

## **Applicability and usage of Injunctive Relief**

**Author name - Rahul Balakrishna**

### **Abstract**

An Injunction is a preventive relief granted to the party by the relevant court as a remedy for prohibiting a commission or a probable commission of a wrong that might harm a party; thus, taking cognizance of such acts to be illegal. Every citizen has a right to appeal to the court, maintain its locus standi and solicit for an injunction, so as to prevent an act from harming the rights of the offended. Courts and tribunals in India having Civil and Criminal jurisdictions have right to grant injunction to the aggrieved party. As per Section 36 of the Specific Relief Act, 1963, a court can grant preventive relief to the plaintiff, temporary or perpetual in nature, by producing an injunction order on its discretion.<sup>1</sup> An Arbitral Tribunal as per The Arbitration and Conciliation act, 1996 can also produce an injunctive order for the plaintiff.<sup>2</sup>

### **Temporary Injunctions [Rule 1 - Order XXXIX of CPC]**

A Temporary Injunction is granted by a competent court to provide a relief for a specific period of time. The competent court can; under the power provided to it under Order 39 Rule 1 grant such temporary injunction for stay or for prevention of wastage, damage, wrongful disposal or disposition of the property of the plaintiff which may cause harm to the property of the plaintiff or to the relation between the property and the plaintiff (who has interest over the property). Temporary Injunction as the term suggests are impermanent and are subject to termination post disposal of the suit or by an order of the court amidst prosecutions to end the provision of relief . A temporary injunction can be invoked at any time after the commencement of the suit. [ Under Rule 5 of Order XXXIX of CPC if the injunction is directed to a corporation, then its bindable against all the members and personals whose actions define the functioning of the corporation.]

A temporary injunction may be provided by the court subject to certain conditions mentioned in Rule 1 of Order XXXIX<sup>3</sup>; defined as follows:

- 1) In any suit which is proved by affidavits or by other means; -

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<sup>1</sup> The Specific Relief Act,1969 (Act 47 of 1963) ss. 36

<sup>2</sup> The Arbitration and Conciliation act, 1996 (Act 26 of 1996) ss. 17

<sup>3</sup> The Code of Civil Procedure, 1908 (Act 5 of 1908), rule 1 of order 39

- 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
- that the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors, or
- 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, or

As per Rule 2 of Order XXXIX of the Civil Procedure Code provides the plaintiff with the benefit of applying for a temporary injunction at any time before or after the judgment pertaining to the suit is produced so as to prevent the repetition or continuance of a breach of contract or causing injury of like kind by the defendant.<sup>4</sup>

In case of an act of disobedience to the temporary injunction provided by the court as per Rule 1 and rule 2 of ORDER XXXIX of Civil Procedure Code, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred may order to attach the property of the person at default of causing the breach and further order such person to be subject to detainment in civil prison for a period not exceeding 3 months or unless the time specified for release by the court.<sup>5</sup>

No attachment of property made under Rule 2 of Order XXXIX of the Code shall remain in force for more than one year. At the end of the period mention, the property shall either be released from the constraints of the attachment or in case of continued breach of the provided injunction, the court has the right to sell out the attached property and announce award to the injured party. [ Rule 2A of Order XXXIX of CPC]<sup>6</sup>

In **Bikash Chandra Deb vs Vijaya Minerals Pvt. Ltd** <sup>7</sup> , The Hon'ble Calcutta High Court mentioned that in order to pass an *ad interim* injunction order, the court shall take into consideration the "*balance of convenience*" so as to take care that the injunction so provided

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<sup>4</sup> The Code of Civil Procedure, 1908 (Act 5 of 1908)

<sup>5</sup> The Code of Civil Procedure, 1908 (Act 5 of 1908)

<sup>6</sup> The Code of Civil Procedure, 1908 (Act 5 of 1908)

<sup>7</sup> *Bikash Chandra Deb vs Vijaya Minerals Pvt. Ltd*, 2005 (1) CHN 582

does not support just one party, discriminating the other, but rather helps in maintaining equilibrium in the case.

### **Perpetual Injunction [ Section 37(2) of Specific Relief Act]**

A perpetual Injunction or a permanent Injunction in accordance to the verbatim used; itself defines the nature of the injunction provided by the court to be permanent and to be enforceable post the disposal of any dispute by the court and is not subject to termination by any order passed by the courts in the future unless any contrary situation arises.

As per Section 38 of Specific Relief Act, 1963, perpetual injunction is granted by the competent court to the plaintiff based on the following circumstances;

1) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of property, the court may grant a perpetual injunction in the following cases, namely:

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- where the defendant is trustee of the property for the plaintiff;
- where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
- where the invasion is such that compensation in money would not afford adequate relief;
- where the injunction is necessary to prevent a multiplicity of judicial proceedings.<sup>8</sup>

In **Bhagwanrao s/o Jijaba Auti vs Ganpatrao s/o Mugaji Raut and another's**<sup>9</sup>, the Bombay High Court stated the difference between the possibility when temporary and perpetual injunctions can be granted. The Bombay High Court specified that temporary injunctions can be granted at any stage of the suit, but unlike temporary injunctions, a perpetual injunction can be granted only on the merits of the suit after hearing both the parties. The court further adds that “*A relief of perpetual injunction on merit cannot be granted unless, relative rights are considered.*”

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<sup>8</sup> The Specific Relief Act, 1963 (Act 47 of 1963), ss. 37(2), 38

<sup>9</sup> Bhagwanrao s/o Jijaba Auti vs Ganpatrao s/o Mugaji Raut and another's 1987, 3 BOM CR 258

### **Mandatory injunctions [ Section 39 of Specific Relief Act]<sup>10</sup>**

An application to the court to provide for a mandatory injunction is to compel for the performance of certain acts. Whereas, in other injunctions the application is made in order to seek relief i.e. the application is made to the court to prevent the defendant from causing any further harm to the property of the plaintiff. The striking difference between the need to file for applications for seeking injunctive reliefs is that in a mandatory injunction, the ordinary order if passed would call for happening of an act whereas the other injunctions are sought as a preventive relief.

In **Dorab Cawasji Warden vs Coomi Sorab Warden & Ors**<sup>11</sup> the Supreme Court specified the guidelines for granting interlocutory mandatory injunctions and mentioned that mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested conditions and rights of the plaintiff prior to the ongoing 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. The Bench mentioned the following necessities to be covered so as to satisfy the bench to pass an interlocutory mandatory Injunction; being: -

- (1) The plaintiff has a strong case for trial, 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.

### **Conditions to Refuse grant of Injunction**

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<sup>10</sup> The Specific Relief Act, 1963 (Act 47 of 1963), ss. 39

<sup>11</sup> *Dorab Cawasji Warden vs Coomi Sorab Warden & Ors* 1990 AIR 867

As per Specific Relief Act, 1963, injunctions can be refused on the following basis: -

- to restrain any person from prosecuting 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;
- to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;
- to restrain any person from applying to any legislative body;
- to restrain any person from instituting or prosecuting any proceeding in a criminal matter;
- to prevent the breach of a contract the performance of which would not be specifically enforced;
- to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- to prevent a continuing breach in which the plaintiff has acquiesced;
- when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- when the conduct of the plaintiff or his agents has been such as to disentitle him to be the assistance of the court;
- when the plaintiff has no personal interest in the matter.<sup>12</sup>

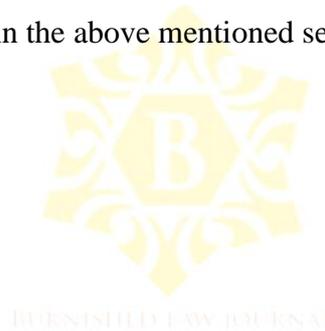
### **Conclusion**

In regards to the application of the injunctive relief clause, it is not mandatory to be added in an agreement, however the addition of injunctive relief clause provides an assurance for redressal of disputes to the courts or any other forum which could amicably settle the conundrum between the parties to the contract or the agreement; if in case there has been a violation of terms and conditions in the agreement agreed upon. The clause is highly used in agreements, violation of which may lead to complex litigious matters. The clause obligates and highlights the responsibility of the parties to the agreement and contracts to abide by the provisions/ clauses mentioned in the contracts. Injunctions are to be provided by the competent courts referred to, however the injunctions or orders granted or delivered by arbitration or conciliation personals are not binding upon the parties to the contract and hence can work according to their free will. In contravention to availability of an anti- injunction relief clause,

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<sup>12</sup> The Specific Relief Act, 1963 (Act 47 of 1963), ss. 41

or an injunctive relief clause, the parties at their own discretion can seek injunction subject to the fact that they have substance to prove about the infringement of their rights and a claim to restore the status quo. The very reason as to why injunctive relief can be sought in India is because adherence to Article 226 and Article 32 under which an aggrieved person can approach the High court or the Supreme court to sort out their issues. Matters dealt under the civil jurisdiction allows Civil courts to grant Injunctions as per provisions under Order XXXIX of the Civil Procedure Code, 1908<sup>13</sup> and under Chapter VII and VIII of PART III of Specific Relief Act, 1963. Criminal Courts also possess rights to grant injunction of perpetual nature or on ad interim basis as per Section 142<sup>14</sup> and Section 144<sup>15</sup> of the Criminal Procedure Code, 1974 subject to any offence committed under Section 133 of CrPC, 1973<sup>16</sup>. Indian Arbitration Tribunals as per Section 17(1)(ii-d) of the Arbitration and Conciliation Act, 1996<sup>17</sup> is capable of granting interim injunctions in order to preserve or inspect the subject matter of the Arbitral suit or for any matter as specified in the above mentioned section.



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<sup>13</sup> *Supra* note. 3

<sup>14</sup> The Criminal Procedure Code, 1974 (act 2 of 1974), ss. 142

<sup>15</sup> The Criminal Procedure Code, 1974 (act 2 of 1974), ss. 144

<sup>16</sup> The Criminal Procedure Code, 1974 (act 2 of 1974), ss. 133

<sup>17</sup> Arbitration and Conciliation Act, 1996 (act 26 of 1996), ss. 17(1)(ii-d)