

WORKSHOP PAPER.

Subject : **Law of Injunction** :

- (i) **Mandatory Injunction &**
- (ii) **Perpetual injunction.**

INTRODUCTION

(1) Under Indian Legal System, the law relating to injunction has been provided in the Specific Relief Act, 1963. 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.

Meaning and scope of injunctions

(2) An injunction is a court order requiring a person to do or cease doing a specific action.

(3) Injunctive relief is a discretionary power of the court and failure to comply with an injunction may result in contempt of court.

(4) 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.

Classification of Injunctions

(5) Injunction is categorized in two forms i.e. Permanent Injunction and Temporary Injunction.

Perpetual Injunction

(6) 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 enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

(7) 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 a restrictive injunction and in the latter a mandatory injunction. Injunctions are either interlocutory or perpetual. Interlocutory or temporary injunctions are such as are to continue until the hearing of the cause upon the merits or generally until further orders. Thus a temporary injunction ends with the suit or earlier when the order so directs. Perpetual injunctions are such as form part of the decree made at the hearing upon the merits. Injunction if granted

being ineffectual and of no use to party concerned, then such injunction should not be granted by the court.

(8) The effect and object 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 a party who seeks its interference has a legal right which he asserts, but needs the aid of the Court for the protection of the property in question until legal right can be ascertained.

(9) Form No. 8 of schedule I appendix F of the Civil Procedure Code sets forth how an injunction order is to be passed. Such an order injuncts the respondents, his servants, workman or relations from infringing the injunction order. If this form is not adhered to and only respondent is injuncted third parties who infringed the order cannot be proceeded against under Order 39 of the Civil Procedure Code.

(10) As per the provision of Section 9-A of the Civil Procedure Code, where at the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken, then it is mandatory for the court to decide such issue as preliminary issue. The said provision provides that if at the hearing of the application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of receiver or otherwise made in any suit, an objection to the jurisdiction of the Court to entertain such a suit is taken by any of the parties

to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed off by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit. However, sub section (2) of section 9-A of the said Code provided that at the hearing of application objecting jurisdiction of the Court, the Court may grant such interim relief as it may consider necessary pending determination by it of the preliminary issue as to the jurisdiction.

Section 38 : Perpetual injunction when granted :

(1) 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.

Distinction between interlocutory and perpetual injunction

(12) As regards the time of their operation injunctions are either temporary or perpetual. As mentioned earlier a temporary injunction is provisional in its nature, continuing until a specific time or until the further order of the Court and does not conclude a right. Its object is to maintain things in status quo until the questions at issue are decided by the Court. It may be granted at any stage of the suit and to obtain it the plaintiff has only to make out a prima facie case. A perpetual, on the other hand can only be granted by a decree made at the hearing and upon merits of the suit. Its object is to see that the defendant is perpetually enjoying from the assertion of a right or from the commission of an act which would be contrary to the rights of the plaintiff as finally established before the Court. It is a decree which concludes right.

(13) When plaintiff applies for an injunction to restrain violation of an alleged right, if the existence of the

right be disputed, he must establish that right before he gets the injunction to prevent the recurrence of its violation. A suit for perpetual injunction is not to be dismissed per-se for absence of prayer of declaration of title, if the plaint discloses foundation of the title of the plaintiff. (Corporation of Bangalore City Vs. M. Papaiah, AIR 1989 Supreme Court 1809). Where the allegation is that the plaintiff is in possession and the suit is for an injunction against threatened eviction he is entitled to sue for mere injunction without adding prayer for declaration of his rights. Under section 34 of the Specific Relief Act a suit for mere declaration does not lie when the consequential relief e.g. injunction is available but under section 38 of the said Act the relief of injunction can be granted even if no declaratory relief implicit in the injunction is expressly prayed for. Proof of damage is not necessary for granting of an injunction in a case in which the parties to the contract for valuable consideration with their eyes open contract that a particular thing should not be done. When injury caused to plaintiff is actionable for say, damages could be presumed.

(14) Perpetual injunction may be granted to the plaintiff when the defendant invaded or threatened to invade the plaintiff's right to or enjoyment of property where the invasion is such that compensation in money would not afford adequate relief and injunction is necessary to prevent multiplicity of judicial proceeding.

Disobedience to injunction

(15) Order 21 Rule 32 of Civil Procedure Code provides for the enforcement of the decree by commitment of a person disobeying to the civil prison or by attachment of property.

Mandatory injunction

(16) In relatively rare cases, the court may issue a "mandatory injunction", compelling a person, company, or governmental unit take affirmative action to do something. It is not infrequent that a covenantor or his successor acts in breach of the terms of the terms of a covenant which binds him not to do something. The coventee then seeks a mandatory injunction requiring the covenantor to undo what has already been done, so far as that is possible, perhaps requiring him to destroy what has already been constructed. It is because the mandatory injunction is such a draconian remedy that the courts have often sought the smallest excuse for refusing it. This reluctance is particularly evident if the application is interlocutory because at the end of the suit, it is as well possible that the allegations against the defendant are proved false; then the previous interlocutory decree did injustice to his right to enjoyment of some property or benefits of a business. Injunctions historically are issued, only "when the remedy at law is inadequate.

Mandatory injunctions when granted

(17) To prevent the breach of an obligation, necessity to compel the performance of certain acts. The Court is capable of enforcing, it is a discretionary relief.

(18) 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.

(19) 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. The purpose of mandatory injunction is thus to restore a wrongful state of things to their former rightful order. Injunction is a specific order of the Court forbidding the commission of a wrong threatened or the continuance of a wrongful course of action which had already begun. Its primary purpose is preserving matters in status quo. It never assumes finality to dispose of the rights. Maintenance of status quo in a premises means not making any physical change.

(20) In the matter of granting relief of mandatory injunction, the grant of relief is to be judged not on the footing alone that the action of the party sued against is lawful but on other considerations namely whether the plaintiff could be adequately compensated or whether the grant of injunction was necessary to do justice or not.

(21) The relief of interlocutory mandatory injunctions are 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 Courts have evolved certain guidelines. Generally stated these guidelines are :

(1) 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 a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

(22) To get a mandatory injunction, whether permanent or temporary plaintiff should be specific that there was breach of obligation and certain acts are necessary to restore the status-quo.

(23) When defendant ignores pending proceedings and presses on with building operations, he takes the risk of having the building pulled down. There can be no mandatory injunction against trespasser compelling he to

come on the land on which he had trespass and to remove an encroachment made by him thereon, but the trespasser may be allowed to remove the materials of the building which he has built over the land of another.

(24) The plaintiff in a suit for perpetual injunction u/s 38 or mandatory injunction u/s 39 of the Specific Relief Act may claim damages either in addition to or in substitution for, such injunction and the court may if it thinks fit award such damages. But no relief for damages shall be granted unless the plaintiff has claimed such relief in his plaint. Since the plaintiff can be adequately compensated in terms of money if there was breach of obligation on part of defendant therefore plaintiff cannot become entitled to interim mandatory injunction. Mandatory injunction could be granted only if a party is feared to suffer grave injustice but if party is itself not bonafide and is found to be engage in malafide practice, it cannot be granted a mandatory injunction. If due to non granting of mandatory injunction a party is supposed to suffer a lot, a temporary mandatory injunction can well be granted.

(25) Article 135 of the Limitation Act, 1963 provides that a 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, it is clear that proviso attached to Article 136 is self-explanatory to the effect that for the enforcement of execution of a decree granting perpetual injunction shall

not be subject to any period of limitation [M.A.Raja Vs. Vedhantham Pillai, 2000 (2) CTC 199, Madras High Court].

Section 40 : **Damages in lieu of, or**
in addition to injunction -

(26) The plaintiff may claim damages under section 38, or under section 39. The plaintiff shall claim damages in his plaint: plaint can be amended at any stage of the suit. The dismissal of a suit is bar to claim damages.

Section 41 of Specific Relief Act

Injunction when refused

(27) **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 dis-entitle him to be assistance of the Court.

(k) where the applicant has no personal interest in the matter.

CONCLUSION :

(28) To sum up, injunction means 'It is an order of Court by which an individual is required to perform, or is restrained from performing, a particular act. It is judicial process. The courts exercise their power to issue injunctions judiciously, and only when necessity exists. An injunction is generally issued only in cases where irreparable injury to the rights of an individual would result otherwise. It should be readily apparent to the court that some act has been performed, or is threatened, that will cause irreparable injury to the party seeking the injunction. An injury is generally considered irreparable when it cannot be adequately compensated by an award of damages. The pecuniary damage that would be incurred from the threatened action need not be great, however. If a loss can be calculated in terms of money, there is no irreparable injury. The consequent refusal by a court to grant an injunction is, therefore, proper.. 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 grant varies with the facts of each case.

Submitted with respect

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