

## SUMMARY FOR THE **WORKSHOP** TO BE HELD ON

**28-11-2015**

ON

“TEMPORARY INJUNCTION UNDER

ORDER 39 RULE 1 AND 2 OF CODE OF CIVIL PROCEDURE AND

PERPETUAL INJUNCTION UNDER THE SPECIFIC RELIEF ACT.”

### 1. DEFINITION

An injunction is defined in **Halsbury's Laws** as :

“A judicial process whereby a party is ordered to refrain from doing or to do a particular act or thing.” Oxford dictionary meaning of word Injunction is “a Judicial warning or a Judicial order restraining a person from an action or compelling a person to carry out a certain act.”

2. The law of injunction in our country is having its origin in the Equity Jurisprudence inherited from England who borrowed it from Roman Law. It is basic principle of our law, that if there is a right there should be a remedy. An injunction is a Judicial Remedy prohibiting persons from doing a specified act called a restrictive injunction or commanding them to undo some wrong or injury called a mandatory injunction and may be either temporary, interim or interlocutory, or permanent.

3. Indian courts regulate the granting of a temporary injunction in accordance with the procedure laid down under Sections 94,95 and Order 39 of the Civil Procedure Code, whereas, temporary and perpetual injunctions are prescribed by Sections 36 to 42 of the Specific Relief Act.

4. Order 39, Rules 1 & 2 of Code of Civil Procedure deals with powers of the Court to grant temporary injunction. The plain reading of Order 39, Rules 1 & 2 shows that the injunction granted by the Court under these provisions is temporary in nature and can operate until disposal of the suit or until further orders. Therefore, order passed under these provisions cannot be said to have independent existence de hors of the suit and can survive or can be continued only during pendency of the suit unless the same is modified or altered either by the same Court or by the higher Court.

5. Cases in which temporary Preventive injunction may be granted.

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.

6. OBJECT-The primary purpose of granting interim relief is the preservation of property or right and interest in dispute till legal rights and conflicting claims of the parties before the Court are adjudicated. Temporary injunction is a provisional remedy that is invoked to preserve the subject matter in its existing condition. Its purpose is to prevent dissolution of the plaintiff's rights. The main reason for use of a temporary injunction is the need for immediate relief.

7. The Court in the exercise of sound judicial discretion can grant or refuse to grant interim relief. The relief of temporary injunction can not be claimed as of right. It is discretionary and equitable relief. The relief of temporary injunction must be granted where it is necessary. It may be granted where it would help in preservation of peace and public order. Where there is possibility of breach of peace of public order, the Court ought to proceed with caution. An injunction is a remedy against an individual and should be issued only in respect of acts done by him against whom it is sought to be enforced. Temporary injunction is a provisional remedy that is invoked to preserve the subject matter in its existing condition. Its purpose is to prevent dissolution of the plaintiff's rights. The main reason for use of a temporary injunction is the need for immediate relief.

8. The court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused, and compare it with that which is likely to be caused to the other side, if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the court considers that, pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. At the stage of deciding the application for temporary injunction, the Court is not required to go into the merits of the case in detail.

9. Section 94(c) and (e) of Code of Civil Procedure contain 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 order as may appear to the Court to be just and convenient. Section 95 of Civil Procedure Code further provides that where in any suit a temporary injunction is granted and it appears to the Court that there were no sufficient grounds, or the suit of the plaintiff fails and it appears to the 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 the pecuniary jurisdiction of the Court trying the suit.

10. Injunctions are of two kind, temporary and perpetual. Temporary injunctions are regulated by Rule 1 and 2 of the order 39 of Code of Civil Procedure. Whereas, perpetual injunctions are regulated by the Specific Relief Act-1963. The party against whom a perpetual injunction is granted is thereby restrained for ever from doing the act complained of and can only be granted by a final decree made at the hearing and upon the merits of a suit. On the other hand, the temporary injunction may be granted at any stage of a suit until the disposed of or until the further orders of the court.

11. An Injunction is a judicial process whereby a party is required to do, or to refrain from doing, any particular act. It is a remedy in the form of an order of the court addressed to a particular person that either prohibits him from doing a continuing to do a particular act (Prohibitory injunction); or orders him to carry out a certain act (Mandatory injunction.)

12. Injunctions are (I) preventive, prohibitive or restrictive, that is when they prevent, prohibit or restrain someone from doing something; or (II) mandatory, that is, when they compel, command or order person to do something. Again, an injunction is granted without finally

deciding an application for injunction and operates till the disposal of the application.

13. An injunction clearly forbids a certain type of conduct. It is a remedy that originated in the English courts of equity. Like other equitable remedies, it has traditionally been given when a wrong cannot be effectively remedied by an award of money damages. Nevertheless, while deciding whether to grant an injunction, courts also take into account the interests of nonparties (that is, the public interest).

14. **PRINCIPLES :**

While granting temporary injunction the tests be applied are

- (1) Whether the plaintiff has a prima facie case,
- (2) Whether the balance of convenience is in favour of plaintiff
- (3) Whether the plaintiff would suffer irreparable injury if his prayer for temporary injunction is disallowed.

15. At the stage of deciding the application for temporary injunction, the Court is not required to go into the merits of the case in detail. Generally, before granting the injunction, the court must be satisfied about the following aspects :

- \* “ubi jus ibi remedium”. Whenever there is right there is remedy.
- \* One who seeks equity must come with clean hands.
- \* One who seeks equity must do equity.
- \* Where equities are equal, the law will prevail.
- \* Equity follows the law.
- \* Equity aids the vigilant, not those who slumber on their rights.
- \* The power to grant a temporary injunction is at the discretion of the court.
- \* This discretion, however, should be exercised reasonably, judiciously and on sound legal principles.
- \* Injunction should not be lightly granted as it adversely affects the other side.
- \* The grant of injunction is in the nature of equitable relief, and the court has undoubtedly power to impose such terms and conditions as it thinks fit. Such conditions, however, must be reasonable so as not to make it impossible for the party to comply with the same and thereby virtually denying the relief which he would otherwise be ordinarily entitled to.

16. **PRIMA FACIE CASE** : 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.) } The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that there is a bona fide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of temporary injunction. The burden is on the plaintiff to satisfy the court by leading evidence or otherwise that he has a prima facie case in his favour. Prima facie case, however, should not be confused with a case proved to the hilt. It is no part of the court's function at that stage to try to resolve a conflict of evidence nor to decide complicated questions of fact and of law which call for detailed arguments and mature considerations. These are matters to be dealt with at the trial. In other word, the court should not examine the merits of the case closely at that stage because it is not expected to decide the suit finally. In deciding a prima facie case, the court is to be guided by the plaintiff's case as revealed in the plaint, affidavits or other materials produced by him. The plaintiff should come before the Court with clean hands. If he suppresses material facts, documents then he is not entitled for the relief of injunction and further points of balance of convenience, irreparable injury even not required to be considered in such case.

17. **BALANCE OF CONVENIENCE**: The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

18 **IRREPARABLE INJURY** : The applicant must further satisfy the court about the third condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted, and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury. In other words, the court must be satisfied that refusal to grant injunction would result in 'irreparable injury' to the party seeking relief and he needs to be protected from the consequences of apprehended injury. Granting of injunction is

an equitable relief and such a power can be exercised when judicial intervention is necessary to protect rights and interests of the applicant. The expression irreparable injury however does not mean that there should be no possibility of repairing the injury. It only means that the injury must be a material one, i.e. which cannot be adequately compensated by damages. An injury will be regarded as irreparable where there exists no certain pecuniary standard for measuring damages.

19. **OTHER FACTORS:** There are some other factors which must be considered by court while granting injunction. The relief of injunction may be refused on the ground of delay, laches or acquiescence or whether the applicant has not come with the clean hands or has suppressed material facts, or where monetary compensation is adequate relief. As per amended Sec.9-A (2) of the C.P.C. The Court is empowered to grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction.

20. As per Rule 3 of Order 39 of the C.P.Code the power to grant an ex parte interim injunction in exceptional circumstances based on sound judicial discretion to protect the plaintiff from apprehended injury may be granted. As per Rule 3A of Order 39 of Civil Procedure Code where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavor to finally dispose of the application within 30 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.

21. **Care for Ad-interim Order-** 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).

22. The Hon'ble Apex Court in the case of **Bloom Decor Ltd., -Vrs- Subhash Himatlal Desai (1994) 6 SCC 322 and Morgan Stanley Mutual Fund -Vrs- Kartik Das (1994) 4 SCC 225**, has held that the factors which should weigh for the grant of ex parte injunction are;-

- (1) Whether irreparable or serious mischief will ensue to the plaintiff;
- (2) Whether refusal of ex parte injunction would involve greater injustice than the grant of it would involve;
- (3) The time at which the plaintiff first had notice of the act complained of; (4) Whether the plaintiff had acquiesced for sometime;
- (5) Whether the application is made in utmost good faith;
- (6) In any case, an ex parte order even if granted must be for a limited period of time. The general principles of balance of convenience, prima facie case and irreparable loss would also be considered by the court.

23. In the case of **DDA -Vrs- Skipper Construction Co. (Pvt) Ltd., AIR 1996 SC 2005 and (1996) 4 SCC 622.** The Hon'ble Apex Court has held that the injunctions and stay orders should not be granted mechanically without realising the harm likely to be caused to the opposite party and it is not proper to burden the other party by saying that the other party can get the stay order vacated.

24. Under Order 39 Rule 2, of Code of Civil Procedure, the Court is empowered to grant injunction to prevent the breach of contract. Whereas, the perpetual injunctions to restrain the breach of contract are regulated by the Specific Relief Act. Section 56(f) of the Specific Relief Act 1877 provided that a perpetual injunction cannot be granted to prevent the breach of a contract the performance of which would not be specifically enforced. Now, the performance of a contract is not specifically enforced where damages would afford adequate relief.

25. The Hon'ble Andhra Pradesh High Court in case of **Chand Sultana -Vrs- Khurshid Begum AIR 1963 AP 365,** has held;- If a suit is brought for specific performance of a contract and for an injunction to restrain the defendant from committing a breach of the contract, and the plaintiff applies for a temporary injunction to prevent the breach of the contract until the suit is disposed of, the court will decline to grant a temporary injunction if the plaint and the affidavits filed by the parties show on the face of them that the case is not one for a perpetual injunction or for specific performance and the Hon'ble Delhi High Court in case of **Raman Hosway -Vrs- J.K. Synthetics AIR 1974 Del 207,** has held that;- No temporary injunction can be granted if final relief cannot be granted.

26. The Hon'ble Allahabad High Court in case of **Triveni Structurals Ltd. -Vrs-**

**Newag Enterprises AIR 1993 All-78**, has held that;- Where the case is not fit for permanent injunction, then it cannot be a fit case for temporary injunction either.

00. In ***Agricultural Produce Market Committee Case<sup>1</sup>***, the Hon'ble Apex Court has held that "a temporary injunction can be granted only if the person seeking injunction has a concluded right, capable of being enforced by way of injunction."

27. The Hon'ble Apex Court in landmark judgment in ***Gujarat Bottling Co. Ltd. Case<sup>2</sup>***, held that the Court needs to follow certain guidelines while considering an application for grant of temporary injunction, some of which are briefly stated hereunder:

- The applicant **shall have to establish a prima facie case** in his favour. the Court will not examine the merits of the case rather only the basic facts on which it is established that the applicant has a prima facie case to contest.
- The court will also examine **the conduct of the applicant and such conduct needs to be examined even at the stage where the application for setting aside an order** under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 is filed.
- The court has to examine the **balance of convenience** i.e. the balance of comparative loss caused to the applicant and the respondent in the case of not passing the order.
- The court will first of all will examine what is the extent of loss that would be caused to the applicant if the order is not passed and also whether it is reparable by monetary compensation i.e. by payment of cost. Then it will examine the loss suffered by respondent if the order is passed and thereupon **it has to see which loss will be greater and irreparable.**
- The court has the power **also to ask the party to deposit security for compensation or to give an undertaking for the payment of the compensation**, if ordered.

28. In ***Seema Arshad Zaheer Case<sup>3</sup>***, the Hon'ble Supreme Court has indicated the salient features of prima facie case as under:

*"The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (i) existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff; and*

(iii) *clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands."*

## 29. **INHERENT POWER :**

There was a conflict of Judicial opinion on the question whether the Court could issue a temporary injunction U/s.151 of Civil Procedure Code when the case did not fall within the term of Order XXXIX Rule 1 and 2 of Civil Procedure Code. However now that point is concluded by the Hon'ble Apex Court in the case of **Manmohanlal Vrs. Seth Hiralal reported in A.I.R.1962 Supreme Court 527** by observing that the Court has powers U/s.151 of Civil Procedure Code to issue an injunction in cases not falling within Order XXXIX Rule 1 and 2; however that discretion should be exercised judiciously.

30. For the purpose of implementation of an injunction order Police protection can be ordered U/s.151 of Civil Procedure Code. However the Court shall not order for Police protection on the basis of an ad-interim ex-parte order and only final order under Order XXXIX Rule 1,2 can be enforced with police assistance. An order granting Police aid without giving a chance to the defendant to submit his objections is not proper.

31. Similarly, Section 151 of the Code of Civil Procedure gives inherent power to the Court to make such order as may be necessary for the ends of justice or to prevent abuse of the process of the Court, however same is required to be exercised by the Court, normally, when there is no other statutory remedy available to the parties to redress their grievance or to prevent abuse of the process of Court. Whenever there is a statutory provision remedy provided under the Code or statute, parties to the litigation are required to exhaust those remedies and in such situation, Court is not expected to exercise inherent powers.

32. **MANDATORY INJUNCTION :** Before issuing temporary mandatory injunction the Court must be satisfied that the effect of injunction would be to preserve status-quo and to prevent irreparable injury. A temporary mandatory injunction can be issued only in case of extreme hardship and compelling circumstances and mostly in those cases when status-quo existing on the date of institution of suit is to be restored. The jurisdiction to issue mandatory injunction is discretionary jurisdiction which can be exercised only in a case which falls strictly

within four corners of provisions enumerated under section 37 to 41 of Specific Relief Act. Mandatory injunctions are contemplated under section 39 of the Specific Relief Act, where it is necessary to prevent the breach of an obligation and the erring party may be compelled to perform certain acts. Section 40 provides for granting damages in lieu of or in addition to injunction. While section 41 provides circumstances when the injunction should be refused.

33. A mandatory injunction can be granted on a interlocutory application. But if a mandatory injunction is granted at all on such an application, it can be granted only to restore the status quo and not to establish a new state of things which did not exist when the suit was instituted.

34. 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. 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 .

35 **INJUNCTION IN CASE OF BANK GUARANTEE** : 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 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** )

36. **ANTI-SUIT INJUNCTIONS** : As per section 41 (a) of the Specific Relief Act 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) of the Specific Relief Act 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. 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. Then 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**).

37. 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 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** )

38. **CAVEAT**: 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.

39. Injunction against local/statutory bodies or government 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 the 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 it's 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.

40. **Status-quo** -Status-quo and injunction are not identical, however, primary purpose of injunction is to preserve the matter. In status-quo both parties prevented from doing any act. Therefore, status-quo should not be granted where there is no prima facie case (**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.

41. **Equity** -Injunction is an equitable remedy as well as it is governed by law of equity. Therefore, equitable principles are of very much importance in granting or rejecting injunction. Principle is that, he who seeks equity must come with clean hands. 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.

42. **Breach of Injunction and how to execute the order-** In order to give power to the trial Court to punish the erring defendant committing breach of to an interlocutory order Rule 2A was introduced in Order 39 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 breach 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.

43. Order 39 Rule 2-A of the Civil Procedure Code. Sub Rule (2) provides that if the disobedience or breach continues beyond one year from the date of attachment, the Court is empowered to sell the property under the attachment and compensate the affected party from such sale proceeds. In other words, attachment will continue only till the breach continues or the disobedience persists subject to a limit of one year period. If the disobedience ceases to continue in the meanwhile the attachment also would cease. The remedy for the enforcement/disobedience of either perpetual or mandatory injunction is lying under Order 21 Rule 32 of C.P.C. Remedies and effect for disobedience of a temporary injunction is laid down in the provisions of Order XXXIX Rule 2A of the Civil Procedure Code. The remedy for the enforcement/disobedience, of either perpetual or mandatory injunction is lying under Order XXI R.32 of CPC.

44. 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.. Naryandas, reported in 2007(4) Mh. L.J. 213**)

45. In **Colgate Palmolive (India) Ltd Vs. Hindustan Lever Ltd., AIR 1999 SC 3105**, The Hon'ble Apex Court held that, other circumstances which ought to weight with the court hearing the applications or petition for the grant of injunction are as below--

- Extent of damages being an adequate remedy,
- Protect the plaintiff's interest for violation of his right though however having regard to the injury that may be suffered by the defendants by reasons thereof
- Considering the facts and circumstances relief should be flexible
- whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot compensated otherwise.
- Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant.

46. Similarly, it is also not necessary that suit should be disposed of only on merits in order to bring an end to interim order. What is contemplated in law is that such

interim order would continue to operate till suit is disposed of one way or the other and would come to an end on the day suit is disposed of. Whether suit is disposed of for want of prosecution or on merits is not the criteria to decide existence of interim orders. These orders by their very nature are temporary and remain in force only during the pendency of the suit and come to an end when the suit is disposed of one way or the other.

### **PERPETUAL INJUNCTION UNDER THE SPECIFIC RELIEF ACT**

47. The sections under Specific Relief Act lays down the general principles which should guide the courts in considering the question of granting or refusing perpetual injunctions in appropriate cases. The principles contained in this section are not new. They have been well settled and recognized and applied by courts in India long before they came to be incorporated in the form of the present section. They contain in simple language, the rules of equity as formulated in England and introduced in India as rules based on principles of justice, equity and good conscience.

48.. Primary object of the grant of perpetual injunction is to prevent a breach of an existing legal right of a person, he is entitled under the law to prevent that breach by means of an injunction. This is an elementary principle, well recognized and established. **Lord Kingsdown in Imperial Gas Light & Coke Co. v. Broadment**, said, that when a plaintiff applied for an injunction to restrain a violation of an alleged right, if the existence of the right be disputed he must establish that right before he got the injunction to prevent the recurrence of its violation. Thus where the plaintiff fails to establish the precise nature of an existing legal right vested in him or the precise obligation of which there has been a breach or the threatened violation by the defendant; he cannot avail of an injunction under this section.

49. In **Tituram Mukerji v. Cohen ILR 33 Cal.**, the Judicial Committee of the Privy Council said : “the right to an injunction, depends, in India upon statute and is governed by the provisions of the Specific Relief Act.” The present Sec. 38 prescribes the conditions when perpetual injunction can be granted by the Court : subsection (1) of this section says that the purpose of granting perpetual injunction should be that breach of an obligation existing in favour of the plaintiff be prevented. It is of no consequence whether the breach of the obligation is expressed or implied. Subsection (2) of this section prescribes when the obligation referred to in subsection (1) of the

section arises under the contract, the Court should be guided by the law enacted in Chapter II of the Act. Subsection (3) of the present section lays down the conditions under which the defendants may be permanently enjoined from invading or threatening to invade the plaintiffs' right to or enjoyment of the property.

**50. Section 38(1) of the Specific Relief Act**, provides that a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication. Sub section (2) says that when any such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II and; Sub section (3) provides that when the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of property, the Court may grant a perpetual injunction in the following cases;-

- (a) Where the defendant is trustee of the property for the plaintiff;
- (b) Whether there exists no standard for ascertaining the actual damage caused or likely to be caused, by the invasion;
- (c) Whether the invasion is such that compensation in money would not afford adequate relief;
- (d) Where the injunction is necessary to prevent a multiplicity of judicial proceedings.

**51.** The Hon'ble Apex court in the case of Corporation of **Bangalore City -Vrs- M. Papaiah, A.I.R. 1989 S.C. 1809**, has held " A suit for perpetual injunction is not to be dismissed per se for absence of prayer of declaration of title, if the plaint discloses foundation of title in the plaintiff."

**52.** Similarly in the case of **Avula Sathaiah -Vrs- Avula Lingaiah, A.I.R. 2001 AP 400**, it has been held " Where the defendant sought title on basis of unregistered sale deed. Both parties basically were setting up their respective claims on basis of two different agreements of sale. Held that in such circumstances question of fact with regard to title had to be given primacy before issue of possession, in order to come to a right conclusion with regard to possession. As the question of title and possession had become inter independent, therefore, Court would not be justified in receiving and admitting into evidence unregistered sale deed."

53. The present secs. 38 to 41 deal with various aspects of injunctions. They have to be read, construed and interpreted together, each provision supplementing the other. This section defines the circumstances under which perpetual injunctions may be granted and new Sec. 41 details the circumstances when the injunction must not be granted. There is an equally, important condition for the grant of perpetual injunction, namely, that when there is no equally efficacious relief which could be granted to the plaintiff except the relief of perpetual injunction, it should be granted. It should be noted that the section contemplates the existence of a legal right in favour of the plaintiff, as a condition precedent to the grant of the relief of the perpetual injunction, which is either threatened to be violated or is actually violated and the existence of a legal right in favour of one person contemplates the existence of the corresponding legal duty in relation to that legal right, in the other.

54. A perpetual injunction is granted by Court to a plaintiff to prevent the breach of some obligation existing in his favour whether expressly or by implication as provided by Sec. 38 of the Specific Relief Act, 1963. The expression "obligation" includes every duty enforceable by law. Where a plaintiff has a legal right to continue in possession of property, he is entitled to a perpetual injunction against a person interfering with his possession; in such a situation perpetual injunction would be necessary to prevent the breach of existing right in plaintiff's favour. When relief for perpetual injunction is claimed on the basis of possession, the plaintiff has to prove that he has legal right to continue in possession. If the defendant denies the plaintiff's title to interfere with his possession. If the defendant denies the plaintiff's title to the property or his right, to continue in possession, the plaintiff must prove his title to the property as well as his right to continue in possession. The plaintiff may have acquired title to the property and legal right to continue in possession by adverse possession but if his title has not matured he would not be entitled to a perpetual injunction against the owner or his agent, servant or manager.

55. Sub-section (3) of Section 38 of Specific Relief Act in clauses (a), (b), (c) and (d) further illustrates the circumstances wherein perpetual injunction may be granted by the Court. That means in view of the section 38 (3) when the defendant invades or threatens to invade the plaintiff's right, or enjoyment of property the Court may grant a perpetual injunction.

56. Under normal parlance, while granting perpetual injunction, the Court has to see the

nature of right being invaded, whether the compensation would be an inadequate remedy for its redressal, there is no standard for ascertaining the actual damage caused by such invasion, there shall not have efficacious remedy to the plaintiff in respect of such invasion, the plaintiff would not have been guilty of delay and laches and his conduct is not unfair. Aspect of comparative hardship also assumes importance.

#### 57. **Injunction when cannot be granted**

Section 41 of the Specific Relief Act, 1963, provides various contingencies in sub section (a) to (j) in which the injunction cannot be granted.

(a) to 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 dis-entitle him to the assistance of the Court.

(j) when the plaintiff has no personal interest in the matter.

58. Section 37(2) of Specific Relief Act says that a perpetual injunction can only be granted by the decree made at the hearing and upon merits of the suit. The defendant is thereby perpetually enjoined from the assertion of a right from the commission of an act, which would be contrary to the rights of the plaintiff.

59. It is well settled that the relief of injunction is available only to a person who is in

possession. An injunction restraining disturbance of possession will not be granted in favour of the plaintiff who is not found to be in possession. In the case of a permanent injunction based on protection of possessory title, the plaintiff is entitled to sue for mere injunction without adding a prayer for declaration of his rights (**Ramji Rai V/s. Jagdish Mallah, AIR 2007 Supreme Court 900**). A person in possession can be evicted only by the due process of law. Even the rightful owner can not eject him with force.

60. Proceedings for grant of injunction are always discretionary & a court of law shall not generally grant, perpetual injunction in favour of a plaintiff against the rightful owner if he is a mere trespasser or if his possession is unauthorized. In a suit for perpetual injunction it is not always necessary for the plaintiff to seek declaratory relief & if his legal right is denied by the defendant then the Court is under a legal duty to consider the plaintiff's title to the property and in that process the plaintiff's legal title to the property in dispute has to be adjudicated. If the plaintiff fails to establish his legal right to the property or his legal right to continue in possession, he cannot be granted perpetual injunction against the owner or the manager of the property.

### **CONCLUSION**

61. An injunction is an equitable remedy and as such attracts the application of the maxim that he who seeks equity must do equity. Granting of injunction is entirely in the discretion of the Court, though the discretion is to be sound and reasonably guided by Judicial Principles. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side. The grant of injunction is in the nature of equitable relief, and the court has undoubtedly power to impose such terms and conditions as it thinks fit. Such conditions, however, must be reasonable so as not to make it impossible for the party to comply with the same and thereby virtually denying the relief which he would otherwise be ordinarily entitled to. The general rule is that grant of an injunction is a matter of discretion of the court and it cannot be claimed as of right. However, the discretion has to be exercised in a judicious manner and in accordance with the provisions relating to the grant of injunction contained in the specific Relief Act. It is well settled that no interim injunction would be issued if final relief cannot be granted. When plaintiff has no personal interest in the matter, injunction cannot be granted.

62. 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 case, balance of convenience and irreparable injury".

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