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District Court, Sindhudurg-Oros.

SUBJECT OF THE SECOND WORKSHOP.

-: Civil Group :-

**Law relating to Perpetual Injunction & Mandatory Injunction
with reference to the provisions of Specific Relief Act.
Temporary Injunction under order 39 Rule 1 & 2 of C.P.C., 1908.**

**-: Preventive Relief Purpose & Scope Governing Principles
Equitable Principles :-**

The preventive relief in the form of injunction has been dealt with in Chapter VIII of the specific Relief Act 1963. An injunction is a writ framed according to the circumstances of the case commanding an act which the court regards as essential to justice, or restraining an act which it esteems contrary to equity and good conscience. It may be either a final remedy obtained by a suit or a preliminary or interlocutory relief granted while the suit is pending. In the first case it is a decree and in the second an order or writ. Whatever be its forms, decree or order, the remedy of injunction is wholly preventive, prohibitory or protective, though it may be in the form of mandatory injunction.

An injunction is a judicial process whereby a party is ordered to refrain from doing or directed to do a particular act or thing. In the former case, it is called a restrictive injunction and in the later, a mandatory injunction. Injunction is the means for granting specific relief by prevention of a party from doing that which he is under an obligation not to do. An injunction as is well known an equitable relief and accordingly is to conform to well known maxim of the law of equity, that *he who seeks equity must do equity*. The law as contained in the Specific relief Act is

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governed by aforesaid principle.

-: General principles governing grant of Injunction :-

The general principle that govern the issuance of injunction is noted by Dr. Pomeroy in these words “In determining whether the Injunction will be issued to protect the right of property, to enforce an obligation, or to prevent any wrong, there is fundamental principle of utmost importance which furnishes to answer to any questions, the solution to any difficulties which may arise. This principle is both affirmative and negative. The affirmative aspect of it should never be lost sight of any more than the negative sight. The general principle may be stated as follows :

Whenever a right exists or is created by a contract by the ownership of the property or otherwise cognizable by law, a violation of that right will be prohibited unless there are other considerations of policy or expediency which forbid a resort to this prohibitive remedy. The restating power of equity extends therefore through the whole range of rights and duties which are recognized by law and would be applied to every case of intended violation, were it not for certain reason of expediency and policy which control and limits its exercise. This jurisprudence of equity to prevent the commission of wrong is however modified and restricted by considerations of expediency and of convenience which confine its application to those cases in which the legal remedy is not full and adequate. Equity will not interfere to restrain the breach of a contract or the commission of a tort or the violation of any right, when the legal remedy of compensatory damages would be complete and adequate. The incompleteness and inadequacy of the legal remedy is criterion which the settled doctrine determines the remedy of injunctions.

In India Section 38 of the Specific Relief Act, 1963 sets forth the affirmative and Section 41 the negative principles. In the mater of issuing injunction the law can not make overnice distinctions and refuse the relief merely because there is a bare possibility that the evil against which an injunction is sought

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may be avoided. Proceeding upon practical views of human affairs, the law will guard against risk which are so eminent that no prudent man would incur them, although they would not amount to absolute certainty of damage. Law will go further according the same rational and practical view and balancing the magnitude of evil against chances of its occurrence. It will never provide against a somewhat less eminent probability in case where the mischief should it be done would be vast and overwhelming.

Except in cases where a statute give an absolute right to an injunction whether temporary or permanent injunction, can not as a general rule be sought as a matter of right but its granting or refusal rests in the should discretion of the Court under the circumstances and facts of the particular case, unless perhaps in cases where facts on which the injunction is asked present questions of law only. The general rule applies with equal force whether the injunction is a preventive or mandatory injunction and also to be an issuance of a restraining order and is specially applicable in the case of a temporary injunction where the granting of injunction depends upon the determination of question of fact and the evidence is conflicting. Where the granting of injunction would be more in euaiicable than refusing of it, if is a proper exercise of discretion to refuse it. An injunction will be denied where it would have been of no effect as between the parties and was sought simply of its effect on third parties. The Court is not bound to grant the relief of injunction merely because it is lawful to do so, but the discretion of the Court is not arbitrary, but sound and reasonable guided by judicial principle and capable of correction by a Court of appeal. The Court must be satisfied that the plaintiff has made out a prima-facie case that irreparable injury will occur to him if the injunction is not granted and that there is no other remedy opened by which he can protect himself from the consequences of the apprehended injury and that the injury is one that can not be adequately compensated for in damages.

The powers of Courts to issue injunction should be exercised with great caution and only where the reason and necessity therefore, are clearly established. The exercise is attended with no small danger both from its summary

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nature and its liability to abuse. It ought therefore, to be guided with extreme caution and applied only in very clear cases, otherwise instead of becoming an instrument to promote the public as well as private welfare it may become a means of extensive and perhaps of irreparable injustice.

It is a general rule that injunction will not be granted for any purpose where the law furnishes an adequate remedy. An action of law will not be enjoined where adequate relief can be obtained in the Court where that action is pending. To grant such relief would tend to multiplicity of litigations. Where the statute provides the particular remedy for infringement of a right of property the jurisdiction of the Court to protect the right by injunction is not excluded, unless the statute expressly or by necessary implication so provides. Where there has been a breach of statutory enactment for which remedy is provided is penalty, an injunction may be granted to prevent future breaches which are threatened. Where a statute merely creates an offence without creating a right of property and provides a summary remedy, a person aggrieved by the commission of offence is confined to the summary remedy and can not claim an injunction. In case however where a person would otherwise be without remedy for an injustice the Court has discretionary powers to entertain by way of declaration and injunction in a dispute upon which a statutory tribunal has adjudicated. Where the statute has provided a special tribunal for a decision of question the Court does not except in very special cases interfere by injunction or declaration of right. Where a remedy for particular ground or injury has been provided by statute the general rule is that no relief in equity can be offered in such a case by injunction.

-: Equitable Principles :-

The Specific Relief Act lays down some established principles of equity upon which injunction are founded. The principle that an injunction can not be granted when the conduct of the applicant or his agent has been such as to disentitle him to the assistance of the Courts. This clause is based upon two well

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known principles “*he who seeks equity must do equity*” and “*he who comes into equity must come with clean hands*”. Equitable remedy will not be granted unless the conduct of applicant is fair and honest and free from any taint or fraud or illegality. A party suppressing material fact does not deserve the grant of any discretionary relief much less a temporary injunction.

In granting an injunction the Courts act in personae and will not suffer anyone within its reach to do what is contrary to its notions of equity merely because the act to be done may be in point of locality beyond its jurisdiction. The person to whom its orders are addressed must be within the reach of the Court or amenable to its jurisdiction. An injunction being an order directed to a person does not run with the land. In India this maxim holds good. Decree of injunction does not run with the land and in the absence of any statutory provision such decree can not be enforced against the surviving members of a Joint Family or against the purchaser from the Judgment Debtor. But where the sons of the Judgment Debtor are brought on record as his legal representatives the decree can be executed against them and so also against the transferee from the legal representative under Section 52 of the Transfer of Property Act.

Some important equitable principles which are necessary to consider while granting or refusing injunction are as follows.

- 1) Whenever there is right there is remedy.
- 2) One who seeks equity must come with clean hands.
- 3) One who seeks equity must do equity.
- 4) Where equities are equal the law will prevail.
- 5) Equity follows the law.
- 6) Equity aids the vigilant, not those who slumber on their rights.
- 7) Equity acts a personam.

-: Perpetual Injunction :-

A perpetual injunction is one granted by the judgment which finally

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disposes of the injunction suit. It forms a part of judgment upon a hearing on merits and it can be properly ordered only upon the final judgment. In order to grant relief on the merits of the case by perpetual injunction it is not a prerequisite that the temporary injunction should have been applied for and granted.

Section 37 of the Specific Relief Act, 1963 provides that a perpetual injunction can only be granted by a decree made at the hearing and upon merits of the suit. The defendants thereby perpetually enjoined from the assertion of a right or from the commission of an act which would be contrary to the rights of the plaintiff. A perpetual injunction is granted when some established rights has been invaded and when damage has occurred or must necessarily of accrue from the act or omission complained of. There must have been a material injury to a clear legal right and damages must not be sufficient compensation. Section 38 is merely a general section enacting that a perpetual injunction only be granted by a decree in a suit. It does not itself a general right to obtain a perpetual injunction in all cases, but is depend on the sections which follow it i.e. Section 38 and 41 of the Special Relief Act, 1963. These defines the circumstances where perpetual injunction can be granted and where they can not and can be granted only when the plaintiff builds a good case and when merits of the case so suggests.

-: When perpetual injunction may be granted :-

Chapter 8 of the Special Relief Act provides for the grant of perpetual injunction. The perpetual injunction can be granted to prevent the breach of an obligation existing in favour of the plaintiff whether expressly or by implication or when such obligations arises from contract which can be specially enforced or when the defendants invades or threatens to invade the plaintiff right to enjoyment of property inter alie where the injunction is such that compensation in money would not afford adequate relief or where there exists a standard for ascertaining the actual damage caused or likely to be caused by the invasion. The reference of Section 38 can be taken in this regard.

-: When perpetual injunction can not be granted :-

Section 41(b) states that, an injunction can not be granted to restrain any person instituting or presenting any proceeding in a Court not subordinate to that from which the injunction is sought. Section 34 of the Specific Relief Act enables a plaintiff to seek a relief of mere declaration without asking for any further relief and the proviso to Section 34 would come into play only if the plaintiff omits to seek further relief in a case where there is no legal bar of seeking such relief. In view of the legal bar mentioned above it can not be said that the Court is not competent to make a mere declaration. If the provisions of Section 41 of the Specific Relief Act prohibits the grant of decree or injunction in cases covered thereunder it must necessarily follow that the Court can not grant a temporary relief of a similar nature.

-: Perpetual Injunction to prevent breach of obligations in favour of plaintiff :-

Section 38 of the Act enables the Court to grant perpetual injunction to prevent the breach of obligation existing in favour of the applicant whether express or implied. This is again subject to exception. Even where an obligation is made out if the case falls within Section 41 of the Act an injunction can not be granted. Therefore, where the plaintiff can not and does not allege any recognizable right or obligation in him nor the breach of the same he can not get a perpetual injunction and also if he can not get perpetual injunction he can not get a temporary injunction as well. Section 38 gives the general principles on which a perpetual injunction may be granted. It does not introduce any new principle of law into India but expresses in its general terms the rules acted upon by Courts of equity in England long since introduced in India, because they were in accordance with equity and good cosines. Section 38 and 41 are to be read together supplementing each other. The former defines the circumstances under which the perpetual

injunction may be granted and the later enumerates the cases wherein injunction must not be granted.

Section 38 of the Act does not authorize a Court to issue injunction in respect of every breach of obligation whether statutory or otherwise but only in respect of breach of obligation arising in favour of the applicant. It automatically follows that the applicant must establish a legal right and then show actual or threatened invasion of that legal right by the particular person against whom he wishes to claim an injunction. Obligation as defined by Section 2 of the Specific Relief Act includes every duty enforceable by law. The definition is not exhaustive but only enumerative. The word "include" has an extended force and does not limit the meaning of the term to the substance of the definition. The definition contemplates only duty enforceable by law. All duties are conceived and spoken of as obligations but a duty is not called as obligation in a legal sense to which no legal sanction attaches. A duty to be enforced by a Court must be a legal obligation and not merely moral, social or religious. In India the term "obligation" as defined is used in its proper juridical sense. It is the condition of being subject to a legal command or liability to do or forbear to do something and every legal command involves a corresponding legal duty for command and duty are necessarily co relative terms. Hence every existence of legal right in one person involves the existence of an obligation either in some one else and or in all others according the right is a particular or general one. Hence the due is enforceable Specific Relief Act may spring up differently either out of fraud or out of contract. The term as been used in India in its wider juristic sense covering duties arising either *ex contractu* or *ex delict*. It includes every duty enforceable by law so that when a legal duty is enforced on the person in respect to another that other is invested with the corresponding legal right.

An injunction may be granted to prevent not merely the recurrence but also the occurrence of the injury. Where the threatened act of the defendant is of such a character that it must inevitably result in injury to the plaintiff, the plaintiff will be entitled to an injunction restraining the defendant from doing such

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an act even though no damage has actually occurred. If after the commencement of the action the damage occurred, the plaintiff may be allowed to amend his plaint by stating the nature and extent of injury suffered.

Section 38 requires that, the obligation in respect of which the injunction is granted should arise either from a contract or from right of property. The legal right must vest on the date of the alleged breach and must be vested in the applicant. If no legal right is established no injunction can be granted. The grant of an injunction is not restricted to wrongs arising out of contract only, but relief can also be given in respect of an invasion of the rights of any person resting on tort.

-: Threatened invasion of legal right :-

The Court will grant relief by way of injunction wherever the fundamental right or statutory or legal rights of persons are invaded or threatened. Before such relief is granted the court must find or declare the existence of such right and such right is being illegally invaded or threatened. A satisfactory proof that the defendant threatens the commission of a wrong is sufficient ground to justify the issue of an injunction. Where the plaintiff's legal rights are not disputed an injunction may be granted to restrain the commission of an apprehended or threatened act on the ground that the act if done will violate the plaintiff's right if he can show a strong case of probability that the apprehended mischief will in fact arise. The mere fact that the defendant denies any intention of committing the act complained of is not itself a sufficient ground for refusing relief. It is not sufficient ground for granting injunction however that if there be no such intention it will do the defendant no harm. But an injunction will not be granted if the defendant even though he asserts his right to do the act not only says that he has no present intention of doing it but undertakes to give reasonable and sufficient notice before attempting to do it. When the defendant offers an undertaking and the plaintiff obtains all the relief he seeks thereby and the offer is one which he ought to have accepted an injunction may be refused. The Court will not restrain the future act of

a wrongdoer unless it is plain they will be of a wrongful nature. If the defendant claims and insists upon his right or gives distinct notice of his intention or threatens or intends to commit an act which if committed would in the opinion of the Court violate the plaintiff's right, an injunction will be granted. The Court has jurisdiction to protect property from an act threatened which if completed would give rise to an action. An injunction will be granted if the person threatened is free from blame and show that an action for damages would not be adequate redress. Unless an actual injury results to a private individual himself from the excessive exercise of the powers of a company, he is not entitled to an injunction. But where there is a dispute on the question of title to the suit property, between plaintiff and the defendant either it must be found that the plaintiff has title by deed or adverse possession or it must be found that the plaintiff is in possession on the date of suit and the defendant has no title to the suit property then the plaintiff's possession can be protected by perpetual injunction.

-: Person in possession his right to injunction :-

Where there is a dispute between plaintiff and defendant on the question of title to the suit property, a decree for permanent injunction in favour of the plaintiff even though he may be found to be in possession of the vacant site can not be granted without adjudicating upon the plaintiff's title. A person who is neither in the enjoyment in possession nor has any title to suit property is not entitled to a decree of perpetual injunction. But where even though he fails to prove his ownership but is able to establish his possession he is entitled to a decree for injunction. Once it is established by plaintiff that he is in exclusive possession and it is admitted by the defendant that he is in such possession, an injunction restraining the defendant from dispossessing the plaintiff must issue as a matter of course. The proposition of law that no injunction can be granted against the owner is true only to the extent that no absolute injunction can be granted. However, a limited injunction that the true owner will not dispossess even a trespasser whose

possession is found to be well established except by due process of law can be granted.

- : Where there exists no standard for ascertaining actual damage :-

Section 38 of the Special Relief Act 1963 provides that an injunction will be granted where there exists no standard for ascertaining the actual damage caused or likely to be caused by the act complained of. This provision should not be taken to mean that a person should not get an injunction unless his property would be practically destroyed if the injunction were not granted. For the award of an injunction it must be proved that damage will be irreparable. Because if the danger is not proved to be so eminent that no one can doubt that if the remedy is delayed the damage will be suffered. It must be shown that if the damage does not occur at any times it will come in such a way and under such circumstances that it will be impossible for the plaintiff to protect himself against it if relief is denied to him in a quia timet action.

- : Where the invasion of right is such that pecuniary compensation would not offered adequate relief :-

The principle remedy afforded by Courts of law for an injury is money damages. If such damages will constitute an adequate compensation for the injury threatened or inflicted if it will not be interfered by injunction. When a party can be compensated in damages a Court should be slow to pass order for granting temporary injunction. If in such a case plaintiff must resort to an action at law for damages sustained specially this doctrine is applicable where the granting of an injunction would cause inconvenience to the public, but the mere fact that damages are recoverable at law. If no objection to the granting of an injunction in case damages would not be an adequate compensation for the injury.

Section 38(3)(c) of the Special Relief Act 1963 provides that, in such a case the Court may grant a perpetual injunction. Prima-facie the Court will not grant the injunction to restrain an actionable wrong for which damages are proper

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remedy. But the fact that the plaintiff may have right to recover damage is no objection to the exercise of jurisdiction by injunction if his right can not be adequately protected or vindicated by damages. An injunction will not be granted if the injury complained of is capable of being adequately compensated by money payment especially when the plaintiff prepared the case as one for compensation.

- : Where equally efficacious relief can be obtained no injunction can be granted :-

When the interest of the plaintiff can be adequately protected by passing other appropriate orders, relief of injunction has to be refused. Court should have therefore, examined whether equally efficacious remedy by way of filing suit for specific performance is available. The legislature has expressed its view in the matter in Section 41 Clause h of the Specific Relief Act of 1963 which is one of those dealing specifically with injunctions and among the conditions there laid down. It is stated that an injunction can not be granted when an equally efficacious relief can certainly obtained in suit for specific performance or by any other mode of usual proceeding except in case of breach of trust. For the clause to apply the defendant must fulfill three requisites, firstly that there is any other mode of securing relief, secondly that the relief obtainable thereby is an efficacious as an injunction and the plaintiff is certain to secure such relief.

An equally efficacious remedy within the meaning of Section 41(h) would be relief which would put in the same position in which he would have been, if he had not asked for relief of injunction. Where the plaintiff filed suit for permanent injunction to the effect that the defendant owner of the suit land be restrained from selling, mortgaging, leasing, exchanging, gifting or transferring the land to other defendants or to anyone else except the plaintiff, because the defendant had entered into an agreement to sale the land to the plaintiff which was required to be registered at a future date. During the pendency of the suit for permanent injunction the defendants filed an application stating that, after the date when the sale-deed was required to be registered, the suit for permanent injunction

has become infructuous in view of Section 41(h) of the Specific Relief Act. In as much as the plaintiff has after that date become entitled to file a suit for specific performance of the contract. Held, that since the plaintiff was entitled to another equally efficacious relief to file a suit for specific performance of contract, the suit for permanent injunction could not proceed, because an injunction could not be granted when equally efficacious relief would be obtained by any other usual mode of proceedings.

Section 41(h) of the Specific Relief Act lays down that an injunction can not be granted to prevent the breach of a contract, the performance of which would not be specifically enforced. So an injunction will be granted only in the case of breach of contract which can be specifically enforced. If an agreement is determinable at the will of either party such a contract can not be specifically enforced. Section 41 provides that, an injunction can not be granted inter alie to prevent the breach of contract the performance of which would not be specifically enforced. Suit for injunction by Vendee to restrain Vendor from selling property to others is therefore not maintainable since adequate relief by damages an equally efficacious remedy by suit for specific performance would be available. A temporary injunction can be granted in aid the main relief prayed for in the suit. If the mandatory injunction can not be granted the prayer for temporary injunction can not be allowed. A temporary injunction to restrain the breach of a contract is regulated by order 39, rule 2 of C.P.C.. A perpetual injunction to restrain the breach of a contract is regulated by section 41(e) of the Specific Relief Act, which provides that a perpetual injunction can not be granted to prevent the breach of contract the performance of which would not be specifically enforced. Section 14(b) provides inter alie that the Court can not enforce a contract of service where the contract is dependent upon the personal qualification of violation of the party. However, where a claim for damages will cause only multiplicity of proceedings or would not be an equally efficacious remedy injunction may be granted. The question whether an equally efficacious relief can be certainly obtained by any other usual mode or proceedings within the meaning of Section 41(h) of the

Specific Relief Act is a question of fact to be determined on its own circumstances and no hard and fast rule can be laid down in this regard.

-:Plaintiff's conduct disentitling him to the assistance of the Court:-

Section 41(i) lays down that an injunction can not be granted when the conduct of the applicant or agent has been such as to disentitle him to the assistance of the Court. An injunction is a discretionary form of specific relief. The Court may refuse to grant an injunction if the plaintiff by his conduct disentitled himself to relief. The party seeking injunction must not be himself at fault, his conduct must not be blamable. The plaintiff is not entitled to relief where the conduct is tainted with illegality. When the conduct of the person complaining the law to the state of thing that occasioned his seeking the equitable remedy an injunction would be refused. Section 41(1) is based upon the maxim that *who seeks equity must do equity* and implies that a plaintiff seeking an injunction must come with clean hands. Clean hands means a clear record with respect to transaction between the parties and not with respect to any third party. A plaintiff who asks for injunction must be able to satisfy the Court his own acts and dealing in the matter have been fair and honest and person against whom he seeks relief or with third party he has acted in an unfair or unequitable manner, he can not have a relief.

-: Fraud :-

A person who comes into Court with a claim which the pleadings show to have had its origin in a fraudulent transaction can not ask a Court of equity to act upon the conscience of a defendant and forced him to do right towards one whose own legal conscience is not void of offence. Equity will leave such party in exactly the same position in which they placed themselves refusing all affirmative aid to either of the fraudulent participants.

-: Illegality :-

Wherever a contract or other transaction is illegal and the party thereto are in contemplation of law *in pari delicto* it is well settled rule subject only to a few special exceptions depending upon other consideration of policy that a court of equity will not aid a *particeps criminis*. Either by enforcing the contract or obligation while it is yet executory not by revealing him against it by setting it aside or by enabling him to recover the title to property which he has parted with by its means. When the plaintiff has been engaged in a fraudulent scheme, agreements in unreasonable restraint of trade or tending to monopoly are illegal and will not be enforced in equity.

-: Acquiescence and delay :-

If a party has an interest to prevent an act being done an acquiescence in it so as to induce reasonable belief that he consents to it and the position of other is altered by giving credit to its sincerity he has no more right to challenge the act to their prejudice than he would have had if it had done by his previous licence. The principles of Court with respect to delay an acquiescence applicable to the case of interlocutory injunction hold also in the case of application for perpetual injunction. But to justify the Court refusing to interfere at the hearing there must be stronger case of acquiescence than is sufficient to be a bar on the interlocutory application.

Delay in applying to the Court although it excites the diligence of the Court to ascertain whether the plaintiff has stood or voluntarily suffered his right to be infringed is no bar if it can be satisfactorily explained. Subject to any statutory bar mere delay in bringing an action for injunction in aid of the rights is not sufficient to deprive the plaintiff of his right, but long abstention from the assertion of his right coupled with alteration of the condition of other parties may render it unconscionable on his part to enforce. The plaintiff must not be guilty of laches for neither law nor equity will aid one who has slept upon his

rights and not been vigilante. The doctrine of laches is not arbitrary or technical doctrine where it would be practically unjust to give a remedy either because the party has by his conduct done by which might fairly regarded as equivalent to waiver or an abandonment of it or where by his conduct and neglect, he has perhaps not waiving or abandoning that remedy. Mere lapse of time is not sufficient ground in equity for the refusal of relief. Time may be either essential or material or immaterial. When the time is essential no question of delay properly arises in such a case the stipulation of a contract must be exactly complied with and it is the failure to perform at the exact day and not the delay which cuts of the right of the defaulting party. Where the time is immaterial no question of delay arises. It is only when time is material that delay may affect the remedial right. But the delay so to affect the right must amount to laches i.e. there must be unexplained delay for an unreasonable time and such delay must prejudice the party against whom the relief is sought.

-: No injunction against redress in Court :-

No permanent injunction can be granted restraining a party from moving a Court for the redress of his grievance this would be an embargo on the undisputed right of a party. An injunction against seeking redress in a court can not be granted.

-: Mandatory Injunction :-

A mandatory injunction is defined by Salmond as “an order requiring the defendant to do some positive act for the purpose of putting an end to a wrongful state of things created by him, or otherwise in the fulfillment of his legal obligations. In India since the passing of the Specific Relief Act, the mandatory injunction is always in the direct form. Section 39 of the Specific Relief Act prescribes that, when to prevent breach of an obligation it is necessary to compel the performance of certain acts, which the Court is capable of enforcing, the Court

may in its discretion grant an injunction to prevent the breach complained of and also to compel performance of the requisite act. The object of a mandatory injunction is to restore him to the original condition and not create a new state of things. It is a most exceptional remedy and one which is never to be applied except with the greatest safeguard for the prevention of waste, as well as injustice.

In granting a mandatory injunction under the Specific Relief Act two elements have to be taken into consideration. First, the Court has to determine what acts are necessary in order to prevent a breach of the obligation, and secondly, the requisite acts must be such as the Court is capable of enforcing. In a suit for mandatory injunction it is necessary to prove special injury or substantial damage. Before a suit for mandatory injunction can be filed, there must be an obligation on the part of the defendant to perform certain acts, whether it is not alleged that other party has committed a breach of an obligation on his part as the case is merely one of trespass, the plaintiff's remedy to file a suit for possession of the land and a suit for mandatory injunction can not be filed without suing for possession of the land. The obligation must be a legal obligation and not a mere moral duty.

- : The Court must be capable for enforcing the act :-

The Court can order the performance of those acts which it is capable of enforcing, A mandatory injunction will not be granted directing a person to do repairs and works of improvement involving considerable expenses & engineering skill. The reason behind it is that, the Court is not capable or enforcing it and also because the Court will not superintend works of building or of repair.

-: Discretion of the Court in granting mandatory injunction :-

The jurisdiction to grant injunction is always discretionary and the Court before granting a mandatory injunction will weigh all facts and circumstances with great caution. The considerations which apply to grant the mandatory injunction are somewhat different from considerations which govern the

grant of prohibitory injunctions though, the general principles for grant of both types of injunctions are essentially the same. In granting or withholding mandatory injunction Court should exercise judicial discretion and weigh the amount of substantial damage done or threatened to be done to the plaintiff and compel it with that which the injunction if granted would inflict upon the defendant. It must be remembered that, an injunction is granted to restore the *status-quo anti* and can not issue to create a new order of things. In order to obtain mandatory injunction the right to restrain the violation of which the injunction is asked for must be clearly made out and also that there is present want to use that right with which the obstruction complained of is an interference.

-: Interlocutory Mandatory Injunction :-

The language of Rule 1 of Order 39 of the Code of Civil Procedure is wide enough to include an order in the form of mandatory injunction. The words, “the Court may by order grant a temporary injunction or make such other order for the purpose of preventing, wasting, damaging, or otherwise causing injury or loss”, clearly take in their fold and order in the mandatory form for doing of a particular thing. The language does not admit any narrow interpretation. Temporary injunction can be issued only in rare cases when the petitioner has a better and higher standard than that of prima-facie case normally required for prohibitory injunction, that is the plaintiff has higher possibility of success when compelled with prohibitory injunction. If a mandatory injunction is granted at all on an interlocutory application, it is granted only to restore the *status-quo* and not granted to establish a new state of things different from the state that existed at the date when the suit was instituted. The Court must satisfy itself about the necessity of issuing such a mandatory injunction, and unless there are some compelling circumstances, the order in the mandatory form should not be issued. However, there is no limitation in the Courts power to grant temporary mandatory injunction in an appropriate case particularly when the *status-quo anti* has been altered shortly

prior to the suit and that act itself was the direct and proximate cause as a result of which the suit came to be filed.

-: Temporary Injunction- Order 39 Rule 1 & 2 of the Code of Civil Procedure, scope, governing principles :-

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 further orders. Therefore, order passed under these provisions can not be said to have independent existence and can survive or can be continued only during pendency of the suit unless the same is modified, altered either by the same Court or by the higher Court.

The primary purpose of granting interim relief is the preservation of property or right and interest in the 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. 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 sided, 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 state of deciding the application for temporary injunction the Court is not required to go into the merits of the case in detail.

In, **“Zenit Mataplast Pvt Ltd. Vs State of Maharashtra reported in 2009 SC (Supp) 2364”**. The Hon'ble Apex Court explained the scope of interim injunctions. It is held that, “an interim injunction should be granted by the Court after considering all the pros and cons of the case. The order can be passed on settled principles taking into account the three basic grounds, i.e. prima facie case,

balance of convenience and irreparable loss. The delay in approaching Court may be good ground for refusal to grant interim relief but where the case of the party is based on fundamental rights and there is an apprehension that the suit property may be developed in a manner that it acquires irretrievable situation, the Court may grant relief even at a belated stage”.

-: Governing Principles :-

While granting temporary injunction the tests be applied are :-

- i. Whether the plaintiff has a prima facie case,
- ii. Whether the balance of convenience is in favour of plaintiff.
- iii. Whether the plaintiff would suffer irreparable injury if his prayer for temporary injunction is disallowed.

A) 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 Vs State of Haryana 2002 (4) Civil L.J. 71 pg**). 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 examined the merits of the case closely at that stage because it is not expected to decide the suit finally in deciding 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.

B) 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.

C) IRREPARABLE INJURY.

The applicant must be 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 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 can not be adequately compensated by damages. An injury will be regarded as irreparable where there exists no certain pecuniary standard for measuring damages.

D) **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 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 Section 9A(2) of Code of Civil Procedure, 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. As per Rule 3 of Order 39 of Code of Civil Procedure 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.

The Hon'ble Apex Court in landmark judgment in **Gujrat Bottling Co. Ltd** 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 :

- a) 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.
- b) 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 39 Rule 4 of the Code of Civil Procedure, 1908 is filed.
- c) 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.
- d) 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

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examine the loss suffered by the respondent if the order is passed and thereupon it has to see which loss will be greater and irreparable.

- e) 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.

Inherent Power :-

There was a conflict of judicial opinion on the question, whether the Court could issue a temporary injunction under Section 151 of Civil Procedure Code when the case did not fall within the term of Order 39 Rule 1 & 2. However now that point is concluded by the Hon'ble Apex Court in the case of, "*Manmohanlal Vs Seth Hiralal reported in A.I.R.1962 SC 527,*" by observing that the Court has powers under Section 151 of Civil Procedure Code to issue an injunction in cases not falling within Order 39 Rule 1 & 2; however that discretion should be exercised judiciously. For the purpose of implementation of an injunction order Police protection can be ordered under Section 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 39 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. 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.

Conclusion :-

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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 the judicial principles. The power to grant a 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 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 injunction is a matter of discretion of the Court and it can not 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 can not be granted. When plaintiff has no personal interest in the matter, injunction can not be granted.

With this I conclude the summary/gist of all papers under subject of workshop.

Sindhudurg-Oros.

Date :- 15/01/2016.

Sd/-

(D.W.Modak)
District Judge -1, and
Addl. Sessions Judge, Sindhudurg.
Head of the Core Group of Judges,
(CIVIL GROUP).