

## LAW OF INJUNCTIONS

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*The law of injunction in India has its origin in the Equity Jurisprudence of England from which we have inherited the present administration of law. England too in its turn borrowed it from the Roman Law wherein it was known as Interdict. The Roman Interdicts were divided in three parts, prohibitory, restitutory and exhibitory. The prohibitory Interdict corresponds to injunction. 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 execution of the decree of Common Law Court. This exercise of power by issuing 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 favour 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 grant of 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. Sections 36 to 42 deal with the grant of injunction. It has been termed as a preventive relief which is granted at the discretion of the Court by injunction which may be temporary or perpetual. Section 37(1) of the Specific Relief Act, 1963 deals with the temporary injunctions which are such as are to continue until a specified time, or until further orders of the Court, and they may be granted at any stage of the suit or proceedings and are regulated by the Code of Civil Procedure. From the aforesaid it is clear that there can be permanent injunction which is granted as a final relief in the suit and there can be temporary injunction which may be passed at any situation of the suit or proceedings for preservation of the property. Both have to be discussed separately.

### **Permanent Injunction:**

As is clear from Section 37 (2) of Specific Relief Act, 1963 (hereinafter referred to as the Act), a perpetual injunction can only be granted by the decree made at the hearing and upon the merit of the suit. The defendant is thereby perpetually enjoined from the assertion of a right or from the commission of an - act which would be contrary to the right of the plaintiff. Section 38 of the Act further provides the circumstances where the perpetual injunction may be granted in favour of the plaintiff to prevent the breach of an obligation

existing in his favour, whether expressly or by implication. In contractual matters when such obligation arises, the Court has to seek guidance by the rules and provisions contained in Chapter II of the Act dealing with specific performance of contracts. Sub- Section (3) of Section 38 in clauses (a), (b), (c) and (d) further illustrates the circumstances where a perpetual injunction may be granted by the Court. The mandatory injunctions are contemplated under Section 39 of the 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. Section 41 provides circumstances where the injunction should be refused. Section 42 provides for grant of injunction to perform a negative agreement. It was made clear at the beginning that the Law of Injunction is vast and expansive jurisdiction and It forcefully illustrates the power of equity in spite of the fetters of codification to march with the times and adjust the beneficial remedies to altered social conditions and the progressive needs of the humanity. The first Specific Relief Act was codified in the year 1877 which was replaced by the Specific Relief Act of 1963 (Act No.47 of 1963). In spite of the codification the law of injunction continued to expand and it fulfilled the needs of the society in different shapes - and forms. The codification of the law has never proved a fetter. In this context, a Civil Court should never have any hesitation in granting injunction to new circumstances and situations. Our society is a progressive society, our country is a developing country and with the growth of the industry one may be called upon to administer law of injunction to various kinds of new situations which were wholly unknown to this field earlier. The essential test should, however, remain equity. In this context the views expressed by the Courts and Jurists may be gainfully quoted here :

"It is the duty of a Court of Equity," said Lord Cot ten hem in Taylor v. Selmon, (and the same is true of all Courts and institutions), "to adopt its practice and course of proceedings, as far as possible, to the existing state of society and to apply its jurisdiction to all those new cases which from the progress daily made in the affairs of men must continually arise and not from too strict an adherence to forms and rules established under very different circumstances decline to administer justice and to enforce rights for which there is no other remedy."

Similarly, the view expressed by the great jurist Shri Banerjee in Tagore Law Lectures as far back as in 1906 may be remembered by us as a good guide even today in this field of law. Banerjee said: 'Since an obligation includes every duty enforceable by law this form of specific relief, it would appear, is applicable to all cases where one person can enforce a duty against another, or to use the correlative term, where one person is vested with a right which empowers him to constrain the other to adopt a particular line of conduct, or to do or abstain from doing a particular act. This right mayor may not arise out of a contract, and the remedy of injunction, by which preventive relief is granted by a Court, may be held to be available throughout the whole range of the law, But the jurisdiction is carefully defined in part III, Specific Relief Act, and to some extent circumscribed. It still remains, however, a vast and expansive jurisdiction, and forcibly illustrates the power of equity, in spite of the fetters of codification, to march with the times and adjust the beneficial remedies to altered social conditions and the progressive needs of humanity.'

Mr. H.C. Joyce also in his Law of Injunctions has expressed identical views. He says, 'As a remedy for preventing wrongs and preserving rights, the injunction has been regarded as more flexible and adjustable to circumstances than any other process known to law. The correctness of the estimate is seen in the readiness with which injunctions yield to the convenience of the parties, the case with which damages are substituted in their place when justice and public interest so require, the facility with which a preventive and a mandatory

injunction are made to co-operate so that by single exercise of equitable power an injury is both restrained and repaired, and the facility with which injunctive relief can be applied to new conditions and adjusted to the changing emergencies of modern enterprise. In this connection it may be declared that as writ of injunction may be said to be a process capable of more modification than any other in the law, it is so malleable that it may be moulded to suit the various circumstances and occasions presented to a Court of Equity. It is an instrument in its hands capable of various applications for the purpose of dispensing complete justice between the parties. It may be special, preliminary, temporary or contracted, in short it is adopted, and is used by Courts of Equity, as a process for preventing wrong between, and preserving the rights of parties in controversy between them...so, where, too, if a party cannot at once comply with an injunction without being put to great expense or grievous annoyance, the Court may order that the injunction do not commence until after a certain stated period. Injunction should not be denied on the ground of its novelty in application, if the exigencies of the situation required it and if it does not militate against statutory provision. The Courts should act according to justice, equity and good conscience, when there is no specific rule applicable to the circumstance of the case."

Once the aforesaid basics of this equity jurisdiction become clear, there may not be any difficulty in its application to various situations - One may be called upon to grant injunction in various kinds of disputes which may be commercial non- commercial, marital, non-marital, encroachment over civil rights etc. The list of these situations cannot be given here. A civil dispute calling for a preventive relief may come before one in any shape and then one may be guided by principles of equity, justice and good conscience in granting relief. The hesitation should not be there when equitable consideration demand and justify it.

### **Temporary Injunction:**

So far as the grant of temporary injunctions is concerned, it used to be a small step during the progress of the suit or proceeding towards the preservation of its subject matter which could be property or any other right has now gained enormous importance and sometimes it becomes even more important than the final result of the suit or proceedings with the change of the time. The society in general and Judiciary in particular is passing through a very trying time where the moral values are at their lowest ebb and there does not appear any prospect of coming them up in near future. The dilemma of the Judicial Court or Tribunal is that initially it has to treat the truth and falsehood at par and has to give the same treatment, protection and hearing until it concludes its investigation to find out which is right or wrong, false or true. This process takes a long time during which by some interim measure the subject matter of the dispute between the parties has to be preserved, and it is this anxiety for preservation of the property on the part of the Judicial Court, which is misused and abused by the side which has come before the Court with a wrong or false case or a doubtful case which had been filed only to take a chance. This category of the unscrupulous litigant once succeeds in obtaining the interim injunction in their favour, they try to prolong proceedings and cause irreparable damage and harm not only to their opposite side but also to the reputation and faith of the public on Courts. Hence, it is high time that the Courts at all levels should be very cautious, alert and vigilant while granting temporary injunction during progress of the suit or proceeding-

Section 37(1) of the Specific Relief Act, 1963, deals with the temporary injunctions which are such as are to continue until a specified time or until further orders of the Court and they may be granted at any stage of the suit or proceedings and are regulated by the Code of Civil Procedure-

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 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 falls 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. The procedure with regard to the grant of temporary injunction and interlocutory orders has been provided in Order 39 of C.P.C., as far as this State is concerned, drastic changes were brought about by amending the provisions contained in Order 39 by U.P. Act No. 57 of 1976. In Sub-Rule (2) of Rule 2 of Order 39, a proviso was inserted by which power of the Court to grant injunction was taken away in certain matters. Further a proviso was added in Rule 3 which 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 the delay and require the applicant to serve the copy of the order of injunction along with copy of the application, affidavit, plaint and other documents relied on by him. Further, he has also been required to file on the same day on which the injunction is granted, an affidavit stating that the requirements contained in Proviso (a) have been complied with. Rule 3(e) further contains a very important provision which requires the Court to make an endeavour to finally dispose of the application within 30 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. Thus by introducing the aforesaid amendment an attempt was made to minimise the hardship and harassment caused by the injunction orders passed *ex parte*.

Identical provisions were included in Article 226 of the Constitution by substituting Clause (3) thereof which provides that if an interim order is passed *ex parte* and the party concerned makes an application to the High Court for vacation of such order, the High Court has to dispose of the application within a period of two weeks and if the application is not so disposed of, the interim order, on the expiry of that period shall stand vacated, There are other local laws also, where the power of the Court or the Tribunal in granting the injunction or stay orders has either been taken away or has been regulated by providing stringent conditions to prevent hardship loss or harassment to the opposite party. It is not necessary to mention a catalogue of such local laws and Central Acts as one come across such laws every day. However, it is a different matter altogether as to how far these legislative measures have succeeded to achieve the object to minimise the hardship to the opposite party and to prevent the abuse of the injunction or interlocutory orders passed by the Courts during suits.

In my opinion, the aforesaid legislative efforts have not been able to achieve their object. The effect of the amendments made in the provisions contained in Order 39 C. P. C. may be mentioned which instead of remedying the situation has created further problems and complicated the Issue. The first price has to be paid by the High Court itself, which has been run over by a large number of writ petitions filed before it for those causes which were normally being agitated by filing suits in civil court. The situation in High Courts has become so grim and difficult that the pendency of the cases has crossed five lakhs and the time taken in deciding the writ petitions is now more than ten to fifteen years. No body could have contemplated this state of affairs at the time the amendments were brought about by U.P. Act No.57 of 1976. The second price, which has been paid by the Bar. Is that the filing of the original suit in every district has declined to such an extent that the growth and progress of the Civil Bar has stopped. Now the position in District Courts as well as in High Court is that

It is difficult to find out a good civil lawyer. The growth of civil law has also come to a standstill which is a matter of great concern. The loss of trust shown by the legislature in subordinate judiciary by taking away the power of granting injunction in the matters enumerated in the proviso to Sub-Rule (2) of Rule 2 of Order 39 has in fact rendered a disservice of bigger magnitude than remedying the situation for which it was enacted. It will be better for the State, the High Court and the Judiciary as a whole and also to the Bar, if this proviso is deleted from Order 39, at the earliest.

Now, coming to the role of the Presiding Officer of the Court while granting order of injunction or other interlocutory order, it should always be kept in mind that its origin is from equitable jurisdiction and before passing the order the claim must be tested on all principles of equity. The normal requirements that the applicant praying for the injunction should have a good prima facie case, chance of suffering irreparable injury and balance of convenience in his favour and other principles connected with the matter, the Court should have extra cautious approach in testing the prima facie case with a certain amount of extra rigour to avoid the abuse of the process of the Court. As already mentioned earlier, we are passing through a difficult time with the population explosion, the pressure on the property has increased to its maximum and it is likely to go further. In these days the grabbing of the private and Government property has become the fashion of the day. Documents are being manufactured and manipulated and on basis of such documents orders are obtained. The modus operandi in such cases is that property grabbers manufacture false documents, then file a suit or proceeding and obtain orders. Knowing well that the suit will take its own time, they succeed in their object. I came across a case which may be quoted here as example and which may also be a reminder to all of us that knowingly or unknowingly Injunction or interlocutory orders may not be passed in such matters.

A writ petition was filed for quashing F.I.R. lodged against the petitioner under Sections 420/ 467/468/471 I.P.C. The facts of the case were that the petitioner filed a suit with the allegation that P.W.D. Rest House has been leased out in his favour by the Executive Engineer on a rent of Rs. 500/- per month for a period of 90 years which was decreed in his favour, as no body put in appearance for contest. Petitioner occupied the bungalow and renovated it by investing huge amount. However, when the authorities tried to dispossess him he filed writ petition in the High Court and in view of the decree passed in his favour a Division Bench of the High Court issued a mandamus in his favour directing the authorities not to dispossess petitioner except in accordance with law from the property in dispute. The F.I.R. was lodged thereafter by the district authorities for prosecuting the petitioner, which was challenged in Court. One can very well imagine when this property shall be restored to the Government. Where lay the failure, it is a matter for consideration.

Hon'ble Supreme Court in a recent case has laid down that property-grabbers, tax-evaders, bank loan dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. A bench comprising Mr. Justice Kuldip Singh and Mr. Justice P .B. Sawant noted while imposing Rs. 11,000/- costs on a litigant, Mr. Jagannath. He had played fraud to secure an order in his favour from the High Court.

"Frauds avoid all judicial acts, ecclesiastical or temporal, "the court recalled the observation made over three centuries ago by the then chief Justice of England, Lord Edward Coke. Any decree or judgment obtained by playing fraud on the court is "a nullity and non est in the eyes of law" the apex court ruled while setting aside the High court's verdict in favour of Mr. Jagannath.

Such a decree or judgment passed either by the first court or by the highest court must be treated as a “nullity by every court it can be challenged in any court even in collateral proceedings,” the judges added.

The judgment is a fall out of the appeal made by the heirs of one S.P., Chengelveraya alleging that Mr. Jagannath had obtained the first decree by fraud. The High Court, however, set aside the trial court's order against Mr. Jagannath, it had also noted that *"there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence."*

Setting aside the High Court's judgment, the apex court said it had fallen into "patent error". The High Court had gone haywire and made observation which were "wholly perverse".

Disagreeing with the High Court's view that no legal duty had been cast upon the plaintiff (Mr. Jagannath) to come to court with a true case and prove it by evidence, the apex court observed that "the principle of 'finality of litigation' *cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants.*

The courts of law are meant for imparting justice between the parties, the judges noted. They added that "one who comes to the court, must come with clean hands. More often than not, process of court is being abused."

Elaborating in the light of the present case, the court said a fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Non-disclosure of the facts amounts to "playing fraud on the Court"

The judicial officers must take extra cautiousness and alertness while granting orders of injunction. Their test to the prima facie case and other allied considerations should be rigorous. The rule should be to grant injunction or interlocutory orders only after hearing parties and only in very exceptional cases; the ex parte orders should be passed. If it is not done, the very existence of this entire judicial system shall be under peril.

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