

LAW OF INJUNCTIONS
Temporary Injunction including Ex-parte Injunction, Perpetual Injunction and Mandatory Injunction.

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An **injunction** is an equitable remedy in the form of a court order that compels a party to do or refrain from specific acts. It is a court order which restrains one of the parties to a suit in equity from doing or permitting others who are under his control to do an act which is unjust to the other party. 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. Injunctions are intended to make whole again someone whose rights have been violated. Nevertheless, while deciding whether to grant an injunction, courts also take into account the interests of non-parties (that is, the public interest). When deciding whether to give an injunction, and deciding what its scope should be, courts give special attention to questions of fairness and good faith. One manifestation of this is that injunctions are subject to equitable defenses, such as laches and unclean hands.

Injunctions are given in many different kinds of cases. They can prohibit future violations of the law, such as trespass to real property, infringement of a patent etc. Taking in to consideration the duration and the stage, they can be classified in to Temporary injunctions and Perpetual injunctions. Otherwise, an injunction that requires conduct is called a "mandatory injunction." An injunction that prohibits conduct is called a "prohibitory injunction. Many injunctions

are both—that is, they have both mandatory and prohibitory components, because they require some conduct and forbid other conduct. When an injunction is given, it can be enforced with equitable enforcement mechanisms such as contempt. It can also be modified or dissolved (upon a proper motion to the court) if circumstances change in the future. These features of the injunction allow a court granting one to manage the behavior of the parties.

In Indian legal system the law of injunctions is mainly governed by **Order XXXIX and section 36 and 42 of the Specific relief Act. Section 94(c) of the Civil Procedure Code** also gives supplemental provision for grant of temporary injunction. It is also settled that there is no bar in granting injunction or supplementary orders under **Section 151 of the Civil Procedure Code** for compliance of injunction in just cases. The later provision of inherent powers increases the scope of civil courts for granting injunctions.

TEMPORARY INJUNCTION

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. 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. 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.

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.

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.

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. 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.

INTERLOCUTARY INJUNCTION

As per Rule 3 of Order XXXIX of the Civil Procedure 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 :

PRIMA FACIE CASE :

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.

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.

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.

IRREPARABLE INJURY

The existence of the prima facie 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.

BALANCE OF CONVENIENCE

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.

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.

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**' (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. 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.*

PERPETUAL INJUNCTION :

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. 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.

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.

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.

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 latches and his conduct is not unfair. Aspect of comparative hardship also assumes importance.

MANDATORY INJUNCTION :

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.

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. Section 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 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.

M. A. Raja S. Vs. Vedhantham Pillai reported in 2000(2) C.T.C. page 199 (Madras High Court) it is held by the Hon'ble High Court-

"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".

In 'Ramji Gupta Vs. Gopi Krishan'(AIR 2013 SC 3099). It is held by the Apex Court held-

"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 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.

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.

Most respectfully submitted,

Sd/-

(P.P. Joshi)

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Additional Sessions Judge, Khed.

Workshop paper

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Civil Judge, (S.D.) Ratnagiri.

Subject :- Law of injunctions:Temporary Injunction including exparte Temporary Injunction, Perpetual Injunction and Mandatory Injunction

1. Injunction is an order or judgment by which a party to an action is required to do, or refrain from doing, a particular thing.

2. Injunctions are a) Preventive restraining a person from doing some thing. b) Mandatory Commanding something to be done or not done. c) Provisional or interlocutory until the hearing of the case before Court or further order. d) Perpetual to last for ever.

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 or containing to do a particular act. (Prohibitory injunction or orders him to carry out a certain act (Mandatory injunction)

4. **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. The Court in the exercise of Sound judicial discretion can grant or refuse to grant interim relief.

5. **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."

6. 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 section 36 to 42 of the Specific Relief Act.

Temporary Injunction :

7. 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 temporary injunction is for immediate relief.

8. Section 94(c) and (e) of Code of Civil Procedure contain provisions under which the Court may in order to prevent ends of justice from being defeated, grant a temporary injunction or under such other interlocutory order as may appear to the Court to be just and convenient. Section 95 of Code of Civil Procedure 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.

9. **Principles :**

While granting temporary injunction the tests to 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.

10. Generally, before granting the injunction, the Court must be satisfied about the following aspects :

- 1) one who seeks equity must come with clean hands.
- 2) one who seeks equity must do equity.
- 3) whenever there is right there is remedy.

The object of the interlocutory injunction

11. As per order 39 rule 3 of The Civil Procedure 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 exercised. As per rule 3 A of Order 39 of C.P.Code where any injunction has been granted without giving notice to the opposite party, the Court shall make an endeavor to finally dispose of the application within 3 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.

12. It is well settled that in granting or refusing to grant temporary injunction, the Court has very wide discretion. 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.

13. Prima facie case :

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.

14. Irreparable injury :

The existence of prima facie 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. The injury must be material one i.e. which cannot be adequately compensated by damages.

Balance of convenience :

15. 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.

Other factors

16. There are some other factors which must be considered by the 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.

17. As per amended section 9A (2) of The Civil Procedure Code, 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.

18. The Court can grant or issue temporary injunction u/s 151 of The Civil Procedure Code in cases not falling within order 39 Rule 1 and 2 of The Civil Procedure Code. This has been concluded by Hon'ble Apex Court in the case of Manmohanlal Vs. Seth Hiralal AIR 1962 Supreme Court 527. However the discretion should be exercised judiciously.

19. 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 adinterim exparte order and only final order under Order 39 Rule 1 and 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.

Perpetual Injunction :

20. 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.

21. Section 38 subsection 3 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.

22. As per section 38 of The Specific Relief Act the plaintiff must establish apprehended breach of an obligation existing in his favour, whether expressly or by implication.

Refusal of Injunction :

23. Section 41 of The Specific Relief Act provides various contingencies in Subsection (a) to (j) in which the injunction cannot be granted. These contingencies are

- (a) to restrain any person from prosecuting a judicial proceeding when such a restrain is necessary to prevent a multiplicity of the proceeding.
- (b) to restrain any person from withdrawing or prosecuting any proceeding in a Court not to 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 withdrawing or prosecuting any proceedings in criminal matter.
- (e) to prevent a breach of the 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 proceeding except in case of breach of trust
 - i) when the conduct of the plaintiff or his agent has been such as to disentitle him to the assistance of the Court.
 - ii) when the plaintiff has no personal interest in the matter.

24. 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 his redressal, there is no stand and for ascertaining the actual damage caused by such invasion.

There shall not have efficacious remedy the plaintiff in respect of such invasion, the plaintiff would not have been guilty of delay and late and his conduct is not unfair. Aspect of comparative hardship also assumes importance.

Mandatory Injunction :

25. 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, equity 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 of a decree for injunction :

26. The wording as framed in Order 21, rule 32(1) of The Code of Civil Procedure 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 Subrule 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 Judgmentdebtor 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 costs of the Judgmentdebtor.

27. The Decree Holder 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 the Decree Holder has to face the consequences thereof at least to the extent of executability of decree for partition.

28. As per the provisions of section 135 of the said Act, decree granting mandatory injunctions, shall have to be executed within three years form the date of decree or where a date is fixed for performance, from such date. The execution of a decree granting perpetual injunctions shall not be subject to any period of limitation as per provisions of Article 136.

Appeal :

29. Under The Code of Civil Procedure, certain specific orders mentioned in section 104 and Order 43 rule 1 of The Code of Civil Procedure are only appealable and no appeal shall lie from any other orders. Therefore the order made u/s 151 of The Code of Civil Procedure being not included in the category of appealable orders, no appeal is maintainable against such orders.

Disobedience, Remedy Effect :

30. Order 39 Rule 2A of The Code of Civil Procedure 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 only continues till the breach continues or the disobedience persists, subject to a limit of one year period.

Conclusion :

An injunction is an equitable remedy and as such attracts the application of the maxim that he who seeks equity must do equity.

Important case laws :

- 1) Ranji Gupta V/s Gopi Krishan AIR 2013 SC 3099.
- 2) Pralhad Jaganath Jawale and others v/s. Sitabai Chander Nikam and others 2011(4) Mh.L.J. 137.
- 3) Zenit Mata Plast Pvt.Ltd.V/s The State of Maharashtra AIR 2009 Supreme Court (supplimentary) 2364

4) Bharat Petroleum Corporation Ltd. V/s Videocon Properties Ltd. 2014(6) Mh.L.J. 289

5) Lata Sunil Joshi V/s State of Maharashtra and others 2014(3) Mh.L.J. 29.

With this I conclude my paper.

Date:03032015.

(R.N.Majgaonkar)
Civil Judge S.D.Ratnagiri

**R. D. Deshpande.
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Paper for the workshop to be held in March 2015

**Subject :- "Law of Injunctions - Temporary Injunction
including Exparte Temporary Injunction, Perpetual Injunction
and Mandatory Injunction."**

**Temporary Injunction including Ex-parte
Temporary Injunction -**

1. Temporary injunctions are regulated by rules 1 and 2 of Order 39 of the Code of Civil Procedure. Rule 1 provides that when the defendant threatens to dispossess the plaintiff or otherwise cause injury to him in relation to any property in dispute in the suit, the Court may grant a temporary injunction to restrain such an act or make other order further purpose of preventing the dispossession of the plaintiff or for the purpose of preventing causing of injury to him in relation to property in dispute. An injunction is called temporary, for it endures only until the suit is disposed off or until the further order of the Court. Granting of temporary injunction is a matter of judicial discretion.

2. Under Order 39 Rule 1, the Court has power to grant an Ex-parte temporary injunction. But the same should be granted only under exceptional circumstances. The factors which should weigh are as under-

- (i) whether irreparable or serious mischief will ensue to the plaintiff,
- (ii) whether refusal of ex-parte injunction would involve greater injustice than the grant of it would involve,

- (iii) the time at which the plaintiff first had notice of the act complained of,
- (iv) whether the plaintiff had acquiesced for some time,
- (v) whether the application is made in utmost good faith and
- (vi) in any case, an ex-parte order even if granted must be for a limited period of time.

3. The general principles of balance of convenience, prima-facie case and irreparable loss would also be considered by the Court. **(Morgan Stanley Mutual Fund V/s. Kartik Das, (1994) 4 SCC 225)**

A prima-facie case implies the probability of the plaintiff obtaining a relief on the material placed before the Court. The Court should be satisfied that there is a serious question to be tried at the hearing and that on the facts before it, there is probability that the plaintiff is entitled to the relief.

4. The plaintiff must have also to establish that the balance of convenience in the event of withholding the relief of temporary injunction will, in all events exceed that of the defendant in case he is restrained. He must show a clear necessity for affording protection to his alleged right which would otherwise be seriously injured or impaired. The principle of balance of convenience implies the evenly balancing of scales.

5. The term irreparable injury means injury which is substantial and could never be adequately remedied or atoned for by damages. Injury which can not possibly be repaired. It implies a substantial and continuous injury for which there does not exist any

standard for ascertaining the actual damage likely to be caused.

6. An injunction being in the nature of a preventive relief, is generally granted taking note of the equity. The delay in approaching the Court may be a good ground for refusal to grant interim relief.

7. Rule 2 of Order 39 enables the Court to grant temporary injunction to restrain the defendant from committing the breach of contract or other injury of any kind. In a suit for Specific Performance, the Court will decline to grant a temporary injunction if the plaint and affidavit filed by the parties show on the face of them that the case is not one for a perpetual injunction or for specific performance. No temporary injunction can be granted if final relief can not be granted.

8. Rule 3 of Order 39 confers on the Court a power to grant an ex-parte interim injunction and has prescribed a particular procedure for passing of an injunction order without notice to the other party, under exceptional circumstance. The Court must record reasons for passing such an order that the object of granting injunction would be defeated by the delay. The requirement of giving reasons as laid down in the proviso is mandatory.

9. Rule 4 of Order 39 says that order for injunction can be discharged, varied or set aside by the Court on application made thereto by any party dissatisfied with such order. The proviso speaks that if in an application for temporary injunction or in any affidavit in support of it, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless for reasons to be recorded it considers that it is not necessary to do so.

Perpetual Injunction -

10. Perpetual Injunctions are governed by section 38 of the Specific Relief Act, 1963. This section 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, recognised and applied by the Courts in India long before they came to be incorporated in the form of 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. In granting or withholding an injunction, the Courts exercise a judicial discretion and weigh the amount of substantial mischief done or threatened to the plaintiff and compare it with that which the injunction, if granted, would inflict upon the defendant.

11. Section 38 prescribes the conditions when perpetual injunction can be granted by the Court. Sub section (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 obligation is express or implied. Sub section (2) says that when such obligation arises under the contract, the Court should be guided by the law enacted in Chapter II of the Act. Sub section (3) lays down the conditions under which the defendants may be permanently injuncted from invading, or threatening to invade the plaintiff's right to or enjoyment of the property.

12. The law has detailed four categories of cases specified in sub clauses (a) to (d) of sub section (3). They are (i) when the defendant is the trustee for the plaintiff, (ii) when there exists no standard for measuring the damages caused, or likely to be caused, by the actual invasion, (iii) where compensation in money would uphold

no adequate relief to the plaintiff and (iv) where the injunction is necessary to prevent multiplicity of judicial proceedings.

13. From the above statement of the law, it will be seen that the primary object of the grant of perpetual injunction is to prevent a breach of an obligation. Where there is a breach of an existing legal right of a person, he is entitled to prevent that breach by means of injunction.

14. 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.

15. Section 41 details the circumstances when the injunction must not be granted. They are as follows -

- (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of 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 proceeding in a 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 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 usual mode of proceeding except in case of breach of trust;
- (i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance to the Court;
- (j) when the plaintiff has not personal interest in the matter.

Mandatory Injunction-

16. Mandatory injunctions are governed by Section 39 of the Specific Relief Act, 1963. Two elements have to be taken into consideration for granting a mandatory injunction under Section 39 of the Specific Relief Act. In the first place, the Court has to determine what acts are necessary in order to prevent a breach of obligation; in the second place the requisite acts must be such as the Court is capable of enforcing. Caution is required in the grant of preventive

relief. The exercise of power to grant mandatory injunction must be attended with the greatest possible caution and is strictly confined to cases where the remedy of damage is inadequate for the purposes of justice and the restoring of things to their former condition is the only remedy which will meet the requirements of the case. The Court will not interfere except in cases where there are extreme serious damage caused which cannot be compensated.

C. Kunhammad Vs. C.H. Ahamad Haji , A.I.R. 2001 Kerala 101.

Temporary Mandatory Injunction- Grant of -

17. The relief of interlocutory mandatory injunction can be granted generally to preserve or restore the status-quo of the last non contested status which preceded the pending controversy until the final hearing, when full relief may be granted, or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. Following guidelines are issued -

- a] 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 prohibitory injunction,
- b] it is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money,
- c] the balance of convenience is in favour of the one seeking such relief.

Grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the Court to be exercised in the light of facts and circumstances of each case.

Dorab Cawasji Warden Vs. Coomi Sorab Warden & Ors.,
A.I.R. 1990 Supreme Court 867.

With this I conclude.

Submitted with respect.

(R. D. Deshpande)
Jt. Civil Judge (S.D.) &
the Judge, Labour Court,
Ratnagiri.

WORKSHOP PAPER BY

Shri. S.D. Indalkar
Jt. Civil Judge, J.D., Ratnagiri.

Law of Injunctions :- Temporary Injunction including exparte temporary injunction, Perpetual injunction and Mandatory injunction.

1. An injunction is a judicial process whereby a party is required to do or restrain from doing, any particular act. It is in the nature of preventive relief as the party fears possible future injury. The purpose is to preserve the subject matter of the suit for the time being. Injunctions may be temporary or perpetual.

2. **Temporary Injunction** : A temporary injunction is granted till the disposal of the suit or till further order. It is regulated by the provisions of Order 39 of Civil Procedure Code and can be granted on interlocutory application at any stage of the suit. The court has the power to grant temporary injunction to restrain certain acts of defendant and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to the suit property.

3. In brief following circumstances must be established by affidavit or otherwise to obtain temporary injunction -

- (a) that, any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

- (b) that, the defendant threatens or intends to remove or dispose of his property, with a view to defraud his creditors; or
- (c) that, the defendant threatens to dispose the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

4. Grant of temporary injunction is a discretionary power which has to be exercised judiciously on being satisfied of following principles -

- (i) In the facts and circumstances of each individual case there must exist a strong probability that, the petitioner has a ultimate chance of success in the suit i.e. *prima facie* case.
- (ii) Court is to balance and weigh the mischief or inconvenience to to either side before issuance or withholding the injunction i.e. balance of convenience and,
- (iii) As the injunction is granted during the pendency of the suit the Court will interfere to protect the plaintiff from injuries which are irreparable. Irreparable injury must be the one which can not be adequately compensated for in damages. The injury if not actual may also be apprehended.

5. It means that before the Court issues temporary injunction, it must satisfy itself that party praying for relief has prima facie case and balance of convenience is in his favour and that refusal to grant would cause him irreparable injury. If a party fails to make out any of the three ingredients he would not be entitled to the injunction. The granting of temporary injunction is purely within the discretion of court and depend upon a variety of circumstance and it is not possible to lay down any set, rigid or general rule on the discretion of the Court of in

all case to be regulated.

6. It would be sufficient for plaintiff to show that he has fare question to raise as to the existence of his right and that till the question is ripe for trial case is made out for preservation of property in question.

7. Irreparable injury means such injury which cannot be adequately remedite by damage. The remedy by damage would be inadequate if the compensation dealing in favour of plaintiff in case of success in suit would not place him in the position in which he was before injunction was refused. The balance of convenience means the comparative mischief or inconvenience to the parties. The court must see the necessary ingredients for grant of temporary injunction exits in favour of the plaintiff.

8. The Court is not bound to grant such relief merely because it is lawful to do so. But the discretion of the Court should not be arbitrary but sound, reasonable, and guided by the principles. The exercise of discretion must be in judicial manner depending upon the circumstances of each case. The jurisdiction of the Court to interfere adequately is governed by principles and therefore, the court will among other, look into the conduct of the person, who makes applications. Sound discretion consist in observation of rules and circumstance which have generally guided and influenced the Court in granting injunction. The court must satisfy itself that the plaintiff has made out prima facie case, that irreparable injury will cause to him if the injunction is not granted. There is no other remedy open by which he can protect himself from consequence of the apprehended injury and that the injury is one that cannot adequately compensated for in damages.

9. The Hon'ble High Court in case of **M/s. Kacchi Properties Vs. Ganpatrao Shankarrao Kadam and Ors. 2010(5) ALL MR 366** held that : "there could always be cases where rule of lis pendens may be inadequate to prevent the mischief and a temporary injunction to prevent such would be warranted. This would imply that a person claiming injunction in such situation would have to show that protection under section 52 of the T.P. Act is not adequate. Merely because there is a power, its exercise could not be sought as a matter of course, or simply because its exercise is unlikely to hurt defendant, for, while granting injunction the court must see that plaintiff makes out a case of irreparable loss and it is not for the defendant to prove that he would suffer if an injunction is issued. After plaintiff proves irreparable loss, comes the question of balance of convenience or rather balance of inconvenience, when the Court would require as to who would suffer greater inconvenience and decide whether injunction ought to be granted."

10. It is further held by Hon'ble High Court in para 22 that: " a plaintiff need not at all worry about transfer pendente lite and so, occasions for invoking powers under order 39, rule 1 and 2 would arise only in rare cases where the plaintiff can demonstrate that rule of lis pendens is inadequate to protect plaintiff's interest."

11. **Grounds for continuing injunction :**

Temporary injunction should be continued where it is necessary to protect the plaintiff's right especially where the action is for sole purpose of injunction. When the circumstances of the case are such that dissolution of injunction would amount to denial of relief to which plaintiff might show himself entitled in final hearing.

12. **Principles for withholding temporary injunction.**

Section 41 of specific Relief Act laid down certain principles for with holding temporary injunction. As per Section 41 the order of temporary injunction can be with hold in following circumstances.

- i) When there is adequate remedy available or when injunctive relief is to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought or to restrain any person from instituting any proceeding in the court not subordinate to that from which injunction is sought or to restrain any person from applying to any legislative body or to restrain any person from prosecuting any criminal proceeding or to prevent breach of contract of performance of which could not be specifically enforced or to prevent on the ground of nuisance when it does not reasonably clear or to prevent a continue breach in which the plaintiff has knowledge or when conduct of the plaintiff or his agents has been such as to dis entitled him to the assistance of the court and when plaintiff has no personal interest in the matter.
- ii) An injunction cannot be granted when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court. This is based on the equitable principle that if a person wants equity he must come to the court with clean hands. The plaintiff has, therefore, to prove that his conduct was fair and honest, free from any fraud, irregularity or illegality, in his dealings with the defendant.

- iii) The Court will refuse injunction to the plaintiff who has no personal interest in the matter. When the person filing a suit is a nominal plaintiff, or when the plaintiff contends that the interest of someone else is going to be prejudicially affected, the Court shall not grant injunction to him.

13. **Ad interim Injunction** : Whenever the Court does grant an injunction without notice to the opposite party i.e. ex-parte the proviso to Rule 3, Order 39, C.P.C. provides duty on the Court to record the reasons for its opinion as to the object of granting the injunction would be defeated by delay. It also puts an obligation on the party in whose favour such order is passed to communicate the order along with all relevant documents to the other side by registered post and to file an affidavit stating that, he complied the requirement.

14. The Hon'ble Supreme Court in **Ramrameshwari Devi and ors. Vs. Nirmala Devi and ors., Civil Appeal No.49/2011** has held that: "the Court should be extremely careful and cautious in granting ex parte ad interim injunctions or stay orders. Ordinarily short notice should be issued to the defendants or respondents and only after hearing concern parties appropriate order should be passed."

15. The Hon'ble Apex Court in the case of **Shiv Kumar Chadha Vs. Municipal Corporation of Delhi, (1993) 3 SCC 161** emphasized the need to give reason before passing ex-parte orders of injunction by observing;

"... the court shall 'record the reasons' why an ex-parte order of injunction was being passed in the facts and circumstances of a particular case. In this background,

the requirement for recording the reasons for grant of ex-parte injunction, cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule 3, the procedure prescribed under the proviso has been followed. The party which invokes the jurisdiction of the court for grant of an order of restrain against a party, without affording an opportunity to him of being heard, must satisfy the court about the gravity of the situation and court has to consider briefly these factors in the ex-parte order."

16. In the case of **Morgan Stanley Mutual Fund Vs. Kartick Das (1994) 4 SCC 225** Hon'ble Apex Court held that, ex-parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex-parte injunctions are -

- (a) *whether irreparable or serious mischief will ensue to the plaintiff;*
- (b) *whether the refusal of ex-parte injunction would involve greater injustice than the grant of it would involve;*
- (c) *the court will also consider the time at which the plaintiff first had notice of the act complained as that the making of improper order against a party in his absence is prevented;*

- (d) *the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex-parte injunction;*
- (e) *the court would expect a party applying for ex-parte injunction to show utmost good faith in making the application;*
- (f) *even if granted, the ex-parte injunction would be for a limited period of time;*
- (g) *General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court.*

17. **Perpetual Injunction** : A perpetual injunction can be granted only after the hearing of suit on merits. The party seeking perpetual injunction has to establish such right in his favour which requires protection in perpetuity. A party who seeks perpetual injunction has to establish his right by adducing substantial evidence.

18. The hon'ble Supreme Court in case of **Anathula Sudhakar vs P. Buchi Reddy (Dead) By Lrs & Ors on 25 March, 2008** held in para 17 of judgment as under : To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

- (a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.
- (b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.
- (c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in **Annaimuthu Thevar (supra)**]. Where the averments regarding title are absent in a plaint and where

there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

- (d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.

19. The Hon'ble Supreme Court in case of **Vareed Jacob vs Sosamma Geevarghese & Ors on 21 April, 2004** held that : I am, therefore, of the opinion that the interim order of injunction did not revive on restoration of the suit. The Courts, however, would be well-advised keeping in view the controversy to specifically pass an order when the suit is dismissed for default stating when interlocutory orders are vacated and on restoration of the suit, if the court intends to revive such interlocutory orders, an express order to that effect should be passed.

20. **Mandatory Injunction** :- A mandatory injunction forbids the defendant to permit the continuance of a wrongful state of things that already exists at the time when the injunction is issued on the purpose of mandatory injunction is thus to restore a wrongful state of things to their former rightful order.

21. Mandatory injunction is granted when to prevent the breach of a 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 purpose of the requisite acts.

22. **Conclusion** :

The grant of injunction is a purely discretionary. The Court may grant or refuse to grant the same taking into account various factors like the balance of convenience, possibility of adequate relief by way of damages, the conduct of the parties, and the possibility of enforcing its order. The service of temporary injunction order on opponent is necessary. An injunction is therefore only valid when the opponent has been served with the court order. Injunctive relief is not a matter of right, but its denial is within the discretion of the court. Whether or not an injunction will be granted varies with the facts of each case.

Thanking You.

Yours Faithfully,

(S.D. Indalkar)
Jt. Civil Judge, J.D., Ratnagiri.

LAW OF INJUNCTIONS

Temporary injunction including exparte injunction, perpetual injunction and mandatory injunction.

A. M. Patankar
Civil Judge(J.D.) &J.M.F.C,
Khed, Ratnagiri.

“The protection of personal and civil liberties are the result of judicial decisions determining rights of private persons in particular cases brought before the court rather than deriving from broad statements of rights or principles in written document of fundamental law. These important rights are the product of and continually protected by vigilant contestation in the regular and public courts of law which are focused on concrete matters rather than grand abstract principles and these rights are inseparably tied to effective remedies ubi jus ibi forum et remedium”

-Dicey

A **legal remedy (judicial relief)** is the means with which a court of law, usually in the exercise of civil law jurisdiction, enforces a right. An **injunction** is an equitable remedy in the form of a judicial process that compels a party to do or refrain from specific acts. It is a court order which restrains one of the parties to a suit in equity from doing or permitting others who are under his control to do an act which is unjust to the other party. 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. Injunctions are intended to make whole again someone whose rights have been violated. Nevertheless, while deciding whether to grant an injunction, courts also take into account

the interests of non-parties (i.e. the public interest). When deciding whether to give an injunction, and deciding what its scope should be, courts give special attention to questions of fairness and good faith. One manifestation of this is that injunctions are subject to equitable defenses, such as laches and unclean hands.

Injunctions are given in many different kinds of cases. They can prohibit future violations of the law, such as trespass to real property, infringement of a patent etc. Taking in to consideration the duration and the stage, they can be classified in to Temporary injunctions and Perpetual injunctions. Otherwise, an injunction that requires conduct is called a "mandatory injunction." An injunction that prohibits conduct is called a "prohibitory injunction. Many injunctions are both—that is, they have both mandatory and prohibitory components, because they require some conduct and forbid other conduct. When an injunction is given, it can be enforced with equitable enforcement mechanisms such as contempt. It can also be modified or dissolved (upon a proper motion to the court) if circumstances change in the future. These features of the injunction allow a court granting one to manage the behavior of the parties.

In Indian legal system the law of injunctions is mainly governed by **Order XXXIX and section 36 and 42 of the Specific relief Act. Section 94(c) of the Civil Procedure Code(C.P.C.)** also gives supplemental provision for grant of temporary injunction. It is also settled that there is no bar in granting injunction or supplementary orders for compliance of injunction order in just cases **under section 151 of the Civil Procedure Code.** The later provision of inherent powers increases the scope of civil courts while granting injunctions and consequential reliefs in appropriate cases. Section 95 of the C.P.C provides for compensation when injunction order is obtained u/s.94 of C.P.C on improper grounds.

**ORDER XXXIX RULE 1 & 2 OF THE C.P.C.-TEMPORARY
INJUNCTION**

Order XXXIX deals with temporary interim or interlocutory injunctions and order. It lays down that where in any suit it is proved by affidavit or otherwise (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree or (b) that the defendants threatens or intends to remove or dispose of his property with a view to defrauding his creditors, (c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may grant temporary injunction to restrain such act, stay and prevent the waisting damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff. The court may also restrain the act of causing injury to the plaintiff in relation to any property in dispute. Such order may be granted until the disposal of the suit or until further orders.

Thus it can be seen from the above statute provision that when the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in a 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. 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. Temporary injunction is a provisional remedy that is invoked to preserve the subject matter in its existing condition. It's 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.

The criteria for weighing the contentions of rival sides while deciding the temporary injunction sought is (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.

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. 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.

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 Code of Civil Procedure lays down provision for Compensation for obtaining arrest, attachment or injunction on insufficient grounds. The defendant has to file application showing an arrest or attachment effected or a temporary injunction granted on insufficient grounds under section 94 of Code of Civil Procedure. He has to show that there was no reasonable or probable grounds for instituting the suit. On such application after satisfaction, the court may award against the plaintiff such amount, [not exceeding fifty thousand rupees], as it deems a reasonable compensation to the

defendant for the [expense or injury (including injury to reputation) caused to him]. Under section 95, an amount exceeding the limits of pecuniary jurisdiction of the Court can not be awarded. An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

POINTS TO BE CONSIDERED AT THE TIME OF DECIDING TEMPORARY
INJUNCTION APPLICATION

PRIMA FACIE CASE :

A prima facie case implies the probability of the plaintiff obtaining relief on the material placed before the court. 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.

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. 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.

IRREPARABLE INJURY :

The existence of the prima facie 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.

BALANCE OF CONVENIENCE :

The principle of balance of convenience implies the evenly balancing of scale in fact while considering the prayer of injunction inconvenience caused to either parties to the dispute is to be considered. 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.

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 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. When plaintiff has no personal interest in the matter, injunction cannot be granted.

INHERENT POWERS :

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**' (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.

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.

PERPETUAL(PERMANENT) INJUNCTION

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.

Section 37(2) of Specific Relief Act lays down 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.

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. 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 assistance of the Court, (j) when the plaintiff has not personal interest in the matter.

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.

MANDATORY INJUNCTION

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 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.

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.

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. 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 be restored.

The following age old canons in equity law are to be borne in mind while considering the subject prayers :

- @ One who seeks equity must come with clean hands.
- @ One who seeks equity must do equity.

- @ **"ubi jus ibi remedium"**.Whenever there is right there is remedy.
- @ Where equities are equal, the law will prevail.
- @ Equity follows the law.
- @ Equity aids the vigilant, not those who slumber on their rights.

INTERLOCUTORY INJUNCTION

As per Rule 3 of Order XXXIX of the 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 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. No interim injunction would be issued if final relief cannot be granted.

In '**Bloom Dekor Limited v/s. Subhash Himatlal Desai and ors**' (MANU/SC/0858/1994) the Hon'ble Apex court has laid down :

"As a principle, ex parte injunction could be granted only under exceptional circumstances. The facts which should weigh with the court in the grant of ex parte injunction are:

- (a) *where irreparable or serious mischief will ensue to the plaintiff;*
- (b) *whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;*
- (c) *the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented ;*

- (d) *the court will consider whether the plaintiff had acquiesced for some time and in such circumstances it will not grant ex parte injunction:*
- (e) *the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.*
- (f) *even if granted, the ex parte injunction would be for a limited period of time.*
- (g) *General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court."*

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 entitled to execute the decree for injunction and partition, without impediment if does not execute 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.

In 'M. A. Raja S. Vs. Vedhantham Pillai' (2000(2) C.T.C., 199 (Madras High Court) it is held by Hon'ble High Court-

"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".

In 'Ramji Gupta Vs. Gopi Krishan'(AIR 2013 SC 3099) it is held by the Hon'ble Apex Court held-

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

IF TEMPORARY INJUNCTION ORDER DISOBEYED REMEDY

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 mean while 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 Code of Civil Procedure. 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 Code of Civil Procedure.

THUS IT CAN BE CONCLUDED THAT-

Granting of injunction is entirely in the discretion of the Court, though the discretion is to be sound and reasonably guided by Judicial Principles. An injunction is an equitable remedy and as such attracts the application of the maxim that he who seeks equity must do equity. 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. 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 as laid down in law.

Most respectfully Submitted,

Sd/-

A.M.Patankar,
Civil Judge(J.D.) & J.M.F.C,
Khed, Ratnagiri.

Mrs.S.V.Deshpande
Civil Judge (J.D.) &
J.M.F.C.RAJAPUR,
Deputation at Lanja

Article for Workshop to be held in the month of March 1015

Subject : Law of Injunctions: Temporary Injunction including Ex-parte Injunction, Perpetual Injunction and Mandatory Injunction.

INTRODUCTION :

Under Indian Legal System, the law relating to injunction has been provided in the Specific Relief Act, 1963. Injunction is categorized in two form i.e. Permanent Injunction and Temporary Injunction. Section 37 of Specific Relief Act, 1963 provides that " temporary injunction are such as are to continue until a specified time, or until the further order of the Court, and they may be granted at any stage of a suit." The procedure for seeking temporary injunction has been provided under Order XXXIX of the Code of Civil Procedure, 1908. However, an injunction being discretionary equitable relief cannot be granted when equally efficacious relief is obtainable in any other usual mode or proceeding.

TEMPORARY INJUNCTION

The injunction is called temporary, for it endures only until the suit is disposed of or until the further order of the Court.

Injunction being in the nature of a preventive relief, is generally granted taking note of the equity. However, the Court has no jurisdiction to grant by way of interim relief what could never be granted in the main suit itself.

The remedy of temporary injunction though has wide scope for consideration, it has to be exercised with utmost care and caution considering preferably, principles of equity and natural justice, as this is stage where the matter on prima facie material is to be considered.

In Zenit Mataplast P Ltd. Vs State of Maharashtra, AIR 2009 SC (Supp) 2364, (2009) 10 SCC 388. The Hon'ble Apex Court explained the scope of interim injunctions. It is held.

"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. Thus, where the application of the appellant for allotment of land was rejected without assigning any reason and the suit land was allotted to respondent in undue haste, it was held that the order rejecting interim relief was liable to be set aside."

MANDATORY INJUNCTION:

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. A mandatory injunction could be passed even at the interlocutory stage. A mandatory injunction on an interlocutory application can be granted even if it results in granting the relief claimed in the suit. In deserving cases the court should not hesitate to come to the aid of a litigant and uphold the cause of justice by granting such a relief. A mandatory injunction can be granted on an interlocutory application after notice to the defendant and after hearing the parties.

EX PARTE INJUNCTIONS :

This rule confers on the Court a power to grant an ex-parte interim injunction and has prescribed a particular procedure for passing of an injunction order without notice to the other party, under exceptional circumstances. The Court must record reasons for passing such an order. The requirement of giving reasons, as laid down in the proviso is mandatory. Order 39, r.3 does not contemplate any special

manner of recording of reasons and it would be sufficient if some kind of reason relatable to the purpose of the rule is disclosed in the order.

An ad-interim injunction should not be granted without prima facie case. The circumstance that the defendant can get it vacated later, is not a sufficient ground for granting it.

In suit for injunction, where no reason was assigned by the Court for dispensing with the statutory requirement of notice under O.39 r.3, it was held that injunction affects valuable rights of parties and therefore such orders should not be passed just for the asking. Further, no prima facie reason was recorded in respect of existence of prima facie case, balance of convenience and irreparable loss and as such mandatory requirement for grant of injunction was not fulfilled.

Morgan Stanley Mutual Fund Vs Kartick Das, 1994(4)SCC 225, The Hon'ble Supreme Court in Morgan Stanley Case, inter alia observed the under mentioned guidelines for grant of temporary injunction besides others:

- (1) Where irreparable or extremely serious injury will be caused to the applicant, ex-parte order can be passed;
- (2) The Court shall examine the time when the plaintiff got notice of the act complained;
- (3) If the plaintiff has acquiesced to the conduct of the respondent than ex-parte temporary injunction shall not be passed;
- (4) The applicant shall be acting in utmost good faith; and
- (5) such an order shall be for a temporary period.

MAREVA INJUNCTION

Mareva Injunction is granted to order the defendant not to remove specific assets from the jurisdiction of the Court. 1) In England, the Mareva injunction is granted to order the defendant, not to remove specific assets from the jurisdiction of the court. The injunction was first granted in Mareva Companies Naviera SA V/s. International Bulk Carriers SA.

Supreme court Act, 1981, Section 37(3) is in respect of powers of High Court with respect to injunction and receivers.

Section 37(1) - The H.C. may by order (Whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court to be just and convenient to do so.

2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks just.

3) The power of the H.C.u/s 5(1) to grant an interlocutory injunction restraining a party to any proceedings from removing from the jurisdiction of the H.C., or otherwise dealing with assets located within that jurisdiction shall be exercisable in cases where that party is, as well as in cases where he is not domiciled, resident or present within that jurisdiction. Thus in India the object can be achieved by recourse to Or.39, R.1 to 5. The Supreme Court Act, 1981 is an Act of the U.K. Parliament.

PERPETUAL INJUNCTION

Section 39 of the Specific Relief Act is relating to mandatory injunction. To get mandatory injunction, whether permanent or temporary, plaintiff should be specific that there was a breach of obligation and certain acts are necessary to restore the status-quo.

A perpetual injunction can be granted only if it could be proved by the plaintiff that there was some overt act or threat of any kind or commission of an act contrary to the plaintiff's right on the part of the defendant to illegally or forcibly dispossess him. 1986 Punjab L.J.,168(171): 1986 (89) Punjab LR 326 (D.B). Relief of of perpetual injunction can only be granted by Civil Court and not by Revenue Court.

Hence, submitted with respect.

Date: 4/3/2015.

(Mrs.S.V.Deshpande)

Place: Lanja.

Civil Judge (J.D.) &
J.M.F.C.RAJAPUR,Deputation at Lanja

(G.M.Sadhale)
Assistant Charity Commissioner
Ratnagiri Region Ratnagiri.

WORKSHOP PAPER

(for the third Workshop to be held on 15/03/2015.)

Law of injunctions : Temporary Injunction, perpetual injunction & mandatory injunction.

INTRODUCTION

An injunction is a judicial process whereby a party is ordered to refrain from doing or to do a particular act or thing. In the former case, it is called restrictive injunction, in the later a mandatory injunction. The law relating to injunctions is contained in sections 36 to 42 of the Specific Relief Act and in order XXXIX Rules 1 to 5 of the Code of Civil Procedure.

An injunction is a specific order of the Court forbidding the commission of a wrong threatened or the continuance of a wrongful course of action already begun. An injunction will not be granted where there is an adequate remedy in damages.

Temporary Injunction :-

Order 39 Rule 1 to 5 of Civil Procedure Code deals with the temporary injunction only. The effect and object of an ad interim injunction is merely to keep matters in status quo until the final disposal of the suit. The Court interferes on the assumption that the

party who seeks its interference has the legal right which he asserts, but needs the aid of the Court for the protection of the property in question until the legal right can be ascertained.

The principles governing the granting of injunctions are well settled and the power is discretionary. The court has to see prima-facie case, irreparable loss and balance of convenience in favour of the party seeking temporary injunction before it is granted. A man who does not come with clean hands is not entitled to injunction.

If Court has no jurisdiction to try the suit, it cannot grant any temporary injunction in the matter. Whether grant of temporary injunction would amount practically granting the relief claimed in a suit, court should be very very slow in granting such prayer.

Being equitable relief, the grant of temporary injunction is discretion of the court. Where plaintiff himself appears to be guilty of wrongful conduct, he is not entitled for grant of temporary injunction. Person in wrongful possession of property cannot protect it against true owner by seeking assistance of the court by way of injunction.

Temporary injunctions are such as to continue until a specified time, or until the further order of the court. And they may be granted at any stage of the suit.

The object of rule 2A of order 39 of Civil Procedure Code is not to punish a person for disobedience of injunction order but to ensure the enforcement and compel the party to act according to injunction. As soon as the party concerned starts complying with injunction order or such order is vacated, the party cannot be held guilty of disobedience and must be released if in the detention in civil prison. Action need not be taken under this rule for every disobedience. It is only when the party against whom temporary injunction is passed, willfully disobeys it the action is needed. Willful disobedience means when the party had intentionally and knowingly disobeyed the order.

2007(5) All MR 95 (Rampyaribai Sukhdeo Daga Vs. Niladevi Narayandas Jakhotiya) in which it was held that, "It is clear that proceedings under Order 39 Rule 2 A of civil Procedure Code are absolutely independent proceedings. So as a matter of fact the application for breach of injunction should be separately registered as Miscellaneous Judicial case".

Order XXXIX Rule 3A of Civil Procedure Code provides that, court to dispose of application for injunction within thirty days. 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 thirty days from the date on which the injunction was granted; and where it is unable to do so, it shall record its reasons for such inability.

Order XXXIX Rule 4 of Civil Procedure Code empowers Court to discharge, vary or set aside the temporary injunction passed against any party during the pendency of suit according to the circumstances of the case. The Rule gives opportunity to Court to rectify the Order after hearing the other party. Also, if a party abusing the temporary injunction after obtaining it and avoiding hearing on one pretext or another Court can vacate the *ex parte* temporary injunction after recording the reasons therefore.

If permanent injunction cannot be granted, temporary injunction of like nature should not be granted. The general rule is that if case does not admit of the relief of permanent injunction at the hearing on the merits, the relief of temporary injunction should be refused.

The principles applicable to the grant of interim injunction against construction on the land in dispute have been explained by the Hon'ble Supreme Court in Gangubai V/s Sitaram. (A.I.R. 1983 S.C.

742). It is first necessary to consider whether the party seeking the action was in lawful possession at any time. If such lawful possession is established, the party opposing the application for interim injunction may be required to show how the applicant was dispossessed. It is also necessary to consider the balance of convenience.

In **2005 (3) All MR Page No.33 (M/s Deshmukh & Co. (Publishers) Pvt. Ltd. Vs. Avinash Vishnu Khandekar and Others)**, it is observed that, the grant or refusal of a temporary injunction is subject to the following principles : (i) *prima facie* case of plaintiff's legal right (ii) balance of convenience in his favour; (iii) whether he would suffer irreparable injury if injunction is not granted. These conditions have to be satisfied and proof of any of them is not by itself sufficient to obtain a temporary injunction.

In **Smt Pramila Lalbhai Dabhoga & another V/s Dr. Harish Lalbhai Dabhoga 2005(4) All M.R. 288** it is observed that, even plaintiff has failed to prove any agreement, his possession can only be disturbed by following due process of law and not by other means.

Section 94 and 151 of Civil Procedure Code

Section 94 of Civil Procedure Code lays down that in order to prevent the ends of justice from being defeated the court may if it so thinks fit grant a temporary injunction.

Section 151 of Civil Procedure Code lays down that nothing in this Code, shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. The court has also inherent jurisdiction to issue temporary injunctions which are not covered by the provisions of Order 39 of Civil Procedure

Code if the court is of opinion that interest of justice requires the issue of such temporary injunction.

The court has no jurisdiction to pass any order under Order 39 Rule 1 of Civil Procedure Code, pending the disposal of an application to sue as indigent person as there is no pending suit at that time. But in such a case the court may in exercise of its inherent power, under section 151 of Civil Procedure code pass an order which partakes of the nature of an order under Order 39 Rule 1 if such an order is necessary for the ends of justice.

When a suit is dismissed for default and the proceedings for restoration of the suit under Order 9 Rule 9 of Civil Procedure Code is pending, court can grant temporary injunction in such a proceeding by invoking an inherent power. In such a proceeding temporary injunction may be granted restraining the defendant from alienating the suit property till the disposal of the application. But no injunction under the inherent powers can be passed against the person who is not a party to the suit.

Section 9A of Civil Procedure Code provides where an objection to jurisdiction of a Civil Court is raised to entertain a suit and pass any interim orders therein, the Court should decide the question of jurisdiction in the first instance but that does not mean that pending the decision, the Court has no jurisdiction to pass interim orders. A mere objection to jurisdiction does not instantly disable the Court from passing any interim orders. It can yet pass appropriate orders. At the same time, the question of jurisdiction must be decided at the earliest possible time. The interim orders so passed are within jurisdiction and effective till the Court decides that it has no jurisdiction to entertain the suit.

Permanent Injunction:

Section 38 of Specific Relief Act applies only to permanent injunctions and not to temporary injunctions which are governed by order XXXIX of Civil Procedure Code.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit. The defendant is thereby perpetually restrained from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff. Sub Section (3) specifically lays down the circumstances under which a perpetual injunction can be granted by the court.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of property the court may grant perpetual injunction in the following cases, namely -

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

Mandatory Injunction:

A mandatory injunction may be defined as one which commands the doing of some positive act by the defendant, some times changing the status of the party.

A mandatory injunction forbids the defendant to permit the continuance of an wrongful state of things that already exists at the time when the injunction is issued. The purpose of mandatory injunction is thus to restore a wrongful state of things to their former rightful order.

The relief of interlocutory mandatory injunctions is thus granted generally to preserve or restore the *status quo* of the last non-contested status which preceded the pending controversy until the final

hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm.

In **AIR 1989 Bom 247 (Baban Narayan Landge V/s Mahadu Bhikaji Tonchar and others)**, it is observed that, Civil Court can issue at an interlocutory stage a mandatory injunction so as to restore the status quo anterior to the date of institution of a suit.

In **AIR 1990 SUPREME COURT 867 (Dorab Cawasji Warden v/s. Coomi Sorab Warden)** the Hon'ble Apex Court has given guidelines for grant of mandatory injunction which are as follows -

“ though the Courts have the power to grant interim injunction, such power ought not to be exercised as a matter of course. Interim mandatory injunctions may be granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts which have been illegally done or the restoration of that which was wrongfully taken by the party complaining. The general guidelines to be applied in the matter of granting interim mandatory injunction are as follows:

- (i) the plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima- facie case, i.e., normally require for a prohibitory injunction;
- (ii) It is necessary to prevent or serious injury which normally cannot be compensated in terms of money;

- (iii) The balance of convenience is in favour of one seeking such relief;

In the aforesaid decision, the Hon'ble Supreme Court has itself made it clear that the grant of relief of interim mandatory injunction being essentially an equitable relief, the grant or refusal of the same shall ultimately rest in the sound judicial discretion of the court to be exercised in light of the facts and circumstances of each case. Therefore, aforesaid guidelines can neither be regarded as exhaustive nor complete or absolute rules and there may be exceptional circumstances needing action, applying them as a pre-requisite for grant or refusal of such injunction would be a sound exercise judicial discretion.

Kishore Kumar Khaitan & Anr vs Praveen Kumar Singh on 13 February, 2006 CASE NO.:Appeal (civil) 1101 of 2006

In which it was held that

"An interim mandatory injunction is not a remedy that is easily granted. It is an order that is passed only in circumstances which are clear and the prima facie materials clearly justify a finding that the status quo has been altered by one of the parties to the litigation and the interests of justice demanded that the status quo ante be restored by way of an interim mandatory injunction. Thus, prima facie, we find that the tenancy claimed by the plaintiff remains to be proved in the suit. For the present, we should say that prima facie, the plaintiff has not been able to establish the foundation for the possession claimed by him. It is significant to note that not even another tenant of the building among the various tenants in the building, was examined to

establish that the plaintiff while in possession, had been dispossessed on 20.6.1998 as claimed by him. Any way, the Additional District Judge has not referred to any such evidence except referring to the affidavit of Shivanand Mishra, who even according to the plaintiff was no more in occupation. Thus, the disturbance of the status quo by the defendants has not been established. Thus, prima facie it is clear that the plaintiff has not laid the foundation for the grant of an interim order of mandatory injunction in his favour. The order so passed by the Additional District Judge, and confirmed by the High Court, therefore, calls for interference in this appeal.”

Section 41 of Specific Relief Act – Injunction when refused – An injunction cannot be granted -

- (a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to stay proceedings in a Court not subordinate to that from which the injunction is sought;
- (c) to restrain persons from applying to any legislative body;
- (d) to interfere with the public duties of any department or the Central Government or any State Government, or with the sovereign acts of a foreign Government;
- (e) to stay proceedings in any criminal matter;
- (f) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (g) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

- (h) to prevent a continuing breach in which the applicant has acquiesced;
- (i) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust;
- (j) when the conduct of the applicant or his agents has been such as to disentitle him to be assistance of the Court.
- (k) where the applicant has no personal interest in the matter.

LIMITATION

There is no separate article provided under the Limitation Act for a suit for injunction. So a suit for injunction has to be governed by the residuary article i.e. Art. 113. Under this article, a suit can be filed within three years from the date of accrual of the cause of action.

Submitted with respect.

Place : Ratnagiri

(G.M.Sadhale)

Date : 05/03/2015

Assistant Charity Commissioner
Ratnagiri Region Ratnagiri.

[R.S.Dhadake]
Joint Civil Judge (J.D.)
and J.M.F.C. Dapoli.

SEX DETERMINATION WITH REFERENCE TO PCPNDT Act, 1994

As per medical law, the term sex determination means “the process of identifying sex of an individual by following different techniques like amniocentesis (by amniotic fluid), etc.”

With the development of technology, several techniques have been evolved for the purpose of observation of foetus in mother's womb. These techniques includes sonography test, amniocentesis, foetoscopy, chorionic villi biospy, placental tissue samplingm, etc. Out of these, the most commonly used sex determination test is sonography and amniocentesis. These pre-natal diagnostic techniques were meant to be used for the detection of genetic or chromosomal disorders or congenital malformations or sex linked disorders. But these are, now a days, used for determination of sex of the child.

India is male dominated country and birth of boy is considered as joyous occasions, on the contrary, the girl is considered as burden on the family. Hence, to kill such child these pre-natal diagnostic techniques are videly used in the Indian Society. The study has clearly showed that these techniques are used by the educated class of the society, mostly in urban areas. Hence, to curb such problem, the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act of 1994 was enacted and with the passage of time several amendments were introduced in this Act to meet requirements of changing society and techniques.

Female foeticide :-

Foeticide is destruction of a fetus. The term 'female foeticide' means the elimination of a female foetus. It is also defined as a process of aborting a foetus, after undergoing sex determination tests or pre-natal diagnostics tests after revealing its sex as a female. The most reasons for high rate of female foeticide in India includes

- i. Woman's status in the society is secondary. It is generally expected that sons would carry the family lineage forward, provide security and care to old parents.
- ii. Certain communities want to get rid of female child due to unemployment, poverty, etc.
- iii. Dowry is also one of the factor for increase in female foeticide.
- iv. It is religious belief that a son continues family lineage (Vansh).

To curb these problems the Indian Penal Code, 1860 several penal provisions have been provided. Under section 312, 313 and 314, causing miscarriage is severally punishable with imprisonment. However, due to development in technology and its misuse by several persons, there was need to enact a special law dealing with aspect of sex determination, etc.

The Preconception and prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act of 1994-

In 1986, a social action group in Mumbai namely the Forum against Sex Determination and Sex Pre-selection initiated a campaign against sex-determination. The Maharashtra Government enacted the Maharashtra Regulation of Pre-natal Diagnostic Techniques Act, 1988, which was first Act for controlling sex determination. This was followed by a similar Act in Punjab in 1994. However, these two Acts were repealed by the Parliament by enacting a central legislation i.e. the

Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994 with effect from 01-01-1996. This Act was renamed in 2002 amendment, as the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act of 1994 (hereinafter for sake of brevity called as 'PCPNDT Act'), which came to effect from 14-02-2003.

- I. The PCPNDT Act chiefly provides for
 - i. prohibition of sex selection, before and after conception,
 - ii. regulation of prenatal diagnostic techniques,
 - iii. prevention of misuse of such techniques for sex selection before or after conception,
 - iv. prohibition of advertisement of any such techniques,
 - v. punishment for violation of the provisions of the Act, etc.

II. Constitutional validity of PCPNDT Act :-

In **Vinod Sony v/s. Union of India**, a married couple challenged the constitutional validity of PCPNDT Act, the Hon'ble Bombay High Court held that -

“the enactment does not bring about total prohibition of any such tests. It intends to thus prohibit user and indiscriminate user of such tests to determine the sex at preconception stage or post-conception stage. The right to life or personal liberty cannot be expanded to mean that the right of personal liberty includes the personal liberty to determine the sex of a child which may come into existence. claiming right to choose the sex of a child which is come into existence as a right to do or not to do something which cannot be called a right. The right to personal liberty cannot expand by any stretch of imagination, to liberty to prohibit coming into existence of a female foetus or male foetus which shall be for the Nature to decide. To claim a right to determine the existence of such foetus or possibility of such foetus come into existence, is a claim of right which may never exist. Right to bring into existence a life in future with a

choice to determine the sex of that life cannot in itself to be a right. In our opinion, therefore, the petition does not make even a prima facie case for violation of Article 21 of the Constitution of India.”

III. As per section 3 (1), no Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic unless registered under this Act, shall conduct or associate with, or help in, conducting activities relating to pre-natal diagnostic techniques. Thus, the registration is compulsory for conducting activities relating to pre-natal diagnostic techniques.

Further, as per Section 3B, no person shall sale any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other person not registered under the Act.

IV. The Section 4 of the Act provides provisions relating to regulation of Pre- Natal Diagnostic Techniques. Under this section, these techniques shall be conducted only for the purposes of detection of any of the following abnormalities, namely -

- (i) Chromosomal abnormalities;
- (ii) Genetic metabolic diseases;
- (iii) Haemoglobinopathies;
- (iv) Sex-linked genetic diseases;
- (v) Congenital anomalies;
- (vi) Any other abnormalities or diseases as may be specified by the Central Supervisory Board;

The place including a registered Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall be used or caused to be used by any person for conducting pre-natal diagnostic techniques for the abovesaid purposes.

Further, such restrictions are extended for use of techniques on

satisfaction of the person qualified. These conditions are-

- (i) Age of the pregnant woman is above thirty-five years;
- (ii) The pregnant woman has undergone of two or more spontaneous abortions or foetal loss;
- (iii) The pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;
- (iv) The pregnant woman or her spouse has a family history of mental retardation or physical deformities such as, spasticity or any other genetic disease;
- (v) Any other condition as may be specified by the Central Supervisory Board;

Such person is bound to record his reasons for conducting such technique. Also, the person conducting ultrasonography on a pregnant woman shall keep complete record thereof in the clinic in such manner, as may be prescribed, and any deficiency or inaccuracy found therein shall amount to contravention of provisions of section 5 or section 6 unless contrary is proved by the person conducting such ultrasonography. Under Rule 9 of the Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996, it is mandatory to maintain register showing, in serial order, the names and addresses of the men or women given genetic counseling, subjected to pre-natal diagnostic procedures or pre-natal diagnostic tests, the names of their spouses or fathers and the date on which they first reported for such counseling, procedure or test. The specific forms viz. Form- D, Form-E, Form-F, etc. are given.

In **Sujit Govind Dange (Dr.) and another v/s. State of Maharashtra and others. 2013 2 BCR 351**, the Hon'ble Bombay High Court held that- "Considering the object of the Act, the maintenance and preservation of records as per rule 9 is an important statutory duty cast upon the person (Doctor) conducting ultra sonography on a pregnant woman deficiency and inaccuracy in

keeping and maintaining the record including form 'F' has resulted in contravention of the provisions contained in section 5 or 6 and, therefore, would amount to an offence and can be treated to be sufficient reason for the Appropriate Authority to invoke the provisions of subsection (3) of section 20 of the Act, in the larger public interest..."

IV. As per Section 5(2) of the Act, no person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs or in any other manner. The said prohibition was incorporated with a view to protect secrecy as to sex of the foetus.

Even such prohibition also prevents a person including a relative or husband of the pregnant woman from seeking or encouraging the conduct of any pre-natal diagnostic techniques on her except for the purposes specified in the Act.

V. The section 6 of the Act is most important section. Under this section determination of sex is prohibited. It is required that, no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall conduct or cause to be conducted in its Centre, Laboratory or Clinic, pre-natal diagnostic techniques including ultrasonography, for the purpose of determining the sex of a foetus. This prohibition is also applicable to a person and he shall not conduct or cause to be conducted any pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of a foetus.

VI. Under Section 7 of the Act the **Central Supervisory Board** was constituted and its function is to advise the Central Government on policy matters relating to use of pre-natal diagnostic techniques, sex selection techniques and against their misuse, to create public awareness against the practice of pre-conception sex selection and pre-natal determination of sex of foetus leading to

female foeticide and to lay down code of conduct to be observed by persons working at Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics. Accordingly, as per Section 16A the State Advisory Committee is also constituted.

VII. As per Section 17 (2), the State Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide. Such Appropriate Authority shall investigate complaints of breach of the provisions of this Act or the rules made there-under and take immediate action, and create public awareness against the practice of sex selection or prenatal determination of sex. Even after investigation and after considering act, the Authority has power to suspend or cancel the registration of the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic. As per Section 17A of the Act such Appropriate Authority is vested with certain powers of the Court like, summoning any person, etc. An appeal from order of such Appropriate Authority shall lie to the State Government or Central Government.

VIII. Offences and Penalties

1. Section 22 of the Act prohibits advertisement relating to pre-natal determination of sex and punishment for its contravention.

It provides that, no person, organization, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or center having ultrasound machine or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus or sex selection shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement, in any form, including internet, regarding facilities of pre-natal determination of sex or sex selection before conception available at such center, laboratory, clinic or at any

other place.

It also provides that, no person or organization including Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement in any manner regarding prenatal determination or pre-conception selection of sex by any means whatsoever, scientific or otherwise.

Any contravention of above said provisions is punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees.

2. As per section 23(1) any medical geneticist, gynaecologist, etc. who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.

The Appropriate Authority shall report the name of such registered medical practitioner against whom a charge is framed by the Court, to the State Medical Council for taking necessary action including suspension of the registration till disposal of the case and if he is convicted, for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence.

3. As per Section 23(3), any person who takes, seeks aid of a Genetic Counselling Centre, etc. for conducting pre-natal diagnostic techniques on any pregnant women for the purposes other than those specified in subsection (2) of section 4, he shall, be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees for the first offence and for any subsequent offence with imprisonment which may extend to five years and with fine which may extend to one Lakh rupees.

4. **Exemption to Woman-**

The provisions of Section 23(3) shall not apply to the woman who was compelled to undergo such diagnostic techniques or such selection. Even the court **shall presume**, unless the contrary is proved, that the pregnant woman was compelled by her husband or any other relative, as the case may be, to undergo prenatal diagnostic technique for the purposes other than those specified in sub-section (2) of section 4.

5. **Abetment**

A person who compels a woman to undergo pre-natal diagnostic technique for the purposes other than those specified in sub-section (2) of section 4, shall be liable for abetment of offence under sub-section (3) of section 23 and shall be punishable for the offence specified under that section.

As per section 17A (c), an Appropriate Authority has power of issuing search warrant for any place suspected to be indulging in sex selection techniques or prenatal sex determination.

6. The Section 25 is like a residue clause under which if anyone contravenes any of the provisions of this Act or any rules made thereunder, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one thousand rupees or with both and in the case of continuing contravention with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

7. The section 26 is in respect offences by companies. If the offences are committed by a company, every person who, at the time commission of the offence was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be

liable to be proceeded against and punished accordingly. However, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence such person can not be held liable for such punishment.

If the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

As per this section "Company" means anybody corporate and includes a firm or other association of individuals, and "director", in relation to a firm, means a partner in the firm.

IX. Cognizance if offences:-

Every offence under this Act shall be cognizable, non-bailable and noncompoundable.

Section 28 provides that the court shall take cognizance of an offence under this Act only on a complaint made by--

(a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority; or

(b) a person who has given notice of not less than fifteen days in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court. The term "person" includes a social organisation. Under such complaint, the court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.

Further a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

Conclusion -

The PCPNDT Act was enacted with intent to control use of technology and to prevent its misuse. However, it is observed that these techniques are still misused for purpose of female foeticide. The reasons are, ofcourse, the beliefs of the people in the Society. However, several complaints are filed under this Act. After, taking into consideration of pendency of Criminal matters relating to PCPNDT, the Hon'ble Chief Justice of Bombay High Court in **Dr. Suhasini Umesh Karanjkar v/s. Kolhapur Municipal Corporation**, gave direction to Judicial Magistrates First Class to take cases under PCPNDT on top priority basis. The issue is so much important that, there is need to control misuse at all levels.

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