Developers Ltd. .Vs. Lanka Sitaram Kamthe and others 2014(3) Mh.LJ. 445,** the plaintiff, claiming share in family property, sought injunction against defendants from alienating and creating third party interest. But an agreement for development of property was already entered and development of property was also started and right of third party was created. It was held that developing property cannot cause prejudice to plaintiff and so not entitled to injunction.

Injunction in suit for specific performance to sale property

21] In case of **M/S Kachhi Properties ..VS.. All Residents 2010 (5) Bom. C. R. 43,** it has been observed as follows:

- (a) *Section 52 of the TP Act provides adequate protection to the parties from transfers pendente lite and such transferees are neither required to be impleaded nor can claim impleadment. They cannot even resist execution proceedings.*
- (b) *plaintiff's could (or rather ought to) have notices of their suits registered under section 18 of the Indian Registration Act, They cannot seek to restrain adversary by an injunction by refusing to go in for registration of the lis.*
- (c) *There is power of court to issue injunction but it must be exercises such power if protection provided by Section 52 of the TP Act is shown to be inadequate.*
- (d) *In the face of protection provided by Section 52 of the TP Act, Courts should be cautious in examining the claims by plaintiff's of irreparable loss injunction to restrain alienations is refused.*

(e) Courts should consider who would face greater inconvenience

(f) Courts may impose suitable conditions (like seeking undertaking that no equities would be claimed, on account of sale/development of properties effecting sale only after putting transferee's to notice that their rights would be subject to suit etc., Interests of prospective purchasers would also be protected if plaintiff's in such cases register the lis, though may be optional.)

22] The transfer made in violence of section 52 of T.P. Act does not become availed, whereas transfer made in violation of T.I. is illegal. Alienation against prohibitory order of court confers no right, title or interest on the transferee as its no transfer in the eyes of law. Hence effect is that transaction is illegal **Keshrimal Shah ..VS.. Bank of Maharashtra 2004 [3] Mh L J 893** The same view is taken in **T.G.Ashok Kumar..VS.. Govindammal and another 2011[1] All M R 462 &Hardevsingh.VS. Gurmalsingh 2007[2] SCC444.**
Coparcener :

23] In the case of **Sunil Kumar and Anr. v. Ram Parkash and Ors., AIR 1988 SC 576** the Hon'ble Apex Court has observed that karta is the best person as to how the joint family estate could be beneficially put into use to subserve the interests of the family. A coparcener cannot interfere in these acts of management. Apart from that a father karta in addition to the aforesaid powers of alienation has also the special power to sell or mortgage ancestral property to discharge his antecedent debt which is not tainted with immorality. If there is no such need or benefit, the purchaser takes risk and the right and interest of coparcener will remain unimpaired in the alienated property. Therefore, he cannot move the Court to grant relief by injunction

restraining the karta from alienating the coparcenary property. The coparcener has adequate remedy to impeach the alienation made by the karta.

Co-owner

24] Co-owner who is not in a possession of any part of the property cannot seek an injunction against another co-owner unless any act of the person in possession of the property causes prejudice or is adverse to the interest of the co-owner who is in possession. **Ashok Bansal and others..Vs..Guru Das and others 2002 (4) Civil LJ 891.**

Co-sharer

25] The plaintiff in a suit for partition is entitled to get a temporary injunction even against his co-sharers to protect his possession when he is exclusively residing in the suit houses and carrying on business thereon - **I P Bhankanarayana v/s P Rajeshwar Rao** AIR 1991 Ori 92. When a stranger Purchaser threatens to entered into joint possession with members of the undivided family temporary injunction should be granted restraining him from entering into possession even if such an order amounts to eviction of the stranger purchaser - **Ashim Ranjan Das v/s Bimla Ghosh** AIR 1992 Cal 44. When the purchaser of undivided interest of coparcenary property is in possession of a portion of a joint property he can compel the non alienating members not to dispossesses him without recourse of law. Therefore, the grant of equitable relief to protect his possession till the filing of the suit for joint partition and a suit for mandatory injunction is permissible(**Maharai v/s Dhansai** 1992 MP 220.).

Injunction to protect easmentary right and akin rights

26] When the legal right of easement and the facts of its disturbance is established, permanent injunction is required to

be granted even without the proof of substantial damage in order to avoid multiplicity of proceeding (**Sarabla Za V/s. Ucheshawar, AIR 1972, Patna 490**)

Injunction to protect Grazing rights :-

27] Grazing rights is customary right. In **Govind Kallar V/s. Ganga Ram, AIR 1934 Nagpur 137**, the Hon'ble Bombay High Court held that, the Malguzar is bound to leave land for grazing proposed.

Injunction to protect Right regarding burial ground :-

28] In **Varkey V/s. Sant Merry, reported in AIR 1997, Kerala, 337**, the right to bury the dead in a particular place in the Church is recognized.

Injunction relating to possession / dispossession/ restoration of possession of immovable prpoerty

29] In **Anathula Sudhakar V/s P. Buchi Reddy reported in 2008(4) SCC 594** held that :-

1)Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, suit for an injunction simplicitor will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

2) Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition if necessary an injunction. A person out of possession, cannot seek the relief of injunction simplicitor, without claiming the relief of possession.

3) Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

30] In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings, and documents established title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleading, particulars and documents to support his claim in order to continue in possession.

31] In **Maria Margarida Sequeria Fernandes and oth. V/s Erasmo Jack de Sequeria (Dead) through Lrs AIR 2012 Supreme Court 1727** the Hon'ble Apex Court has discussed that it would be imperative that one who claims possession must give the following below :-

- a) Who is or are the owner or owners of the property ;
- b) Title of the property ;
- c) Who is in possession of the title documents ;

- d) Identity of the claimant or claimants to possession ;
- e) The date of entry into possession ;
- f) How he came into possession whether he purchased the property or inherited or got the same in gift or by any other method ;
- g) In case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, license fee or lease amount ;
- h) If taken on rent, license fee or lease then insist on rent deed, license deed or lease deed ;
- i) Who are the persons in possession / occupation or otherwise living with him, in what capacity as family members, friends or servants etc.;
- j) Subsequent conduct i.e. any event which might have extinguished his entitlement to possession or caused shift therein and
- k) Basis of his claim not to deliver possession but continue in possession.

Settled possession

32] It is settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. As held in case between **Puran Singh v/s state of Punjab reported in 1975 (4) SCC 518**, "settled possession" must be (a) effective, (b) undisturbed and (c) to the knowledge of the owner or without any attempt and concealment by the trespasser.

33] In **Rame Gowda V/s Varadappa Naidu, 2004(1) SCC 769**, the Hon'ble Apex court has laid down following test

which may be adopted for determining the attributes of settled possession as under :-

- a) that the trespasser must be in actual physical possession of the property over a sufficiently long period;
- b) that the period must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would however, be a matter to be decided on the facts and circumstances of each case;
- c) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner and ;
- d) That one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession.

Nuisance

34] As nuisance 'per se' can be defined as any act or omission or use of property or thing which is of itself hurtful to the health, tranquility or morals or outrages the decency of the public and which is not excusable under the circumstances. An injunction will not be granted in every instance of alleged nuisance. The present or threatened injury must be real, not trifling, transient or temporary it must be one from which either on account of its essentially irreparable nature or its repetition or continuance, the legal remedy of damages is inadequate. In restraining a private nuisance by injunction a court of Equity

may act from one or more of these motives, the restraint of irreparable mischief, the suppression of oppressive and interminable litigation or preventing a multiplicity of suits. One or more of these evils must be present or imminent to warrant a court of Equity in granting the relief for it is not every case which furnishes a right of action against a party which will warrant a court of Equity in assuming jurisdiction to redress the injury or to remove the annoyance.

Injunction in case of Bank Guarantee

35] There can not an injunction against the bank from paying the amounts covered by bank guarantee furnished unconditionally in the absence of fraud. Only on the ground of fraud and in case of irreversible injury the bank guarantee can be stayed. **(U.P. Cooperative Federation Ltd. -Vs- Sing Consultants and Engineers (P. Ltd.) [1988(1) S.C.C. 174)**

Plaintiff should have personal interest in the matter

36] Under section 41 (j) of the Specific Relief Act, an injunction cannot be granted where the applicant has no personal interest in the matter. In the case of public funds, for instance, a person interested in the smallest degree may sue if there is malversation, and pray for an injunction. **(Premji Vs Union of India 1995(2) Bom.C.R.374)**

Anti-suit Injunctions

37] As per section 41 (a) an injunction cannot be granted to restrain any person from prosecuting a judicial proceeding pending at the institution of suit in which the injunction is sought unless such restrain is necessary to prevent a

multiplicity of proceedings. The object is to avoid conflict of judgments and orders. As per section 41 (b) an injunction cannot be granted to restrain any person from instituting or prosecuting any proceedings in a Court not subordinate to that from which injunction is sought.

38] In **Cotton Corporation of India Limited v. United Industrial Bank Limited and Ors. (1983) 4 SCC 625**, it was held that the Court was precluded by its injunction to grant stay of proceeding in a Court not subordinate to that from which the injunction was sought. Dealing with the ambit and scope of an anti suit injunctions, the Hon'ble Apex Court in **Modi Entertainment Network v. WSG Cricket Pte. Ltd., AIR 2003 SC 1177**] has laid down various guide-lines for anti-suit injunctions.

Acquiescence or equitable estoppel

39] Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded both at law and equity, from asserting his rights which might perhaps have otherwise existed, either of property. Of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse (**Rekha Vs Rambhau AIR 2007 Bombay 135**)

Section 151 C.P.C-

40] Civil Court has a power to grant interim injunction in exercise of its inherent jurisdiction even if the case does not fall within the ambit of provisions of Order 39 Code of Civil Procedure. **Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hira Lal, AIR 1962 SC 527.**

41] Order 39 Rule 1 is not the sole repository of the power of court to grant injunction but sec 151 confers power upon in court to grant injunction if the matter is not covered by Rule 182. But the court shall exercise inherent jurisdiction only when they considered it absolutely necessary for the ends of justice and exercise said discretion with extreme caution and only in very rare cases(**Tanushree Basu Vs. Ishanya Bagal, 2008 All S C R. 1186)**)

Caveat:-

42] Para 27 of Chapter II of Civil Manual, the Court, for the special reasons to be recorded in writing can grant interim relief without serving the caveator, if, in the opinion of the Court, the object of granting interim relief on the application would be defeated by delay.

Injunction against local/statutory bodies or government

43] Section 80 of the Code of Civil Procedure deals with two classes of cases. Suits against Government and suits against public officer. In the First Class notice under section 80 must be given in all cases, whereas in the second class notice under section 80 is necessary only where suit is in respect of any act for purportedly to be done by such public officer in his official capacity. The section is mandatory and its terms are imperative and admits of no exceptions. However, sub section (2) of Section 80 provides for waiver of the notice in case urgent or immediate relief need be granted in the suit. At any rate, no relief by interim order or otherwise can be granted in such suits without service of notice to the state or a public officer concerned.

44] In case of **Noor Mohammad Shameer Shaikh..Vrs... Maharashtra Housing and Development**

Board and Others, 2014 (1) Mh.L.J.92 wherein it is held that “when the pre-suit statutory notices, as required under section 527 of the Mumbai Municipal Corporation Act and also under section 164 of Maharashtra Co-operative Societies Act, are mandatory legal provisions. Similar is the case of **Harikishanlal ..Vrs.. State of Jammu & Kashmir (1994) 4 S.C.C 422.**

45] In cases relating to orders for demolition of buildings, irreparable loss may occur if the structure is demolished even before trial, and an opportunity to establish by evidence that the structure was authorized and not illegal. In such cases, where prima facie case is made out, the balance of convenience automatically tilts in favour of the plaintiff and a temporary injunction will be issued to preserve status quo. (**Seema Arshad Zaheer and others Vs Municipal Corporation of Greater Mumbai and others, (2006) 5 SCC 282**)

46] In case of Abdul Hasan Shaikh Mansuri Vs Municipal Corporation of Mumbai & Ors, 2007 (4) ALL MR 97 our Hon'ble High Court directed all the Municipal Authority to consider issuance of appropriate directions to all its officers concerned that in a suit of such kind a statement be made on the first date of hearing of the suit before the court on behalf of the authority that they will follow the due process of law on which basis the suit can be disposed of . It is further observed that, such suit can be disposed of by Court on the date of hearing on the statement made on behalf of authority that due process will be followed. The Hon'ble High Court had given a word of caution that courts should restrict grant of ad-Interim orders only to a limited time and in the mean time call upon the local authorities to file their reply and then decide the said application by giving priority to such matters. Further it would be desirable in such cases that at the time of granting ad-interim reliefs the court should appoint a

commissioner to inspect the construction. This would help to curb the practice of misusing the interim order passed by the courts.

47] In case of ***Sopan Maroti Thopate..vs..Pune Municipal Corpor 1996 (1) Mh.L.J 963***, the guidelines are laid down about procedure to be followed before taking action under section 351 of the Bombay Municipal Corporation Act or under section 260 of Bombay Provincial Municipal Corporation Act.

48] Mere issuance of notice under the said section is not sufficient to suggest that the due process of law has been followed, in as much as after issuance of notice, the concerned person would file response and which response has to be considered by appropriate officer designated for that purpose and that officer is obliged to pass decision, one way or the other. Moreover, such a decision has to be communicated to the affected person giving reasonable opportunity in that person to challenge that decision as permissible by law. Unless such a course was followed, it is not possible to conclude that due process of law has been complied with. This has been held in case of ***Mangesh Ghorpade ..Vrs.. Kalyan Dombivli Municipal Corporation, 2005(3) Bombay CR 483.***

49] Any person aggrieved by action of Panchayat under Sub Section (2) of Section 53 of Bombay Village Panchayat Act can file appeals before Commissioner within thirty days from the date of exercise of such power. The notices which are challenged in such suit clearly in the exercise of the powers vested with Gram Panchayat u/s 53(2) of Gram panchayat Act and, therefore, as the action taken u/s 53(2) for which the specific remedy is provided under Sub-Sec.3(A) of Sec. 53 of the Act, prima facie the jurisdiction of civil court stands excluded. In

this respect reference can be made to a case of **Village Panchayat Anotore..Vrs..Wasudeo Mohod,2014(5) Mah.L.J.189.**

Negative covenant:

50] Negative covenant is a covenant which calls for refraining from certain acts, or certain uses of property. Sec. 42 of Act 1963 provides that, a court may grant an injunction to perform a negative covenant even where specific performance of the affirmative covenant may not be enforced. The enforcement of negative covenant of contract of personal service is based squarely upon the theory that the defendants' services are unique and extraordinary and therefore cannot be compensated for monetary damages.

51] In the case of **Percept D'mark (India) Pvt. Ltd. Vs. Zahirkhan AIR 2006 SC 3426** Hon'ble Apex Court held it is not permissible to grant an negative injunction if any of the following contingency comes in the way-

A] Firstly, grant of this injunction resulted in compelling performance of a contract of a personal, confidential and fiduciary service, which is barred by Clause (b) and (d) of Section 14(1) of the Specific Relief Act, 1963.

B] Secondly, it is not only barred by Clause (a) of Sec.14(1) of the Specific Relief Act, 1963, but this court has consistently held that, there shall be no specific performance of contract for personal services.

C] Thirdly, this amounted to granting the whole, or entire relief which may be claimed at the conclusion of trial, which is impermissible (Bank of Maharashtra Vs. Race Shipping AIR 1995 SC 1368).

D] Fourthly, if the plaintiff can be fully compensated in terms of money,

E] Fifthly, the principle which governs injunction relief in such cases of contract of a personal, or fiduciary nature, such as management and agency contracts for sportsmen or performing artistes

52] In the case of **Suresh Dhaluka Vs. Sunita Mahapatra AIR 2012 SC 892**, Hon'ble Apex Court held that, , the injunction sought for by the appellant was not to restrain the respondent from carrying on trade or business, but from using the trademark, which was the subject matter of the suit, accordingly the provisions of Sec. 27 of the Indian Contract Act, 1872 would not be attracted to the fact in this case.

Mandatory injunction

53] Section 39 of Specific Relief Act defines mandatory injunction as “ is an order compelling to defendant to restore things to the condition in which they were when the plaintiff's complaint was made” Sub Rule (1) & (2) of Order XXXIX of the Code of Civil Procedure deals with the provisions of grant of Temporary Injunction. In Civil Procedure Code there is no any specific provision for granting of mandatory temporary injunction. However, applying the provisions of Sub-Rule (1) & (2) of Order XXXIX the Civil Procedure Code temporary injunction can be granted.

54] In case of **Babab Narayan Landage..Vrs.. Mahadu Bhikaji Tonchar and others,1989 Mh.L.J.146** , it is held that there are two essential per-requisite of exercising jurisdiction by the Court. Firstly that, such power is not to be exercise unless Court feels high degree of assurance that, at the trial similar injunction would in all probabilities be granted and

secondly irreparable injury is caused if thing complained of is allow to continue until final decision.

55] In case of **Dorab Cawasji Warden.Vrs. Coomi Sorab Warden, AIR 1990 S.C.867**, the guidelines for interim mandatory injunctions are laid down viz-

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 can not be compensated in terms of money.

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

The above guidelines are neither exhaustive nor complete or absolute rules. Grant of refusal of such injunction raised in the sound judicial discretion of the court to be exercised in the light of facts and circumstances of each case. While seeking temporary mandatory injunction, the party should not only make out prima facie case, balance of convenience and irreparable loss, but also to prove that the case falls in exceptional category where the court should intervene in granting of relief which may in fact cover entire relief, that should have been granted in the suit. Higher degree of satisfaction of the Court is required, much higher than case involving grant of prohibitory injunction. If the effect of injunction is to alter status quo, then temporary mandatory injunction cannot be granted. It is indeed a rare power. In case of **Mohd. Mehtabkhan..Vrs.. Khushnuma Ibrahim, 2014(2) Mh.L.J. 150** the guidelines laid down in case of Dorab Warden are reiterated .

56] An interim mandatory injunction is not a remedy that is easily granted. It is an order that is passed in circumstances which are clear and prima facie materials justify

the finding that the status quo has been altered by one of the parties to the litigation and interests of justice demanded that, the status quo ante be restored by way of interim mandatory injunction (**Kishor Kumar Khaitan Vs Praveen Kumar Singh, AIR 2006 SC 1474**).

57] The Court shall very slow to grant ex-parte mandatory order. However, in exceptional cases, only when failure to do so will lead to an irreversible or irretrievable situation. This has been laid down in case of **State Bank of Patiyala ..Vrs.. Vinishkumar Bhasain, 2010(3) ALL MR 981 (SC)**.

Injunction by defendant agaist plaintiff.

58] As per Order XXXIX Rule 1(a) of C.P.C . provides that when any property in suit is in danger of being wasted, damage or alienated by any party to the suit, other party can claim injunction. Thus,Rule 1(b) & 1(c), shows injunctions by plaintiff against defendant, whereas Rule 1(a) states about parties to the suit, and therefore, defendant can seek temporary injunction regarding subject matter of Rule 1(a) only.

Breach of Injunction and how to execute the order

59] In order to give power to the trial Court to punish the erring defendant committing breach of an interlocutory order Rule 2A was introduced in Order XXXIX of the of the Civil Procedure Code. The purpose of Rule 2A of CPC is not to punish a person who had disobeyed the injunction order but to enforce it. Only willful disobedience invites the penal action. Unless the knowledge of order of court is proved, the beach thereof cannot be said to be willful. Rule 2A of Order 39 of the Civil Procedure Code does not apply to the final order decree of permanent injunction passed by the Court at the

conclusion of the hearing of the suit. Rule 2A would apply for breach of an undertaking given to the Court.

60] The application for breach of injunction should be separately registered as Misc. Judicial case and should be tried by framing appropriate points. The proceeding under Order 39, Rule 2A of the Civil Procedure Code are absolutely independent proceedings. (**Rampyaribai Sukhdeo Daga and ...Vrs.. Niladevi Naryandas, reported in 2007(4) Mh. L.J. 213**)

61] In case of **Food Corporation of India ..Vrs.. Sukhdeo Prasad AIR 2009 SC 2330** the Apex Court observed that, “ order” in regard to which disobedience /breach was alleged can not construed as creating obligation to do something which is not mentioned in the “order” on surmises, suspicion and inferences. Power under order 39 rule 2A should exercise with great caution and responsibility in entertaining applications under order 39 rule 2A from person who was not entitled to file application and accepting interpretation of the said order which does not flow from order and creating liability where non existence.

62] The proceeding initiated on the ground of disobedience or breach of injunction order is the nature of a criminal proceeding. Here the principle of criminal law will apply and the plaintiff will have to establish beyond any shadow of doubt that the defendants had committed disobedience or breach of the injunction order even though he had full knowledge of the same.

63] If the undertaking have been breached resulting in contempt of the order of the Court, which were in form of consent terms of the parties, the direction to struck off of

defence is proper. (**Sanjay Anagad Chaddha ..Vrs.Deepa Sanjay Chaddha, 2011(7) All M.R.212**)

64] The party committing disobedience and breach of injunction, his property is liable to be attached and such person may also be detained in the Civil prison for a term, not exceeding three months. Attachment made under this Rule shall not be remained in force more than a period of one year. In a case of continuation of disobedience then attached property be sold, and out of the sale proceeds, the Court may award such compensation as it think fit to the injured party and balance, if any, shall be returned to the owner. Rule 11 of Order 39 of the Civil Procedure Code empowers the court to strike of defence of defendant who commit breach of an order of the court. The remedy for the enforcement/disobedience of either perpetual or mandatory injunction is lying under Order 21 Rule 32 of C.P.C.

65] Even if the injunction order was subsequently set aside, the disobedience does not get erased. It may be a different matter that, the rigor of such disobedience may be toned down, if the order is subsequently set aside. It is open to the court to attach the property of the disobeying party and at the same time the court can order to be detained in civil prison also, if the court deems fit (**Samee Khan Vs. Bindu Khan AIR 1998 SC 2765**). Even where Court passed interim order, but without jurisdiction, said order should be followed till set aside, failing which, there will be breach of said interim order. (**Tayyab Ali..vs.. Hind Rubber Ind. Pvt. Ltd. AIR 1997 S.C. 1240.**)

Damages :

66] Section 95 provides that, wherein any suit a temporary injunction is granted and it appears to the Court that, there was no sufficient grounds or the suit of plaintiffs fails and it

appears to court that, there was no reasonable or probable ground for instituting the same, the Court may on application of the defendant award reasonable compensation which may be to the extent of pecuniary jurisdiction of the Court trying the suit. Before an individual can recover damages, the injury suffered must be one recognized by law as warranting redress and must have actually been sustained by the individual. In relation to a temporary injunction, the court may award damages as a consequences, if the disobedience or breach continues after laps of one year from the date of attachment of properly for breach of temporary injunction order. The provision finds place in Order 39 Rule 2-A(2) of the Code.

Miscellaneous provisions relating to injunction,

67] Following are the miscellaneous provisions-

- (1) Order 39 Rule 1 of the C.P.C. regarding the temporary injunction,
- (2) Order 39 Rule 2A of C.P.C. regarding consequence of disobedience or breach of injunction,
- (3) Order 39 Rule 4 of C.P.C. regarding vary or set aside the injunction,
- (4) Order 39 Rule 6 of C.P.C regarding power to order interim sale
- (5) Order 39 Rule 7 of C.P.C regarding detention, preservation, inspection, or subject matter of suit
- (6) Order 39 Rule 9 of C.P.C regarding put in immediate possession of land the subject matter of the suit
- (7) Order 39 Rule 10 of C.P.C regarding deposit of money in the court

(8) Order 39 Rule 11 of C.P.C Bombay High Court Amendment Procedure regarding parties defying order of Court and committing breach of under taking to the court

(9) Section 151 of the C.P.C. are regarding the injunction & Section 94 (c) & (e) regarding grant of temporary injunction and other interlocutory orders

(10) Order 21 Rule 26 (1)(2) and (3) of C.P.C regarding impose the conditions when court grant a stay to execution , Order 41 Rule 5 and 6 of C.P.C regarding impose condition when court grant stay to decree are the preventive relief like a nature of injunction.

Other leading cases-

68] Where an objection to jurisdiction of civil court to entertain a suit and to passed interim orders therein is raised. The court should decide the question of jurisdiction in the first instance but that does not mean that pending the decision on the question of jurisdiction the court has no right to pass interim order as may be called for. (**Tayyabhai Bagusarwala Vs. Hind Rubber Industries, 1997 SC 1240**).

69] Referring the issue of tenancy by Civil Court to the Tenancy Court, does not bar the Civil Court to grant interim relief of injunction. (**Laxmi..vs.. Savanta Bapu 1985 Mah.L.J. 314 (Bombay)**)

70] On restoration of suit, injunction order would be automatically revived unless it has been specifically mentioned at the time of dismissal that, it would not be revived. (**Vareed Jacob..vs.. Sosamma Geevarghese AIR 2004 S.C. 3992**).

71] Practice of calling witness to challenge the affidavit of that witness for deciding application for temporary injunction should be deprecated (**1981 Mah. Law Reporter 280**).

72] Where an objection to jurisdiction of civil court to entertain a suit and to passed interim orders therein is raised. The court should decide the question of jurisdiction in the first instance but that does not mean that pending the decision on the question of jurisdiction the court has no right to pass interim order as may be called for (**Tayyabhai Bagusarwala Vs. Hind Ruber Industries, 1997 SC 1240**).

Conclusion

73] In view of the aforesaid, it can be concluded that grant of temporary injunction cannot be claimed by the party as a matter of right nor can be denied by the Court arbitrarily. However, the discretion to be exercised by the Court is guided by the principles mentioned here in above and depends on the facts and circumstances of each case. The party seeking relief not only has to establish prima facie case but also the irreparable loss that would be caused in case of denial to grant relief and that the balance of convenience lies in his favour.

74] Thus rational behind the provision of Order 39 of the Code of Civil Procedure, as laid down by Hon'ble Supreme Court in the case of **M. Gurudas and Ors. Vs. Rasaranjan and Ors. - AIR 2006 SC 3275**, can be summarized as "While considering an application for injunction, the Court would pass an order thereupon having regard to prima facie, balance of convenience and irreparable injury".

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