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Analyzing Defendant's Right to Seek Temporary Injunction under C.P.C.

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ABSTRACT

Under the civil law the remedy of temporary or interim injunction has been widely been used by the plaintiff to prevent irreparable harm that may arise due to actions of the defendant. These actions may include wastage, alienation or disposal of the suit property. However, the right to seek temporary injunction is not exclusive to the plaintiff. The Order XXXIX of the Civil Procedural Code does not place any bar upon the defendant to seek this remedy if required. In this article, the author tries to understand and analyze defendant's right to seek interim injunction under various provisions of the Code. The author further takes note of various judicial precedents that solidify defendants inherit right to seek injunction.

Keywords- Temporary Injunction, Order XXXIX, Plaintiff, Defendant

I. INTRODUCTION

Injunction in simpler terms means a judicial process that restrains a party to a suit from carry out a certain act or mandates to do something for the purpose of prevention. Like most of laws that are currently administered in India, the origin of laws of injunction can be traced by to the Courts of Equity in England. The English too, derived this relief from the much older Roman Law where it was referred to as Interdict. In India, injunction is not a right rather an equitable relief which can only be granted application of judicial mind². It can be broadly divided into two different types which are-

- Temporary/ Interim Injunction- These types of injunctions are granted as per procedure laid down under Section 94, 95 and Order XXXIX of CPC and Section 37(1) of Specific Relief Act, 1963.
- Permanent/ Perpetual Injunction- These types of injunctions are granted as per Section 37(2), 38, 39 of the Specific Relief Act, 1963.

For the purpose of this article, the author will only delve in the provisions cornering the grant of temporary injunction under Code of Civil Procedure and will further examine whether these

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² Yogesh Agarwal v. Sri. Rajendra Goyel, 2014(3) ARC 427

provisions accommodate defendant's right to seek relief of temporary injunction. The author will also examine the Court's inherent power to grant injunction under Section 151 of the Code.

(A) Literature Review

- Justice R.R.K. Trivedi, *Laws of Injunction*, 4-5 J.T.R.I. JOURNAL (1996)³, in this article the author traces back the origins of injunction laws in India. The author also extensively discusses how Indian Courts have exercised their judicial discretion in granting temporary or permanent injunctions. He also breaks down the provisions of Specific Relief Act, 1963 (Section 36 to Section 41) and Code of Civil Procedure (Order XXXIX and Section 94,95) in order to enable the reader to have a better understanding of the core concepts of the law involved.

- A.B. Srivastav, C.S. Lal, *Nelson's Law of Injunction*, Vol. I, (9th Etd. 2017)⁴, this book is considered as the complete Code on laws of injunction and is defined as an authority on injunction laws. The book scientifically explores various aspects of injunction laws in the country. It covers topics including temporary injunction, mandatory injunction, perpetual injunction in relations to contracts and other novice concepts such as injunctions in intellectual property and internet.

- David M. Kaiser, *Temporary Injunction in Cases Involving Doubtful Questions of Law*, 40 Marquette Law Review (1956)⁵, in this paper author analysis few usual cases of injunction that came in for consideration before various American Courts. In doing so the author raised a thesis that in cases where a usual or untried question of law arises, court usually deny to issue a temporary injunction. It was his contention that the primary consideration for granting injunction should not be the complexity of the issue rather sound legal principles that ensure that the status quo is maintained.

II. TEMPORARY INJUNCTION- MEANING AND SCOPE

Temporary injunction is a type of injunction that in effect for a specified time, or until further orders of court or until the suit is finally disposed of by the court.⁶ This type of injunction is provide as immediate relief to the party in a suit are granted as per provisions laid down under Order XXXIX of CPC. Further, the Section 94(c) and Section 94(e) provide supplementary procedure for the same. The primary objective of granting such injunction is to shield the

³ Justice R.R.K. Trivedi, *Laws of Injunction*, 4-5 J.T.R.I. JOURNAL (1996)

⁴ A.B. Srivastav, C.S. Lal, *Nelson's Law of Injunction*, Vol. I, (9th Etd. 2017)

⁵ David M. Kaiser, *Temporary Injunction in Cases Involving Doubtful Questions of Law*, 40 Marquette Law Review (1956)

⁶ Section 37(1), Specific Relief Act, 1963, No. 47 Act of Parliament, 1963(India).

plaintiff from any legal injury which causes damages which cannot be adequately compensated if the case is decided in his favor⁷. Further, it has been held in various judgements that the one other purpose of granting temporary injunction is to maintain the status quo during the pendency of the trial⁸.

Rule 1 Order XXXIX of the Code lays down certain grounds where an interim injunction may be granted-

- (a) In situations where the property in dispute is in danger of being wasted, alienated or damaged by any of the party or there is threat of it being wrongfully sold in execution of a decree⁹.
- (b) In situations where defendant threatens or Intends to remove or dispose of his property with the view to defraud his creditors¹⁰.
- (c) In situations where defendant threatens to dispose the plaintiff or cause injury to the plaintiff in relation to any property that is disputed in the suit¹¹.

Apart from the abovementioned grounds an interim injunction can also be granted in the cases where-

1. The defendant is about to commit a breach of a contract, or other injury of any kind¹².
2. In cases where courts deem it necessary in the interest of justice¹³.

The power to grant temporary injunction is that of discretionary in nature as injunction is not a right rather an equitable relief. Therefore, courts exercise their discretion while granting injunction. However, this discretion is not exercised in arbitrary manner than is based on sound legal principles¹⁴ which are as follows-

(A) Prima Facie Case

The first and foremost condition that needs to be satisfied while granting a temporary injunction is that there must exist a prima facie case in favor of the party seeking injunction. The applicant must show the court that there exists a bona fide case in his favor. The court while determining whether a prima facie case is made out need not to go into detailed questions of fact while will need further investigation or serious consideration. Rather, it should be satisfied that a bona

⁷ Zenit Mataplast P. Ltd. vs. State of Maharashtra, 2009(6) Supreme 584

⁸ Shiv Kumar Chadha Vs. Municipal Corporation of Delhi 1993 (3) SCC 161

⁹ Order 39, Rule 1(a) of Code of Civil Procedure, No. 5 Act of Parliament, 1908 (India)

¹⁰ Order 39, Rule 1(b) of Code of Civil Procedure, No. 5 Act of Parliament, 1908 (India)

¹¹ Order 39, Rule 1(c) of Code of Civil Procedure, No. 5 Act of Parliament, 1908 (India)

¹² Order 39, Rule 2(I) of Code of Civil Procedure, No. 5 Act of Parliament, 1908 (India)

¹³ Section 94(c) of CPC, Section 151 of Code of Civil Procedure, No. 5 Act of Parliament, 1908 (India). Also, in Manohar Lal Chopra v. Seth Hiralal, AIR 1962 SC 527

¹⁴ Gujarat Bottling Co. Ltd. Vs. Coca-Cola Co. AIR 1995 SC 2372

fide question is raised which when investigated will probably be decided in the favor of the applicant¹⁵. In order to see if a prima facie case is made out the court can rely upon the plaint, affidavits or any other averments made by the applicant.

(B) Irreparable Injury

Once the court is satisfied that there exists a prima facie case in favor of the defendant, it shows see that whether the second condition is satisfied as well because mere existence of a prima facie case does not entitle the applicant of an interim injunction¹⁶. It is essential for the applicant to show to the court that an irreparable injury will be caused to him in case an interim injunction is denied. Further, the court must be satisfied that there exists no other remedy that the applicant can avail in order to protect himself from such injury. The phrase ‘irreparable injury’ does not necessarily mean an injury that cannot be repaired rather it is construed as an injury that cannot be adequately compensated. An injury will also be construed as an irreparable one in cases where there is no fixed standard to determine its quantum¹⁷.

(C) Balance of Convenience

The third condition that the courts need to look into while deciding whether a temporary injunction can be granted or not is Balance of Convenience. Under this the court must decide as whether the balance of convenience lies in the favor of applicant. To determine this the court needs weigh whether the mischief, hardship or inconvenience caused to the applicant by denying the injunction would be greater to that of the opposite party in case the injunction is granted¹⁸. The courts need to exercise their discretion judiciously and base their answer after comparing two contrasting probabilities. As mention earlier, injunction is an equitable relief so while deciding the balance of convenience in a parties favor the court has to keep in mind all equitable considerations. After comparing both the probabilities, if balance of convenience lies in applicants favor, the interim injunction is granted or else denied¹⁹.

(D) Other Factors

Apart from the above-mentioned conditions there are several other minor considerations that the court may take into account while issuing an order for temporary injunction. These factors may include-

- Whether the accused has come to the court with clean hands.

¹⁵ Dalpat Kumar vs. Prahlad Singh, AIR 1993 SC 276

¹⁶ CCE v. Dunlop India Ltd., (1985) I SCC 260

¹⁷ Cotton Corpn. Of India Ltd. v. United Industrial Bank Ltd., (1983) 4 SCC 625.

¹⁸ Yogesh Agarwal v. Sri. Rajendra Goyel, 2014(3) ARC 427

¹⁹ Dalpat Kumar Versus v. Prahlad Singh AIR 1993 SC 276

- Is there any suppression of material facts?
- Is there any unnecessary delay in filing the petition?

All such factors help court decide whether to grant an interim injunction or not. However, it should be kept in mind that these conditions are not exhaustive in nature as injunction in itself is discretionary in nature.

III. DEFENDANT'S RIGHT TO SEEK INTERIM INJUNCTION

Over the years both High Courts and the Supreme Court have delivered judgements interpreting laws of injunction in such a way that its implementation has become relatively uniform and unambiguous. However, one legal issue that to this date still seemed to be unresolved is addressing the right of the defendant to seek an interim injunction. The High Courts have adopted different approaches while addressing this issue. While keeping in mind that one of the primary objects of interim injunction is to protect the property in dispute, the courts largely have agreed to the fact that the defendant has a right to seek relief of interim injunction. However, they seemed to have adopted different approaches while granting such remedy.

(A) Right under Order XXXIX Rule 1

The Rule 1(a) talks about grant of injunction in cases where the suit property is at risk of being alienated, damaged or wasted. However, this sub-rule does not specifically mention either the plaintiff or the defendant, leaving it open for interpretation. One of the landmark judgements on this issue was delivered by the Kerala High Court in the case of *Vincent v. Aisumma*²⁰, where the court not only confirmed the right of defendant to seek interim injunction under Order XXXIX of the Code but also expanded its horizon. Here too, the court reasoned that the object of grant of interim injunction was to protect the suit property from any mischief, damage or alienation. The court further pointed out that Rule 2A, 3, 3A and 4 of the Order does not use terms such as 'Plaintiff' or 'Defendant' rather terms such as 'opposite party' or 'any party' is used implying that the scheme of Order XXXIX does not prohibit the defendant from seeking the relief of interim injunction.

A more recent judgement of the Himachal Pradesh High Court too confirms that defendant can seek temporary injunction under Order XXXIX of the Code²¹. However, the court in this case held that such remedy is only available under sub-rule 1(a) not 1(b) or (c). The court while delivering this judgement constantly drew upon a previous judgement of the Karnataka High

²⁰ *Vincent v. Aisumma* AIR 1989 Ker 81

²¹ *Himachal Pradesh State Electricity Board Limited vs. Valecha Engineering Limited and Ors.* MANU 0951 HP 2020.

Court in case of *Suganda Bai v. Sulu Bai*²² where it was held that defendants right to seek temporary injunction exists in cases where defendants' claims arise out of plaintiff's cause of action or is incidental to it.

One other way to ascertain that such remedy exist under Order XXXIX, is by understanding one of the primary objectives of adopting CPC which was to avoid duplicity of suits. In case the defendant is denied remedy under Order XXXIX, he will be forced to file a fresh petition seeking an interim injunction. Thereby, increasing burden of on judiciary. The Supreme Court to in a recent judgement held all the questions arising out of a suit must be settled in singular trail²³.

(B) Inherent Power to grant Injunction

Section 151 of the Code of Civil Procedure talks about the inherent powers of the Court to make such orders which it deems necessary to make ends of justice meet. The courts across the country use this section to grant relief which are not expressly covered under any order or section of the court but is crucial for the cause of justice.

Over the years, the courts have regularly invoked this section to grant interim injunction in those case which are not covered by Order XXXIX of the Code²⁴. Courts on occasion have used this section to grant interim injunction to the defendant.

In *Himachal Pradesh State Electricity Board Limited*²⁵ case, the Himachal Pradesh High Court while concluding ascertaining defendants right under Rule 1(a), also noted that in cases which are not covered under Rule 1(a) of the code, the defendant can be can granted injunction by invoking inherent powers of the court under section 151 of the Code. This view has been consistently been adopted by High Courts across the country.

In *Nanasaheb v. Dattu*²⁶, the Bombay High Court was of the view that in cases where grant of injunction to the defendant falls under scheme of Order XXXIX, the court can grant injunction for the same or else it can invoke its inherent powers under Section 151 to grant injunction. A almost identical view was adopted by Allahabad High Court in the case of *Shiv Ram Singh v. Smt. Mangara*²⁷.

²² *Suganda Bai v. Sulu Bai*, MANU/KA/0088/1975

²³ *Rahul S. Shah v. Jinendra Kumar Gandhi*, MANU/SC/0333/2021

²⁴ *Tanushree v. Ishani Prasad*, (2008) 4 SCC 791.

²⁵ *Himachal Pradesh State Electricity Board Limited vs. Valecha Engineering Limited and Ors.* MANU 0951 HP 2020.

²⁶ *Nanasaheb v. Dattu* AIR 1992 Bom 24

²⁷ *Shiv Ram Singh v. Smt. Mangara* AIR 1989 ALL 164

IV. CONCLUSION

The above-mentioned analysis helps us to conclude that the defendant has indeed a right to seek temporary injunction under various provision of CPC. However, the approach of recognizing this right has varied amongst the High Courts. While some have been of the view that Order XXXIX is broad enough to accommodate the defendants' right, other have invoked their inherent powers under 151 to grant relief. This difference in approach has caused confusion in mind of litigants and subordinate courts alike, thereby hurting the interest of parties to the suit.

In order to shape a more uniform approach to the issue the Supreme Court of India in a very recent case has issued notice which would ultimately decide defendants' right to interim injunction²⁸. An appeal is challenge to a Karnataka High Courts judgement which affirmed defendant's right to interim injunction under Rule 1(a),(b) and (c) read with Section 151 of the Code. The Apex Court's judgement in this case will settle the issue for foreseeable future.

²⁸ Tamminedi Ramakrishna Etc. v. N. Jayalakshmi SLP (C) No(s). 12678-12679/2021, SLP (C) No(s). 12678-12679/2021

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