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Interlocutory orders

The main source of power for grant of interlocutory orders can be found in Sec. 94 of CPC known as 'supplemental proceedings'

Under Section 95 (1) of C.P.C. if injunction, arrest or attachment is granted on insufficient ground or on failure of suit, the plaintiff can be directed to pay such amount not exceeding Rs.50,000/ as damages to the defendant.

Most importantly S.95 (2) declares that 'Further suit on issue of compensation is prohibited' when an order is passed under 95(1) in matters of injunction, arrest or attachment.

Order 39 Rules 1 to 10 deal with temporary injunctions and interlocutory orders. In an Amendment in 1999, under O. 39 new rule (2) the Court shall pass such order staying or for prevention of wastage, injury, removal or damage to property or direct the plaintiff to provide security.

An interlocutory application, normally, would mean an application made to the Court in any suit, appeal or other legal proceeding that was already instituted in such Court, other than an application for execution of a decree or order or for review of judgment or for leave to appeal.

The distinction between 'Incidental Proceedings' referred to in Part III of the CPC and 'Supplemental Proceedings' in Part VI is as follows:

An order passed in the Incidental Proceedings is in aid to the final proceedings as it will have a direct bearing on the result of the suit. Therefore such proceedings in aid of the final proceedings cannot, thus, be held to be at par with 'supplemental proceedings' which may not have anything to do with the ultimate result of the suit.

Supplemental proceeding is initiated to prevent the ends of justice from being defeated not in routine matter but only when an exigency arises but not otherwise within well-defined parameters laid down by the Court from time to time.

An order to furnish security to produce any property belonging to a defendant and to place the same at the disposal of the Court or attachment of any property as also grant of a temporary injunction or appointment of a receiver are supplemental in nature which may have force or operate even after even after decree is passed. For instance an order of temporary injunction passed in a suit either may merge with a decree of permanent injunction or may have an effect even if a decree is passed, as, for example, for the purpose of determination as regard the status of the parties violating the order of injunction or the right of a transferee whom have purchased the property in disobedience of the order of injunction.

Sec. 141 – Miscellaneous proceedings: The procedure provided in this Code in regard to suit shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction. Explanation: In this section, the expression "proceedings" includes proceedings under O. IX, but does not include any proceeding under Art.226 of the Constitution.

The Apex Court **Ramachandra Agarwal vs. State of U. P and another AIR 1966 SC 1888** held "though there is no discussion, this Court has acted upon the view that the expression `Civil Proceedings` used in Sec.141 CPC is not necessarily confined to an original proceeding like a suit or an application for appointment of guardian etc., but it applies also to a proceedings which is not an original proceeding." From this view it would follow that the procedure in the Code with regard to suits shall be followed in all proceedings in any court of civil jurisdiction.

In **Shipping Cor. of India Ltd v. Machado Brothers AIR 2004 SC 2093** it was declared 'that 'interlocutory orders are in aid of final order but not the reverse. They do not survive beyond the original suit'.

The Court 'shall examine' on the 'existence of prima facie case alone' for granting interlocutory orders as 'it does not go into matters finally at that stage' was the ruling in **HPCL v. S Narayana (2002) 5 SCC 760**

A. Venkatasubbiah Naidu vs S. Chellappan And Ors on 19 September, 2000

Lord Justices KTThomas and RP Sethi

Plaintiff-Petitioner claiming to be in possession of the property as 'lessee' under Mr. S. Alagu (6th defendant and lessor) prayed for permanent injunction in suit and also moved an IA under Order 39 Rules 1 and 2 of the Code and obtained an ex-parte 'ad interim injunction' restraining Respondents 1 to 5 (defendants 1 to 5) or their men or agents etc. from evicting him other than by due process of law from Civil Court, Chennai

Lower Court passed the following order: "Heard. Documents perused. On the basis of Rental receipt of statutory tenancy, prima facie possession of property, though leased out by R.6 on the basis of mortgage, the petitioner is now in continuous possession and on the balance of convenience ad interim injunction till then. Notice by 25.8.99. Order 39 Rule 3 to be complied with."

But in revision by Res-1, on behalf of Res-2 to 5 also, arguing that no injunction can be granted since they were in possession of the property as purchasers from the owners under different sale deeds executed on 15.3.1996, Single Judge of the Madras HC under Article 227 of the Constitution set aside the injunction on 'reason that the trial court ought not to have granted an order of injunction at the first stage itself which could operate beyond thirty days as the court had then no occasion to know of what the affected party has to say about it' as such course is impermissible under Order 39 Rule 3A of the Code

The matter reached the SC.

Appellant argued that that when respondent had two remedies under statute, (1) for vacating, if not for any modification, of the interim ex-parte order passed in trail court or (2) an appeal can be preferred, HC should not have entertained a petition.

IT was also argued that the power to grant orders of temporary injunction, with or without notice, interim or temporary, or till further orders or till the disposal of the suit is an inbuilt power in O. 39 as the repository of such powers.

Contrary, the respondents then argued that an order granting injunction without complying with the requisites envisaged in Rule 3 of Order 39 be void.

Issue 1. What would be the position if a court which passed the order granting interim ex parte injunction did not record reasons thereof or did not require the applicant to perform the duties enumerated in clauses (a) & (b) of Rule 3 of Order 39. (no finding on this but in view of the decision in the order shall be void)

Such an order can be deemed to contain such requirements at least by implication even if they are not stated in so many words (by referring to the above order)

But if a party, in whose favour an order was passed ex parte, fails to comply with the duties which he has to perform as required by the proviso quoted above, he must take the risk. The consequence of the party (who secured the order) for not complying with the duties he is required to perform is that he cannot be allowed to take advantage of such order if the order is not obeyed by the other party. A disobedient beneficiary of an order cannot be heard to complain against any disobedience alleged against another party.

Then explaining the position of Rule 3-A of the Code, SC declared, differing with Single Judge, that '**the Rule does not say that the period of the injunction order should be restricted by the Court to thirty days at the first instance,** but **the Court should pass final order on it within thirty days from the day on which the injunction was granted. Hence, the order does not ipso facto become illegal merely because it was not restricted to a period of thirty days or less.**

Nonetheless, we have to consider the consequence, if any, on account of the Court failing to pass the final orders within thirty days as enjoined by Rule3-A.

The aforesaid Rule casts a three-pronged protection to the party against whom the ex parte injunction order was passed.

First is the legal obligation that the Court shall make an endeavour to finally dispose of the application of injunction within the period of thirty days.

Second the legal obligation that if for any valid reasons the Court could not finally dispose of the application within the aforesaid time the Court has to record the reasons thereof in writing.

ii) **What would happen if a Court does not do either of the courses?**

We have to bear in mind that in such a case the Court would have by-passed the three protective humps which the legislature has provided for the safety of the person against whom the order was passed without affording him an opportunity to have a say in the matter.

First is that the Court is obliged to give him notice before passing the order. It is only by way of a **very exceptional contingency** that **the Court is empowered to by-pass the said protective measure.**

Second is **the statutory obligation cast on the Court to pass final orders on the application within the period of thirty days.** Here also it is only in very exceptional cases that the Court can by-pass such a rule recording reasons for such course.

It is the acknowledged position of law that **no party can be forced to suffer for the inaction of the court or its omissions to act according to the procedure established by law.**

Under the normal circumstances the aggrieved party can prefer an appeal only against an order passed under Rules 1, 2, 2A, 4 or 10 of Order 39 of the Code in terms of Order 43 Rule 1 of the Code.

He cannot approach the appellate or revisional court during the pendency of the application for grant or vacation of temporary injunction.

Recognising that, in such circumstances, the party who does not get justice due to the inaction of the court must have a remedy by way of an appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force and the appellate court shall be obliged to entertain the appeal and further to take note of the omission of the subordinate court in complying with the provisions of Rule 3A.

In appropriate cases the appellate court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry in his ACRs.

Failure to decide the application or vacate the ex-parte temporary injunction shall, for the purposes of the appeal, be deemed to be the final order passed on the application for temporary injunction, on the date of expiry of thirty days mentioned in the Rule.

The SC also declared that 'it is a well recognized principle that High Court should direct the party to avail himself of remedies available to him before he resorts to a constitutional remedy

though hurdles cannot be put on High Court on exercise of powers under Art. 227 of Ind. Con., it need not have entertained the revision petition at all but now it is idle to embark on that aspect as the High Court had chosen to entertain the revision petition.

In the light of the direction issued by the High Court that the trial court should pass final orders on the interlocutory application filed by the plaintiff on merits and in accordance with law, we may further add that till such orders are passed by the trial court, status-quo as it prevailed immediately preceding the institution of the suit would be maintained by the parties.

The appeal disposed off.

Food Corporation Of India v. Sukh Prasad on 24 March, 2009 SC
Bench: R.V. Raveendran, Markandey Katju

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The SBI (Plaintiff-Res.) filed Suit No.93/1991 against the Respondents (Def. 1,2,3 and borrowers of a loan) and Raj Narain, Ram Kishore and Khachore (Def - 4,5,6 and guarantors) for recovery of loan, after adjusting with rents paid directly to bank by FCI (Appell-Def-7, as lessee of godowns of Def. 1, 2, 3) and by sale of mortgaged properties and for balance amount, if any, personally from the defendants.

Def 1 to 3 argued that FCI agreed to occupy godowns and pay rents to bank until the entire loan was cleared vacacated godowns prematurely, thereby liable for payment shall be added as party, (as preliminary issue) the Lower Court directed FCI to be impleaded as party but without giving any opportunity to show cause before being impleaded.

On 27.5.1996 Court passed an interim direction on an application filed by bank in the suit directing the FCI to deposit the rent in PNB since SBI was authorized, under the loan documents executed by the borrowers, to directly receive the rents.
Thereafter allowing the application filed by respondent under O. 39 R. 2A of the Code against FCI and its officers, the Court attached the assets of FCI, both movable and immovable, for defying the interim direction dt. dated 27.5.1996.

FCI filed an appeal in SC when Allahabad High Court dismissed the appeal with an observation that it was not competent to consider the validity of the `injunction order' in an appeal against an order passed under order 39 Rule 2A of the Code for disobedience of the `injunction order,' assuming that in the appeal against the order dated 15.12.2004 passed under O. 39 R. 2A, FCI was also trying to challenge the validity of the `injunction order' dated 27.5.1996, but without prejudice to the rights of FCI to challenge the order of injunction.

The SC made clear that it is dealing with the purport and effect of the interim order but not validity of order, as only the order passed dt. 15.12.2004 under Order 39 Rule 2A of the Code was challenged.

Questions of Law : i) The purport and effect of the order dated 27.5.1996

It was held that that application on which the order was passed did not fall under R. 1 as it did not relate to any of the three matters mentioned in clauses (a), (b) and (c) of R. 1 nor under R. 2 as 'there was no privity of contract with it nor FCI was a co-obligant' or that FCI was causing any injury to the bank when no relief was sought against FCI. There was also no mention of any order under which the application was filed.

At best it was an 'interim prohibitory (garnishee) order by way of attachment before judgment in of rents payable against 'garnishee defendant' and not a `principal defendant' governed by Rules 46 and 46A to 46F of Order 21 of the Code.

ii) Respondent can maintain an application under Rule 2A of the Code in mortgage suit filed by the bank?

Respondent had no locus to file an application under R. 2 since breach of interim order did not cause any injury to him as it was not made for his benefit and bank did not complain of any disobedience against FCI.

An interim direction to a defendant-tenant in a suit by the creditor against the landlords/borrowers, to deposit the arrears of rent in court cannot be considered to be an order of `injunction'. A direction to pay money either by way of final or interim order, is not considered to be an `injunction' as assumed by the courts below. (In a general sense, though every order of a court which commands or forbids is an injunction, but in its accepted legal sense, an injunction is a judicial mandate operating in personam by which, upon certain established principles of equity, a party is required to do or refrain from doing a particular thing [see Howard C. Joyce - A Treatise on the Law relating to injunctions (1909) S. 1 at 2-3].
A combined reading of R 46 A, 46B and 46C provides that in the case of a debt (other than a debt secured by a mortgage or a charge) which has been attached under Rule 46 upon the application of the attaching creditor, the court may issue notice to the garnishee calling him either to pay into court the debt due from debtor or to appear and show cause why he should not do so but when he defies execution may follow as though such order were a decree against him. But when garnishee disputes liability, the court shall decided it as an issue in a suit for passing appropriate orders.

At all events, contempt proceedings under the Contempt of Court Act, 1971, or R. 2A is not intended to be used for enforcement of money decrees or directions/orders for payment of money if a garnishee, or a defendant fails to pay the amount.

(iv) Whether the High Court was justified in disposing of FCI's appeal in a summary manner?

NO

Therefore, SC allowed appeal.

It is held in **Manthrala Chandrakala vs. Mandan Janakiram Singh (2004) 5 ALD 156)** that the principles underlying Or 22 Rule 4 CPC cannot be limited to the judgments in suits only. They apply to the disposal of applications with equal force, as is evident from section 141 CPC.

When application to bring on record the LRs of deceased party is pending, application under Or 1, Rule 10 CPC to add party to the proceedings is maintainable in the light of section 141 CPC.Gunnam Venkateswara Rao vs. Vanaja Kumari (2004) 4 ALD 786

In most of the cases IA is moved to pray for 'temporary injunctions' but it can also be moved for various other reliefs.

Recently, the SC explained about 'vexatious, frivolous, malicious or speculative litigation' and 'the nature of order that can be passed at the Interlocutory stage and what sort of conditions can be imposed' in "**VINOD SETH VS. DEVINDER BAJAJ & ANOTHER (2010 (8) SCC 1)**."

A.N. Saraswathi v. Gollapalle Munikrishna Reddy 1997 (2) ALT 823

Initially the interim injunction was granted O.S. No. 273 of 1995 seeking interim relief but subsequently on appearance of the defendant and on filing of the counter, it was vacated.

Accepting that even at the interlocutory stage the documents produced by both the parties can be taken into consideration and they can be marked with consent of the parties and taking these documents into consideration the learned Judge has to proceed to write the order, but, in the present case no document as such was marked and some documents which are totally inadmissible in evidence were taken into consideration Ramesh Madhav Bapat, J set aside order by remanding with a direction to mark the documents with consent of the parties, and on hearing both the parties the learned Judge may proceed to pass the order according to law Rule

115 of Civil Rules of Practice, which gives the procedure to be adopted in marking the documents after referring to Section 141 of the C.P.C.

Application for maintenance under Sec.24 of Hindu Marriage Act

Ganga Devi vs Krushna Prasad Sharma AIR 1967 Ori 194 (G.K. Misra, LJ)

In a petition for divorce filed by Plaintiff (husband), defendant-wife's application filed under Sec. 24 of the HM Act, 1955 for maintenance pendente lite including arrears, expenses as she has no independent income to maintain herself, with certain interrogatories, to know about the income and his association with a firm etc., served on the plaintiff, District Judge rejected defendant's application for interrogatories on objection of husband that it cannot be maintained on reason that 'Order 11, Rule 1, C. P. C. applies only to suits but not to any interlocutory proceedings and also on reason that the 'interrogatories sought to be served appear to be in the nature of fishing out the evidence which the plaintiff may adduce in the matter' but 'when the purpose of interrogatories is to discover the nature of the case as distinct from the evidence.'

Hence, this Civil Revision.

G.K. Misra, LJ held that 'application filed under Sec. 24 is 'interlocutory' (though in one sense it is an original matter in the nature of a suit) as 'it has no direct connection with the question of divorce since 'issues and nature of proof in both proceedings are different' to grant her prayer if her claim is genuine, Sec.141 is applicable the proceedings.

Even assuming that Sec. 141 has no application to interlocutory proceedings in a suit, the Court can issue interrogatories in exercise of inherent power of the Court under Sec.151 of Code to make orders necessary for the ends of justice in matter arising under Sec. 24 of the Act.

In the absence of an express prohibition, it is now well settled in AIR 1962 SC 527 that nothing in the Code shall be deemed to limit or otherwise affect the Court can, therefore, under Sec. 151, permit interrogatories being served to shorten the prolonged course of interlocutory proceedings.

Declaring that Order 11, dealing interrogatories, has full application to the proceedings under Sec. 24 of the Act, LJ G.K. Misra directed Plaintiff to answer them before the District Judge by quoting a beautiful passage of Cotton L. J. on 'main purpose of interrogatories' in Enlgish Law which is also followed in India (AIR 1914 Cal 767)

In **Attorney General v. Gaskil**, (1882) 20 Ch D 59 he observed : "The right to discovery remains the same, that is to say, a party has a right to interrogate with a view to obtaining an admission from his opponent of everything which is material and relevant to the issue raised on the pleadings. It was said in argument that it is not discovery where the plaintiff himself already knows the fact. But that is a mere play on the word 'discovery'. Discovery is not limited to giving the plaintiff a knowledge of that which he does not know, but includes the getting an admission of anything which he is to prove on any issue which is raised between him and the defendant. To show that the pleadings have raised issues and that therefore, interrogatories should not be allowed is another fallacy. The object of the pleadings is to ascertain what issues are. The object of the interrogatories is not to learn what the issues are but to see whether the party intelligently can obtain an admission from his opponent which makes the burden of proof easier than it otherwise would have been."

Accepting that 'an appeal does not lie against the interlocutory order but I lies against a final order under Sec.24 of the Act, G.K. Misra, held that 'this Court can interfere with such order in view that 'order 11 C. P. C. applies to a proceeding under Sec. 24 of the Act' when District Judge failed to exercise a jurisdiction vested in him by saying that, the application was not maintainable.'

Dasam Vijay Rama Rao vs M.Sai Sri AP HC on 17 June, 2015

In O.P.No.1547 of 2014 filed for dissolution of their marriage decree of divorce by mutual consent by the petitioner-2-husband and his respondent – wife under Sec. 13-B of HM Act, 1955, the father of 2nd petitioner/husband holding 'General Power of Attorney of his son, filed an 'interlocutory application' R.No.2216 of 2015 on 09.04.2015 before the Family court 'to receive the chief sworn affidavit of his son' duly dispensing with his personal appearance before the Court as he was 'staying at Melbourne, Australia' whereas wife has been attending Court.

After explaining the meaning of GPA and s. 2 of Power of Attorney Act, 1882 and sec. 13 and other provisions of Family Court Act, LJ N Ram Mohan Rao directed the Family Court to entertain the I.A. as it is maintainable and permit the GPA holder to represent and depose on behalf of the 2nd petitioner and the Family Court shall also direct such GPA or any legal practitioner chosen by him to make available the skype facility where new technology is developing to enable the Court to interact with 2nd petitioner to record his consent proceed with the matter by referring referring to DB decision in **Mrs. Padmakiran Rao v. B. Venkataramana Rao** on receiving of an 'affidavit, notarized in USA, without personal hearing of husband, as 'hearing of parties' does not always mean personal attendance of parties before the court' since husband who was employed in USA.

In **Ravinder V. G.Dasarath, 2004(4) ALD 851,** it was held that it is not open for a party to insist upon the Court to undertake an independent enquiry into the admissibility of a document at the stage of interlocutory adjudication and pronounce upon it once for all.

Rule 53 read with Rule 50 of the CROP

It is held in **Bathula Ekambaram vs. Develle Peda Venkateswarlu and others 2010 (3) ALT 239** that mere filing of affidavit is not sufficient compliance with the statutory rules. An affidavit cannot be accepted as a petition. It is further observed that the Rule under which the application is made must be quoted. When the application is relating to the High Court, it is not for the Registry of the High Court to advise persons approaching High Court for redressal about provisions of law under which they can ventilate grievances.

Separate Application for distinct prayers under Rule 55 of CROP

There are divergent views expressed by two separate decisions of the A.P. High Court Single judges. It is heldin Supriya Cold Storage, Warangal vs. K. Sambasiva Rao and others (2006) 3 ALD 659 a single application / petition with multiple prayers is not maintainable for each distinct relief prayed for.

But in a contrary decision in K.Narayana v. K. Chennamma (2005) 1 ALD 672 'a petition to condone the delay in setting aside the exparte decree being interconnected with main relief, namely, setting aside exparte decree, squarely falls under category of consequential reliefs, which are exempt from requirement of Rule 55 therefore, a single petition can be maintained.

In Massarath Yasmeen vs. Mohammed Azeemuddin (2011) 6 ALT 202 it was found not inconsistent to each other, when it was held that if the relief is separate and distinct as per Rule 55 of CROP, two separate applications have to be filed but when one relief is ancillary to the main relief or inter-connected to the main relief two prayers can be asked for in one petition and those prayers can be granted. Even otherwise, as per Rule 55, if two separate applications are necessary, the court may direct the party making the application to file two separate applications. But when once the party is entitled to the relief, the Court is not supposed to dismiss the petition on the technical ground.

***Every Interlocutory Application need not be tried as a suit under the guise of Sec. 141 CPC*:**

The purport of section 141 cannot be understood to the extent that every interlocutory application shall be decided as though it is a suit. The indication is that the procedure in regard to suit has to be followed 'as far as it can be' made applicable.

Instances are – where oral evidence is recorded, while deciding interlocutory application such as those under Or 22 or Or 39 etc. Confining the evidence to the form of affidavits at the interlocutory stages is adopted mostly as a measure of convenience. With the recent amendments to the Code, the evidence through affidavits also stands equated to that of oral evidence. The broad principles such as reference to pleadings, evidence, appreciation of the contentions, application of the provision of law, need to be followed even while disposing of interlocutory applications.

However, the Code does not prescribe any special procedure to be observed in regard to interlocutory or miscellaneous proceedings. Sec. 141 mandates that the procedure provided for in the Code in regard to suit, shall be followed in all the proceedings in any Civil Court as far as possible. (Asia Vision Entertainment limited vs. Suresh Productions (2004) 3 ALD 874 SC)

Rights before Payment

In **Mamata ghose AIR 1987 Cal 280** it was held that when the surety found and proved by affidavit that when the debt has become due the PD is disposing of his personal properties one after another to defeat the creditors including the surety, the court may grant a temporary injunction or other such order to prevent the PD.