

***Topic : Law of Injunctions : Temporary Injunction including ex-parte temporary injunction, Perpetual Injunction and mandatory injunction.***

1. 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.

2. Relief of injunction can not be claimed as of right. It is discretionary, equitable relief. The relief of injunction must be granted where it is absolutely 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.

3. 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.)

### **OBJECT**

4. The primary purpose of granting interim relief is the preservation of property in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. The court in the exercise of sound judicial discretion can grant or refuse to grant interim relief.

### **DEFINITION**

5. 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.”

### **LEGAL PROVISIONS**

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

### **KINDS OF INJUNCTIONS**

7. Injunctions are mainly of two kinds i.e. temporary and perpetual injunction. A party against whom a perpetual injunction is granted is thereby restrained forever from doing the act complained of. A Perpetual injunction can only be granted by

a final decree made at the hearing and upon the merits of the suit. On the other hand a temporary or interim injunction may be granted on an interlocutory application at any stage of a suit. The injunction is called temporary as it is until the suit is disposed of or until the further order of the Court.

8. 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.

#### **(A) TEMPORARY INJUNCTION**

##### **SCOPE :**

9. It provides that when the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in suit, the Court may grant a temporary injunction to restrain such an act or make other order for the purpose of preventing the dispossession of the plaintiff or for the purpose of preventing the causing of injury to the plaintiff in relation to any property in dispute.

10. If the defendants are creating third party interest/rights as he is trying to dispose of part of the property, the plaintiff can claim the injunction.

11. 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.

12. 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.

**PRINCIPLES :**

13. 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 and (3) Whether the plaintiff would suffer irreparable injury if his prayer for temporary injunction is disallowed.

14. 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. Thus the court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.

**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.

**16.** Generally, before granting the injunction, the court must be satisfied about the following aspects :

One who seeks equity must come with clean hands.

One who seeks equity must do equity.

Whenever there is right there is remedy.

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 OBJECT OF THE  
INTERLOCUTARY INJUNCTION:**

17. As per Rule 3 of Order XXXIX 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 XXXIX 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.

**BASIC INGREDIENTS :**

**(A) PRIMA FACIE CASE :**

18. It is well settled that in granting or refusing to grant temporary injunction, the Court has very wide discretion. The exercise of the discretion should be in a judicial manner, depending upon the circumstances of each case. No hard and fast rule can be laid down for the guidance of the Court to that effect.

It is well settled that while granting injunction plaintiff must show

- : (i) existence of prima facie case,  
(ii) balance of convenience and

- (iii) the injury must be of an irreparable loss that can not be compensated in terms of money.

**19.** 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 bonafide 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.

**20.** 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.

**21.** 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) IRREPARABLE INJURY :**

22. The existence of the prima faice case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the court about the second 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 absolutely 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.

**(C) BALANCE OF CONVENIENCE :**

23. The third 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.

**(D) OTHER FACTORS :**

24. 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.

**INHERENT POWER :**

25. 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.

**26.** 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.

**(C) PERPETUAL INJUNCTION**

**27.** 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. Section 38 of the Specific Relief Act further provides a circumstance where a perpetual injunction may be granted in favour of the plaintiff to prevent the breach of obligation existing in his favour. In contractual matters when such obligation arises, the Court has to seek guidance by the rules and provisions contained in Chapter II of the Specific Relief Act dealing with the specific performance of contracts.

**28.** 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.

**29.** As per **Sec.38 of Specific Relief Act** – the plaintiff must establish apprehended breach of an obligation existing in his favour, whether expressly or by implication.

**Refusal of Injunction :-**

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

**30.** Section 41 of the Act deals with when injunction can not be granted, (a) to restrain any person from prosecuting a judicial proceedings unless such a restrain is necessary to prevent a multiplicity of the proceedings, (b) to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought,(c) to restrain any person from applying to any legislative body, (d) to restrain any person from instituting or prosecuting any proceedings in criminal matter, (e) to prevent the breach of a contract the performance of which would not be specifically enforced,(f) to prevent on the ground of nuisance, an 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 certainly be obtained by any other mutual mode of proceedings except in case of breach of trust, (i) when the conduct of the plaintiff or his agent has been such as to dis entitle him to the assistant to the Court, (j) when the plaintiff has not personal interest in the matter.

**31.** Under normal parallence, 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.

### **(D) MANDATORY INJUNCTION**

**32.** Interlocutory mandatory injunctions are granted generally to preserve or restore status-quo of the last non-contested status which preceded the pending controversy until the final hearing, when full relief could be granted or to compel the undoing of those acts which have been illegally done or the restoration of that which was wrongfully taken from the complaining party. 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.

**33.** 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.

**34.** 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. Section 42 provides for grant of injunction to perform a negative agreement. The law of injunctions is vast and expansive and it is based on the principles of equity. The Court should act according to the justice, equality and conscience, when there is no specific rules applicable to the circumstances of the case. Section 39 says to prevent a breach of 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 acts.

### **Enforcement**

#### **Enforcement of a decree for injunction :-**

The wording as framed in Order 21, Rule 32(1) would indicate that in enforcement of the decree for injunction a judgment-debtor can either be put in civil prison or his property can be attached or both the said courses can be resorted to. But Sub-rule (5) of Rule 32 shows that the Court need to resort to either of the above two courses and instead the Court can direct the judgment-debtor to perform the act required in the decree or the Court can get the said act done through some other person appointed by the Court at the cost of the judgment-debtor. Thus, in execution of a decree the Court can resort to a three-fold

operation against disobedience of the judgment-debtor in order to compel him to perform the act. But, once the decree is enforced the judgment-debtor is free from the tentacles of Rule 32. A reading of that rule shows that the whole operation is for enforcement of the decree. If the injunction or direction was subsequently set aside or if it is satisfied the utility of Rule 32 gets dissolved.

The DH entitle to execute the decree for injunction and partition, without impediment if not executed the decree within 12 years as per Article 136 of the Limitation Act then DH has to face the consequences thereof at least to the extent of executability of decree for partition.

As per the provisions of Article 135 of the said Act, decree granting mandatory injunction, shall have to be executed within three years from the date of decree or where a date is fixed for performance, from such date. However, here it is clear that proviso attached to Article 136 is self explanatory to the effect that for the enforcement of execution of a decree granting perpetual injunction shall not be subject to any period of limitation.

*M. A. Raja S. Vs. Vedhantham Pillai* reported in *2000(2) C.T.C. page 199 (Madras High Court)*

### APPEAL

*Ramji Gupta Vs. Gopi Krishan* reported in *AIR 2013 SC 3099*.

Under the Code of Civil Procedure, certain specific orders mentioned in Section 104 and Order 43 Rule 1 of C.P.C. are only appealable and no appeal shall lie from any other orders. Therefore, the order made under Section 151 of CP.C. being not included in the category of appealable orders, no appeal is maintainable against such orders.

**Disobedienc, Remedy Effect :**

Remedies and effect for disobedience of temporary injunction is laid down in the provisions of 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 Rule2A 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.

## CONCLUSION

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.



**CASE LAWS DISCUSSED IN WORKSHOP DT. 18.01.2015 :**

**CIVIL :**

- 1) Pralhad Jagannath Jawale and others Vs. Sitabai Chander Nikam and others reported in 2011 (4) Mh.L.J. 137,
- 2) Dalpat Kumar Vrs. Pralhad Singh reported in A.I.R. 1993 Supreme Court 276,
- 3) Zenit Mata Plast Pvt. Ltd. Vrs. The State of Maharashtra reported in A.I.R. 2009 Supreme Court (Supplementary) 2364,
- 4) Morgan Stanley Mutual Fund Vrs. Kartik Das reported in (1994) 4 Supreme Court Cases 225,
- 5) Shanti Kumar Panda Vrs. Shakuntala Devi reported in AIR 2004 (1) Supreme Court 115,
- 6) Martin Burn Ltd v. R. N. Banerjee reported in AIR 1958 SC 79,
- 7) Colgate Palmolive (India) Vs. Hindustan Lever Ltd. reported in AIR 1999 SC 3105,

- 8) Bharat Petroleum Corporation Ltd. vs. Videocon Properties Ltd. reported in 2014(6) Mh.L.J. 289,
  - 9) Premji Ratansey Shah Vs. Union of India reported in 1994 (5) SCC 547,
  - 10) State Bank of Patiala Vrs. Vinesh Kumar Bhasin reported in A.I.R. 2010 Supreme Court 1542,
  - 11) State Bank of Patiala Vrs. Vinesh Kumar Bhasin reported in A.I.R. 2010 Supreme Court 1542,
  - 12) Dorab Cawasji Warden & Ors. V/s Coomi Sorab Warden, reported in AIR 1990 S.C., 847,
  - 13) Lata Sunil Joshi vs. State of Maharashtra and others, reported in 2014(3) Mh.L.J.29,
  - 14) Baban Narayan Landge Vs.Mahadu Bhikaji Tonchar; reported in AIR 1989 Bombay 247,
  - 15) Gujarat Bottling Co. Ltd. vs. Coca Cola Company and Others, reported in 1995(5) SCC 545.
  - 16) Nanasaheb Vs. Dattu & ors, AIR 1992 Bom 23.
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