

“Critical Analysis of Law of Temporary Injunction”

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Background

Law of bail and law of injunctions are two most popular and commonly used concepts in the lower courts. While bail secure the immediate release from custody pending the trial, the law of injunctions serves immediate relief to the party in whose favor it is made. Law of injunctions have its origin in the Equity Jurisprudence inherited from England. It was developed in the fourteenth century before the chancery court, but this concept was there in another name. For example, in ancient roman law, the writs of the English Kings in the period following the Norman Conquest, and the writs of the early English common law courts are similar as that of injunctions. It is based on the Latin maxim “ Ubi Jus Ibiremedium”, where there is a right, there is a remedy. Black's law dictionary defines it as “ a judicial process operating in personam, and requiring [the] person to whom it is directed to do or refrain from doing a particular thing.”¹

It was pointed by a noted jurist that “The injunction as a chancery remedy developed at the time of Henry, the VIth. The Chancellor set aside a certain bond by the plaintiff as one not binding on him. The Court of Common Pleas, however, gave a decree with bond. Chancellor thereupon devised the remedy of injunction by which he prohibited the execution of the decree of the Common Law Court. This exercise of power by issuing an injunction by the Chancery Court was viewed with jealousy by the Common Law Court and it became a source of conflict between the two jurisdictions. This conflict rose to the climax between the Lord Justice Coke and Lord Chancellor Ellesmere in 1816. A decree was obtained from Lord Coke by practising gross fraud. The Chancellor thereupon by an injunction perpetually enjoined the decree-holder from proceeding to execute his judgment. The validity of this procedure of issuing injunction was seriously questioned. The matter was referred to Bacon, the then Attorney General and other counsel, who finally settled the question in favor of Chancellor. The jurisdiction to issue injunctions was thus affirmed and the remedy which is termed as the strong arm of the Courts of equity has contributed a lot to consolidate the position of the judiciary in dispensing justice between the litigant parties. From the aforesaid historical background it is manifest that the origin of the power to grant injunction is from equity, hence the exercise of the discretion by the Courts is to be governed mainly by equitable considerations. In our country, in Criminal matters Sections 133, 142 and 144 of the Code of Criminal Procedure deal with the grant of an injunction. In Civil matters the law relating to grant of injunction is contained in Chapter VII of Part III of the Specific Relief Act, 1963.”²

It is of three types prohibitory, forbidding an act; restitutory, ordering property to be restored to a party; and exhibitory, commanding a defendant to produce something in court. However, Prohibitory form known as ‘stay order’ is most common and popular form used to

¹Blacks Law Dictionary, 705 (Rev. 5th ed. 1979).

²Law of Injunctions by Justice R.R.K. Trivedi, Available at http://jajharkhand.in/images/pdf/read_mtrl_feb_2015.pdf.

prevent persons being disturbed in the exercise of any just right, or to prohibit any acts being done which would obstruct the free use of any right related with property or possession. When any threat of such harm is caused then , such injunctions are issued. It is also used to give commands to someone to do or forbear from doing something . So, Based on its nature , it can be mandatory , perpetual or temporary injunction.

As an equitable relief, it is the first tool in the hand of court to provide justice to the plaintiff. Since it is addressed, to a particular person so it is more effective than any other remedies. However, in certain cases the effect of granting temporary relief may amount to final relief . Supreme Court observed in the case of *ZenitMataplastP.Ltd vs State Of Maharashtra &Ors*, that “ The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice.”³

Being an equitable relief, it is difficult for the court to devise any state jacket formula or to abide by any given Ideas. What is more important for the court to see that whether granting of interim injunction would provide justice to the aggrieved party without causing injustice to the opposite party. Purpose of granting injunction is generally to prevent the plaintiff from any encroachment of his rights to use property, possession or other rights. In this article, discussion is limited with respect to temporary injunctions.

Meaning and Scope of Temporary Injunctions

The Oxford law dictionary defines injunctions as “ A judicial order restraining a person from beginning or continuing an action threatening or invading the legal right of another, or compelling a person to carry out a certain act, e.g. to make restitution to an injured party.”⁴So, all the said three types are contained in the definition by an oxford law dictionary. Halsbury’s Laws defines injunction as “In, it is stated: "An injunction is a judicial remedy by which a person is ordered to refrain from doing or to do a particular act or thing. In the former case it is called a restrictive injunction, and in the latter a mandatory injunction.”⁵In India, Law of Temporary injunction is provided for immediate relief pending the case. It 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. Law related to temporary injunction is provided under Sec 94, Sec 95 and Order Order XXXIX of the Code of Civil Procedure(Hereinafter referred as C.P.C.) .

Under Sec 94 (c) of C.P.C the Court can Grant injunction in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold in

³*ZenitMataplastP.Ltd vs State Of Maharashtra &Ors* ,AIR 2004 SC 1975.

⁴Oxford Dictionary, Available at <http://www.oxforddictionaries.com/definition/english/injunction>.

⁵HALSBURY’S LAWS OF ENGLAND (Halsbury's Laws of England (4th Edn.), Vol. 24, para 901, p. 511).

order to prevent the ends of justice from being, defeated the Court may, if it is to prescribed.⁶ Further, Sec 94 (e) of the C.P.C says that “ in order to prevent the ends of justice from being, defeated the Court may, if it is to prescribed make such other interlocutory orders as may appear to the Court to be just and convenient.”⁷

Sec 95 of C.P.C provides that “Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section,

(a) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or

(b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable grounds for instituting the same, the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the [expense or injury (including injury to reputation) caused to him];

Provided that a Court shall not award, under this section, an amount exceeding the limits of its peculiar jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.⁸

So, both these provisions are intended to provide just and equitable relief to the party , whose right is being threatend by the defendent.

Order 39 rule 1 provides the situation in which temporary injunction may be granted. It says 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 defendant 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 by Order grant a temporary injunction to restrain such act, or make such other Order for the purpose of staying 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 any property in dispute in the suit as the court thinks fit, until the disposal of the suit or until further orders.”⁹It further provides that “In case of disobedience or of breach of the terms of such temporary injunction or order, the Court granting the injunction or making such order

⁶ Code of Civil Procedure, Sec 94(c) .

⁷ *Ibid*, Sec 94(e).

⁸ *Ibid*, Sec 95.

⁹ C.P.C., Order 39 Rule 1.

may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months unless in the meantime the Court direct his release."¹⁰ Further, The property attached under sub-rule (2) may, when the Court considers it fit so to direct, be sold, and out of the proceeds the Court may award such compensation to the injured party as it finds proper and shall pay the balance, if any, to the party entitled thereto."¹¹

In the case of *Dalpat Kumar And Another v Prahlad Singh And Others*, It was held that "Order 39, Rule 1(c) provides that temporary injunction may be granted where, in any suit, it is proved by the affidavit or otherwise, 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 by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing...or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit until the disposal of the suit or until further orders."¹² It was further held that Rule 1 primarily concerns with the preservation of the property in dispute till legal rights are adjudicated.¹³

Order 39 rule 2 provides for Injunction to restrain repetition or continuance of the breach. It says that " In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right."¹⁴

Further, the court may by Order grant such injunction, on such terms, as to the duration of the injunction, keeping an account, giving security, or otherwise, as the court thinks fit.¹⁵

Order 39 Rule 2A provides for the **Consequence of disobedience or breach of injunction. It says that** " In the case of disobedience of any injunction granted or other Order made under rule 1 or 2 or breach of any of the terms on which the injunction was granted or the Order made, the court granting the injunction or making the order, or any court to which the Suit or proceeding is transferred, may Order the property of the person guilty of such disobedience or breach to be attached, and may also Order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the court directs his release."¹⁶ It further says that " No attachment made under this rule shall remain in force for more than one year at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the court may award such

¹⁰*Ibid*, Sub Rule1.

¹¹ *Ibid*, Sub Rule2.

¹² *Dalpat Kumar And Another vs Prahlad Singh And Others* ,AIR 1993 SC 276.

¹³ *Supra* Note 9.

¹⁴ *Ibid*, Rule2.

¹⁵ *Ibid*.

¹⁶ *Ibid*,Rule 2 A, Subrule 1.

compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto."¹⁷

Order 39 Rule 3 provides for notice requirements to opposite party before granting injunction. It says that "The court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:

Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant—

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the Order granting the injunction has been made, a copy of the application for injunction together with—

(i) a copy of the affidavit filed in support of the application;

(ii) a copy of the plaint; and

(iii) copies of documents on which the applicant relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.¹⁸

Order 39 Rule 3 A was added to make speedy disposal of application. It says that "Where an injunction has been granted without giving notice to the opposite party, the court shall make an endeavour to finally dispose of the application within thirty 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."¹⁹

39 rule 4 provides that the order for injunction may be discharged, varied or set aside. It says that "Any Order for an injunction may be discharged, or varied, or set aside by the court, on application made thereto by any party dissatisfied with such order: Provided that if in an application for temporary injunction or in any affidavit supporting such application, 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 so to do in the interests of justice: Provided further that where an Order for injunction has been passed after giving to a party an opportunity of being heard, the Order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the court is satisfied that the Order has caused undue hardship to that party."²⁰

¹⁷ *Ibid*, Subrule 2.

¹⁸ *Ibid*, Rule 3.

¹⁹ *Ibid*, Rule 3 A.

²⁰ *Ibid*, Rule 4.

Order 39 Rule 5 Provides that any order for injunction to a corporation is binding on its officers. It says that " An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain."²¹

Order 39 Rule 6 to rule 10 provides for interlocutory orders , which can be passed by the court . Order 39 Rule 6 provides for the **power to Order interim sale**. It says that "The court may, on the application of any party to a suit, Order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property, being the subject matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once."²²

Order 39 Rule 7 provides for the **Detention, preservation, inspection, etc., of subject matter of suit.It says that** " The court may, on the application of any party to a suit and on such terms as it thinks fit,—

(a) make an Order for the detention, preservation or inspection of any property which is the subject matter of such suit, or as to which any question may arise therein;

(b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit; and

(C) for all or any of the purposes aforesaid authorise any samples to be taker, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence."²³Further, it says that "The provisions as to execution of process shall apply, mutatis mutandis, to persons authorized to enter under this rule."²⁴

Order 39 Rule 8 provides that the Application for such orders under the rule 6 or 7 to be made after the notice. It says that " (An application by the plaintiff for an order under rule 6 or rule 7 may be made at any time after institution of the suit. "²⁵ Further, An application by the defendant for a like order may be made at any time after appearance.²⁶ And before making an order under rule 6 or rule 7 on an application made for the purpose, the court shall, except where it appears that the object of making such order would be defeated by the delay, direct notice thereof to be given to the opposite party.²⁷

Order 39, Rule 9 deals with the situation when **the party may be put in immediate possession of land the subject matter of suit.Itsaya that** " Where land paying revenue to government, or a tenure liable to sale, is the subject matter of a suit, of the party in possession of such land or tenure neglects to pay the government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered

²¹*Ibid*, Rule 5.

²²*Ibid*, Rule 6.

²³*Ibid*, Rule 7.

²⁴*Ibid*, SubRule 2.

²⁵*Ibid*, Rule 8, Subrule 1.

²⁶*Ibid*, Subrule 2.

²⁷*Ibid*, Subrule 3.

to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the court), be put in immediate possession of the land or tenure; and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the court orders, in any adjustment of accounts which may be directed in the decree passed in the suit."²⁸

Order 39 Rule 10 provides for depositing the money in the court . It says that "Where the subject matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other things as a trustee for another party, or that it belongs or is due to another party, the court may Order the same to be deposited in court or delivered to such last named party, with or without security, subject to the further direction of the court."²⁹

Rules of Interpretation

It is really difficult for the courts to provide arthimatic formula to decide grant of interim injunctions. It was observed by the Supreme Court in the case of *DorabCawasji Warden &Ors. V/s CoomiSorab Warden*, that " The courts can grant interlocutory mandatory injunction in certain special circumstances. The relief of interlocutory injunction is 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. But since the granting or non-granting of such an injunction may cause great injustice or irreparable harm to one of the parties, the Courts have evolved certain guide- lines.³⁰ The courts have developed broad principles for granting interim injunction. These are three broad criterias applied for granting interim relief.

1. Prima Facie case
Balance of convenience
2. Irreparable loss and injury

However, the Supreme Court in the case of *In the case of Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd*, observed that the other considerations which ought to weigh with the Court hearing the application or petition for the grant of injunctions are as below :

- (i) Extent of damages being an adequate remedy;
- (ii) Protect the plaintiff's interest for violation of his rights though however having regard to the injury that may be suffered by the defendants by reason therefor ;

²⁸*Ibid*, Rule 9.

²⁹*Ibid*, Rule 10.

³⁰*DorabCawasjiWarden &Ors. V/s CoomiSorab Warden*, AIR 1990 S.C., 847.

(iii) The court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others;

(iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case- the relief being kept flexible;

(v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;

(vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;

(vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise."³¹

The Supreme Court in the case of *Dalpat Kumar &Anr. Vs. Prahlad Singh &Ors.*, observed that "The phrases `prima facie case', `balance of convenience' and `irreparable loss' are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice. The facts rest eloquent and speak for themselves. It is well nigh impossible to find from the facts prima facie case and balance of convenience."³²

In the case of *ZenitMataplast P. Ltd. Versus State of Maharashtra and Ors.*, it was held that "Thus, the law on the issue emerges to the effect that interim injunction should be granted by the Court after considering all the pros and cons of the case in a given set of facts involved therein on the risk and responsibility of the party or, in case he loses the case, he cannot take any advantage of the same. 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 the Court is of course a good ground for refusal of interim relief, but in exceptional circumstances, where the case of a party is based on fundamental rights guaranteed under the Constitution and there is an apprehension that suit property may be developed in a manner that it acquires irretrievable situation, the Court may grant relief even at a belated stage provided the court is satisfied that the applicant has not been negligent in pursuing the case."³³

³¹AIR 1999 SC 3105.

³²*Supra Note 12*, AIR 1993 SC 276.

³³*ZenitMataplast P. Ltd. Versus State of Maharashtra and Ors.*, A.I.R. 2009 Supreme Court (Supplementary) 2364.

1. Prima Facie case

So, the first important criteria focus on having a prima facie case. The party asking for an injunction must be able to show to the court that he has a case based on some primary facts. It is not equivalent to having sufficient evidence or sufficient facts leading to his case. The party is required to per se assert that he is entitled to have his right with respect to property, possession or otherwise. However, it is the duty of the party asking for injunction to take the burden of showing prima facie case.

In the case of *Dalpat Singh*, It was held that "Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infringement of the enjoyment of his property or the right is a condition for the grant of a temporary injunction. Prima facie case is not to be confused with prima facie title, which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on the merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant an injunction.

In the case of *BarakUpatyaka D.U. KarmachariSanstha* case, It was held that " Interim order is passed on the basis of prima facie findings, which are tentative. Such order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. The object of the interlocutory injunction is, to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial." ³⁴

It was held in the case of *Morgan Stanley Mutual Fund V/s. Kartik Das*, that "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." ³⁵

Generally, after getting convinced by the prima facie case, courts proceed for seeing other factors.

2. Irreparable Loss and Injury

The second important point is irreparable loss and injury. Here, the court assesses impact of threat perceived by the party asking for an injunction and its consequences. If the party is going to suffer from a loss, which can not be compensated later on then the court has to consider the case for granting interim injunction.

In the case of *Dalpat Singh*, It was held that "The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant an injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the

³⁴(2009) 5 SCC 694).

³⁵*Morgan Stanley Mutual Fund V/s. Kartik Das*, (1994) 4 SCC 225.

injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages."³⁶

In the case of *PralhadJagannathJawale and others Vs. SitabaiChanderNikam and others*, It was held that "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 the defendant; for, while granting injunction the Court must see that the 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 the balance of convenience or rather balance of inconvenience, when the Court would inquire as to who would suffer greater inconvenience and decide whether the injunction ought to be granted."³⁷

3. Balance of Convenience

The third important principle is to weigh the claim of the party seeking injunction vis a vis other party. If the grant of injunction is necessary and not causing greater inconvenience to another party then only the injunction is granted generally. This principle is more important for the defendant to prove the inconvenience he may be subjected to is interim injunction is granted to plaintiff.

In the case of *Dalpatsingh* , It was held that " The third condition also is that "the balance of convenience" must be in favour of granting injunction. 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 it 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."³⁸

It was observed by the Supreme Court in the case of *Gujarat Bottling Co. Ltd. vs. Coca Cola Company and Others*, that "The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be

³⁶Supra Note 12.

³⁷*PralhadJagannathJawale and others Vs. SitabaiChanderNikam and others*,Decided by the Supreme Court on 8 April, 2011.

³⁸Supra Note 12.

adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience' lies."³⁹

Limitations of Grant of Interim Injunction

Grant of interim injunction must be done only where there is imminent threat of possession, property, office or other right. When other effective remedy is available then also, it is not generally granted.

The supreme court observed in the case of *Gujrat Bottling Plant v Coca Cola Limited*, that "The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court. While exercising the discretion the court applies the following tests - (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence."⁴⁰ So, where there is no permanent injunction sought for, ordinarily, a temporary injunction can not be granted. Secondly, if the party has not approached the court with clean hand or has materially suppressed any facts, then also an interim injunction can not be granted. It is based on the principle that equitable relief should be granted only to those who approach the court with clean hands. Further, no interim injunction would be issued if final relief cannot be granted. When the plaintiff has no personal interest in the matter, injunction cannot be granted. When other remedy is available, then also an interim injunction cannot be granted. In the case of *Ramji Gupta & Anr vs Gopi Krishan Agrawal*, it was held that "The inherent powers enshrined under Section 151 CPC can be exercised only where no remedy has been provided for in any other provision of the CPC. However, inherent powers cannot be used in conflict of any other existing provision, or in case a remedy has been provided for by any other provision of the CPC. Moreover, in the event that a fraud has been played upon a party, the same may not be a case where inherent powers can be exercised."⁴¹ So, interim injunction should not be granted under Sec 151 C.P.C, if it cannot be granted under Order 39.

In the case of *In Deoraj vs. State of Maharashtra & Ors.*, the Supreme Court held that "where the courts below had refused the grant of interim relief. While dealing with the appeal, the Court observed that ordinarily in the exercise of its jurisdiction under Art.136 of the Constitution, this Court does not interfere with the orders of an interim nature passed by the High Court. However, this rule of discretion followed in practice is by way of just a self-imposed restriction. An irreparable injury which forcibly tilts the balance in favour of the applicant, may persuade the Court even to grant an interim relief, though it may amount to granting the final relief itself. The Court held as under: "The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court

³⁹*Gujarat Bottling Co. Ltd. vs. Coca Cola Company and Others*, 1995(5) SCC 545.

⁴⁰*Ibid.*

⁴¹AIR 2013 SC 3099.

and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice."⁴²

CONCLUSION

Law of temporary injunction is developed as a tool to provide immediate relief to a party facing injustice. Generally, it has been used to restore or maintain property, possession and other rights for which the party is entitled prima facie and otherwise he will suffer loss which can neither be compensated nor be restored lateron. However, as discussed above principles given above are meant to administer justice and to fight against injustice. So, in the hand of a judge, it is a tool to ensure justice without causing any injustice to another party. As per the situation, these defined principles can be applied meticulously to effectuate justice. So, the courts have developed well defined guidelines and principles for granting of an interim injunction.

⁴²*Deoraj vs. State of Maharashtra &Ors.*,AIR 2004 SC 1975.