Evolution of Law of Temporary Injunction in India

INDEX

SL. No.	Judgment	Page No.
1.	***Dorab Cawasji Warden v. Coomi Sorab Warden*, (1990) 2 SCC 117**	2-8
2.	***Wander Ltd. v. Antox India (P) Ltd.,* *1990 Supp SCC 727***	9
3.	***Dalpat Kumar v. Prahlad Singh,* *(1992) 1 SCC 719***	10-13
4.	***Shiv Kumar Chadha v. Municipal Corpn. of Delhi,* *(1993) 3 SCC 161***	14-18
5.	***Gujarat Bottling Co. Ltd. v. Coca Cola Co.,* *(1995) 5 SCC 545***	19-23
6.	***Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd.,* *(1999) 7 SCC 1***	24-31
7.	***Hindustan Petroleum Corpn. Ltd. v. Sriman Narayan,* *(2002) 5 SCC 760***	32-33
8.	***Best Sellers Retail (India) (P) Ltd. v. Aditya Birla Nuvo Ltd.,* *(2012) 6 SCC 792***	34-35
9.	***Ambalal Sarabhai Enterprise Ltd. v. KS Infraspace LLP Ltd.,* *(2020) 5 SCC 410***	36-43
10.	***Narendra Hirawat & Co. v. Sholay Media Entertainment (P) Ltd.,* *(2023) 16 SCC 102***	44-45

Compiled by

(Purushottam Mishra)

Principal District & Sessions Judge, Bihar

TEMPORARY INJUNCTION

Mandatory Injunction dwelling house

1. This extract is taken from *Dorab Cawasji Warden v. Coomi Sorab Warden*, (1990) 2 SCC 117 : 1990 SCC OnLine SC 108 at page 126

16. 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.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.

DWELLIN HOUSE Section 44 TP Act 1885

18. The suit is one filed under Section 44 of the Transfer of Property Act (hereinafter referred to as 'the Act'). In considering the question of interim mandatory injunction in a suit filed under Section 44 of the Act the court has also to keep in mind the restriction on the rights of the transferee to joint possession under that section. The section reads as follows:

> "44. Where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liability affecting, at the date of the transfer, the share or interest so transferred.
>
> Where the transferee of a share of a dwelling house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house."

19. In order to attract the second paragraph of this section the subject matter of the transfer has to be a dwelling house belonging to an undivided family and the transfer is a share in the same to a person who is not a member of the family. Therefore, in order to satisfy the first ingredient of clear existence of the right and its infringement, the plaintiff will have to show a probable case that the suit property is a dwelling house and it belonged to an undivided family. In other words, on the facts before the court there is a strong probability of the plaintiff getting the relief prayed for by him in the suit. On the second and third ingredients having regard to the restriction on the rights of a transferee for joint possession and the dominant purpose of the second paragraph of Section 44 of the Act, there is danger of an injury or violation of

the corresponding rights of the other members of the family and an irreparable harm to the plaintiff and the court's interference is necessary to protect the interest of the plaintiff. Since the relief of an interim injunction is all the same an equitable relief the court shall also consider whether the comparative mischief or inconvenience which is likely to ensue from withholding the injunction will be greater than that which is likely to arise from granting it, which means that the balance of convenience is in favour of the plaintiff.

20. The first point that has to be considered, therefore, is whether one can have a reasonably certain view at this stage before the actual trial that the suit property is a 'dwelling house belonging to an undivided family' within the meaning of Section 44 of the Act. As to what is the meaning of these words in the section, the leading case is the one decided by the Full Bench of the Allahabad High Court in *Sultan Begam* v. *Debi Prasad* [1908 ILR 30 All 324: 5 ALJ 352: 1 MLT 38] . That was concerned with the meaning of the phrase "dwelling house belonging to an undivided family" in Section 4 of the Partition Act, 1893. That section provides that where a share of a dwelling house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the court shall, if any member of the family, being a shareholder shall undertake to buy the share of such transferee make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder. The argument was that the words 'undivided family' as used in the section mean a joint family and are confined to Hindus or to Muhammadans, who have adopted the Hindu rule as to joint family property. The counter-argument was that the expression is of general application and means a family whether Hindu, Muhammadan, Christian etc. possessed of a dwelling house which has not been divided or partitioned among the members of the family. The case itself related to a Muslim family to whom the house belonged. The Full Bench observed:

> "...in it (Section 4 of the Partition Act) we find nothing to indicate that it was intended to apply to any limited class of the community. The words 'undivided family' as used in this section appear to be borrowed from Section 44 of the Transfer of Property Act. The last clause of that section prescribes that where the transferee of a share of a dwelling house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the dwelling house. This provision of the statute is clearly of general application, and the effect of it is to compel the transferee of a dwelling house belonging to an undivided family, who is a stranger to the family, to enforce his rights in regard to such share by partition. There appears to me to be no reason why the words 'undivided family' as used in Section 4 of the Partition Act, should have a narrower meaning that they have in Section 44 of the Transfer of Property Act. If the legislature intended that Section 4 should have limited operation, we should expect to find some indication of this in the language of the section. For example, instead of the words 'undivided family' the expression 'undivided Hindu family' or 'joint family' might have been used."

With reference to the object and purpose of such a provision the Full Bench further observed:

> "...as was pointed out by Mr Wells, Judicial Commissioner, in the case of *Kalka Parshad* v. *Bankey Lall* [(1906) 9 Oudh Cases 158] is to prevent a transferee of a member of a family who is an outsider from forcing his way into a dwelling house in which other members of his transferor's family have a right to live, and that the words 'undivided family' must be taken to mean 'undivided qua the dwelling house in question, and to be a family which owns the house but has not divided it'."

21. Again in construing the words "family" and 'undivided family' a Division Bench of the Calcutta High Court in *Khirode Chandra Ghoshal* v. *Saroda Prosad Mitra* [(1910) 7 IC 436: 9 MLT 117] , observed:

> "The word 'family', as used in the Partition Act, ought to be given a liberal and comprehensive meaning, and it does include a group of persons related in blood, who live in one house or under one head or management. There is nothing in the Partition Act to support the suggestion that the term 'family' was intended to be used in a very narrow and restricted sense, namely, a body of persons who can trace their descent from a common ancestor."

22. The decision in *Nil Kamal Bhattacharjya* v. *Kamakshya Charan Bhattacharjya* [AIR 1928 Cal 539: 109 IC 67] , related to a case of a group of persons who were not the male descendants of the common ancestor to whom the property in the suit originally belonged but were respectively the sons of the daughter of a grandson of the common ancestor and the sons of a daughter of a son of the said common ancestor. The learned Judge applied the principle enunciated in *Sultan Begam* v. *Debi Prasad* [1908 ILR 30 All 324: 5 ALJ 352: 1 MLT 38] to this family and held that it was an undivided family since the house had not been divided by metes and bounds among themselves. The Madras High Court also followed and applied the ratio of this judgment in the decision in *Sivaramayya* v. *Venkata Subbamma* [AIR 1930 Mad 561: 58 MLJ 341: 126 IC 593] . The next decision to be noted is the one reported in *Bhim Singh* v. *Ratnakar Singh* [AIR 1971 Ori 198: (1970) 1 Cut WR 183] . In that case the undivided family consisted of the plaintiff and the defendants 1 and 2 therein. Defendant 1 had alienated 1/3 of his half share in the house property in favour of defendants 7 and 10 who were the appellants before the High Court. The suit was filed for a permanent injunction restraining defendants 7 and 10 from jointly possessing the disputed house along with the plaintiff and defendant 2. The facts as found by the courts were that by an amicable arrangement among plaintiff and defendants 1 and 2 they were living separately for a long time, had

separated their residences and were living in different houses unconnected with each other but all situate in one homestead and that after defendant 1 had alienated his separate interest as well as his separate house in favour of the alienees and in pursuance thereof the alienees were put in possession. After referring to the judgments we have quoted above and following the principles therein, Ranganath Misra, J. as he then was held: (AIR p. 201, para 21)

> "If in this state of things, a member of the family transfers his share in the dwelling house to a stranger paragraph 2 of Section 44 of the Transfer of Property Act comes into play and the transferee does not become entitled to joint possession or any joint enjoyment of the dwelling house although he would have the right to enforce a partition of his share. The object of the provision in Section 44 is to prevent the intrusion of the strangers into the family residence which is allowed to be possessed and enjoyed by the members of the family alone in spite of the transfer of a share therein in favour of a stranger. The factual position as has been determined is that the property is still an undivided dwelling house, possession and enjoyment whereof are confined to the members of the family. The stranger-transferees being debarred by law from exercising right of joint possession which is one of the main incidences of co-ownership of the property should be kept out."

On the question whether the enjoyment of ascertained separate portions of the common dwelling house and the alienee taking possession made any difference the learned Judge quoted the following passage from *Udayanath Sahu* v. *Ratnakar Bej* [AIR 1967 Ori 139: 33 Cut LT 1163] , with approval:

> "If the transferee (stranger) get into possession of a share in the dwelling house, the possession becomes a joint possession and is illegal. Courts cannot countenance or foster illegal possession. The possession of the defendant-transferee in such a case becomes illegal. Plaintiff's co-owners are entitled to get a decree for eviction or even for injunction where the transferee threatens to get possession by force. If there had been a finding

that there was severance of joint status but no partition by metes and bounds, defendant 1 was liable to be evicted from the residential houses and Bari under Section 44 of the T.P. Act."

The learned Judge further held: (AIR p. 202, para 23)

"The last contention of Mr Pal is that the plaintiff sued for injunction only. The learned trial Judge, however, has decreed ejectment of the transferee defendants and that decree has been upheld. Once it is held that the plaintiff is entitled to protection under the second part of Section 44 of the Transfer of Property Act and the stranger purchasers are liable to be restrained, it would follow that even if the defendants have been put in possession or have come jointly to possess they can be kept out by injunction. The effect of that injunction would necessarily mean ejectment. In that sense and to the said extent, the decree of the trial court upheld by the lower appellate court must be taken to be sustainable. The remedy of the stranger purchaser is actually one of partition. Until then, he is obliged to keep out from asserting joint possession."

23. We may respectfully state that this is a correct statement of the law. There could be no doubt that the ratio of the decisions rendered under Section 4 of the Partition Act equally apply to the interpretation of the second paragraph of Section 44 as the provisions are complementary to each other and the terms "undivided family" and "dwelling house" have the same meaning in both the sections.

2. This extract is taken from *Wander Ltd. v. Antox India (P) Ltd.*, 1990 Supp SCC 727 : 1990 SCC OnLine SC 490 at page 731

9. Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated

> "...is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience' lies."

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted.

General principles of temporary injunction

3. This extract is taken from *Dalpat Kumar v. Prahlad Singh*, (1992) 1 SCC 719 : 1991 SCC OnLine SC 345 at page 720

4. Order 39 Rule 1(*c*) provides that temporary injunction may be granted where, in any suit, it is proved by the affidavit or otherwise, 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, the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing ... or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit until the disposal of the suit or until further orders. Pursuant to the recommendation of the Law Commission clause (*c*) was brought on statute by Section 86(*i*)(*b*) of the Amending Act 104 of 1976 with effect from February 1, 1977. Earlier thereto there was no express power except the inherent power under Section 151 CPC to grant ad interim injunction against dispossession. Rule 1 primarily concerned with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court, on exercise of the power of granting ad interim injunction, is to preserve the subject matter of the suit in the status quo for the time being. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be

established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.

6. Undoubtedly, in a suit seeking to set aside the decree, the subject matter in the earlier suit, though became final, the Court would in an appropriate case grant ad interim injunction when the party seeks to set aside the decree on the ground of fraud pleaded in the suit or for want of jurisdiction in the Court which passed the decree. But the Court would be circumspect before granting the injunction and look to the conduct of the party, the probable injuries to either party and whether the plaintiff could be adequately compensated if injunction is refused. This case demonstrates (we are not expressing any opinion on the plea of fraud or their relative merits in the case or the validity of the decree impugned), suffice to state that the conduct of the respondent militates against the bona fides. At present there is a sale deed executed by the Court in favour of the first appellant. If ultimately the respondent succeeds at the trial, they can be adequately compensated by awarding damages for use and occupation from the date of dispossession till date of restitution. Repeatedly the civil court and the High Court refused injunction pending proceedings. For any acts of damage, if attempted to be made, to the property, or done, appropriate direction could be taken in the suit. If any alienation is made it would be subject to doctrine of lis pendens under Section 52 of the Transfer of Property Act. The High Court without adverting to any of these material circumstances held that balance of convenience lies in favour of granting injunction with the following observations, “keeping in mind the history, various facts which have been brought to my notice, and looking to the balance of convenience and irreparable loss, I think it will be in the interests of justice to allow these appeals and grant temporary injunction that the appellants may not be dispossessed from the suit property”. The phrases “prima facie case”, “balance of convenience” and “irreparable loss” are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by men's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice. The facts are eloquent and speak for themselves. It

is well nigh impossible to find from facts prima facie case and balance of convenience. The respondents can be adequately compensated on their success.

Ex parte Interin injunction

4. This extract is taken from *Shiv Kumar Chadha v. Municipal Corpn. of Delhi*, (1993) 3 SCC 161 : 1993 SCC OnLine SC 181 at page 175

TEMPORARY INJUNCTION

30. It need not be said that primary **object of filing a suit challenging the validity of the order of demolition** is to restrain such demolition with the intervention of the court. In such a suit the plaintiff is more interested in getting an order of interim injunction. It has been pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the status quo. The court grants such relief according to the legal principles — ex debito justitiae. Before any such order is passed the court must be satisfied that a strong prima facie case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him.

31. Under the changed circumstance with so many cases pending in courts, once an interim order of injunction is passed, in many cases, such interim orders continue for months; if not for years. At final hearing while vacating such interim orders of injunction in many cases, it has been discovered that while protecting the plaintiffs from suffering the alleged injury, more serious injury has been caused to the defendants due to continuance of interim orders of injunction without final hearing. It is a matter of common knowledge that on many occasions even public interest also suffers in view of such interim orders of injunction, because persons in whose favour such orders are passed are interested in perpetuating the contraventions made by them by delaying the

final disposal of such applications. The court should be always willing to extend its hand to protect a citizen who is being wronged or is being deprived of a property without any authority in law or without following the procedure which are fundamental and vital in nature. But at the same time the judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the court.

32. Power to grant injunction is an extraordinary power vested in the court to be exercised taking into consideration the facts and circumstances of a particular case. The courts have to be more cautious when the said power is being exercised without notice or hearing the party who is to be affected by the order so passed. That is why Rule 3 of Order 39 of the Code requires that in all cases the court shall, before grant of an injunction, direct notice of the application to be given to the opposite-party, except where it appears that object of granting injunction itself would be defeated by delay. By the Civil Procedure Code (Amendment) Act, 1976, a proviso has been added to the said rule saying 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 delay…".

33. It has come to our notice that in spite of the aforesaid statutory requirement, the courts have been passing orders of injunction before issuance of notices or hearing the parties against whom such orders are to operate without recording the reasons for passing such orders. It is said that if the reasons for grant of injunction are mentioned, a grievance can be made by the other side that court has prejudged the issues involved in the suit. According to us, this is a misconception about the nature and the scope of interim orders. It need not be pointed out that any opinion expressed in connection with an interlocutory application has no bearing and shall not affect any party, at the stage of the final adjudication. Apart from that now in view of the proviso to Rule 3 aforesaid, there is no scope for any argument. When the statute itself

requires reasons to be recorded, the court cannot ignore that requirement by saying that if reasons are recorded, it may amount to expressing an opinion in favour of the plaintiff before hearing the defendant.

34. The imperative nature of the proviso has to be judged in the context of Rule 3 of Order 39 of the Code. Before the proviso aforesaid was introduced, Rule 3 said "the court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite-party". The proviso was introduced to provide a condition, where court proposes to grant an injunction without giving notice of the application to the opposite-party, being of the opinion that the object of granting injunction itself shall be defeated by delay. The condition so introduced is that the court "shall record the reasons" why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex parte injunction, cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule 3, the procedure prescribed under the proviso has been followed. The party which invokes the jurisdiction of the court for grant of an order of restraint against a party, without affording an opportunity to him of being heard, must satisfy the court about the gravity of the situation and court has to consider briefly these factors in the ex parte order. We are quite conscious of the fact that there are other statutes which contain similar provisions requiring the court or the authority concerned to record reasons before exercising power vested in them. In respect of some of such provisions it has been held that they are required to be complied with but non-compliance therewith will not vitiate the order so passed. But same cannot be said in respect of the proviso to Rule 3 of Order 39. The Parliament has prescribed a particular procedure for

passing of an order of injunction without notice to the other side, under exceptional circumstances. Such ex parte orders have far-reaching effect, as such a condition has been imposed that court must record reasons before passing such order. If it is held that the compliance with the proviso aforesaid is optional and not obligatory, then the introduction of the proviso by the Parliament shall be a futile exercise and that part of Rule 3 will be a surplusage for all practical purposes. Proviso to Rule 3 of Order 39 of the Code, attracts the principle, that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not all. This principle was approved and accepted in well-known cases of *Taylor* v. *Taylor* [(1875) 1 Ch D 426 : 45 LJ Ch 373] and *Nazir Ahmed* v. *Emperor* [AIR 1936 PC 253 (2) : 63 IA 372 : 37 Cri LJ 897] . This Court has also expressed the same view in respect of procedural requirement of the Bombay Tenancy and Agricultural Lands Act in the case of *Ramchandra Keshav Adke* v. *Govind Joti Chavare* [(1975) 1 SCC 559 : AIR 1975 SC 915] .

35. As such whenever a court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an ex parte order is not passed. But any such ex parte order should be in force up to a particular date before which the plaintiff should be required to serve the notice on the defendant concerned. In the *Supreme Court Practice* 1993, Vol. 1, at page 514, reference has been made to the views of the English Courts saying:

> "Ex parte injunctions are for cases of real urgency where there has been a true impossibility of giving notice of motion.…
>
> An ex parte injunction should generally be until a certain day, usually the next motion day…."

36. Accordingly we direct that the application for interim injunction should be considered and disposed of in the following manner:

(*i*) The court should first direct the plaintiff to serve a copy of the application with a copy of the plaint along with relevant documents on the counsel for the Corporation or any competent authority of the Corporation and the order should be passed only after hearing the parties.

(*ii*) If the circumstances of a case so warrant and where the court is of the opinion, that the object of granting the injunction would be defeated by delay, the court should record reasons for its opinion as required by proviso to Rule 3 of Order 39 of the Code, before passing an order for injunction. The court must direct that such order shall operate only for a period of two weeks, during which notice along with copy of the application, plaint and relevant documents should be served on the competent authority or the counsel for the Corporation. Affidavit of service of notice should be filed as provided by proviso to Rule 3 of Order 39 aforesaid. If the Corporation has entered appearance, any such ex parte order of injunction should be extended only after hearing the counsel for the Corporation.

(*iii*) While passing an ex parte order of injunction the court shall direct the plaintiff to give an undertaking that he will not make any further construction upon the premises till the application for injunction is finally heard and disposed of.

5. This extract is taken from *Gujarat Bottling Co. Ltd. v. Coca Cola Co.*, (1995) 5 SCC 545 : (1995) 84 Comp Cas 618 at page 573

42. In the matter of grant of injunction, the practice in England is that where a contract is negative in nature, or contains an express negative stipulation, breach of it may be restrained by injunction and injunction is normally granted as a matter of course, even though the remedy is equitable and thus in principle a discretionary one and a defendant cannot resist an injunction simply on the ground that observance of the contract is burdensome to him and its breach would cause little or no prejudice to the plaintiff and that breach of an express negative stipulation can be restrained even though the plaintiff cannot show that the breach will cause him any loss. [See: *Chitty on Contracts*, 27th Edn., Vol. I, General Principles, paragraph 27-040 at p. 1310; *Halsbury's Laws of England*, 4th Edn., Vol. 24, paragraph 992.] In India Section 42 of the Specific Relief Act, 1963 prescribes that notwithstanding anything contained in clause (*e*) of Section 41, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement. This is subject to the proviso that the plaintiff has not failed to perform the contract so far as it is binding on him. The Court is, however, not bound to grant an injunction in every case and an injunction to enforce a negative covenant would be refused if it would indirectly compel the employee either to idleness or to serve the employer. [See: *Ehrman* v. *Bartholomew* [(1898) 1 Ch 671 : (1895-99) All ER Rep Ext 1680] ; *N.S. Golikari* [(1967) 2 SCR 378 : AIR 1967 SC 1098 : (1967) 1 LLJ 740] at p. 389.]

43. The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests — (*i*) whether the plaintiff has a prima facie case; (*ii*) whether the balance of convenience is in

favour of the plaintiff; and (*iii*) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience" lies. [See: *Wander Ltd.* v. *Antox India (P) Ltd.* [1990 Supp SCC 727] , (SCC at pp. 731-32.] In order to protect the defendant while granting an interlocutory injunction in his favour the court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial.

44. Shri Shanti Bhushan has contended that Coca Cola can be adequately compensated for the loss caused to it by award of damages in the event of it succeeding in the suit and that if the impugned injunction granted by the High Court is not reversed the loss suffered by GBC would be irreparable and incalculable inasmuch as the plants at Ahmedabad and Rajkot would remain idle and large number of workmen employed in those plants would be rendered unemployed and it may lead to closure of the undertaking of GBC. Shri Nariman and Shri Andhyarujina, on the other hand, have submitted that Pepsi in taking over GBC, took a calculated commercial risk knowing fully well the

effect of negative covenant contained in the 1993 Agreement and that if GBC is not restrained from manufacturing and selling Pepsi products for the stipulated period of one year, the goodwill and the market share which Coca Cola has for its own products would be effectively destroyed by a rival which has captured GBC and that damages would not be an adequate compensation for the injury which would be irreparable and that in respect of the loss that may be sustained by it, GBC would be protected by the undertaking that is required to be given by Coca Cola under Rule 148 of the Bombay High Court (Original Side) Rules, 1980.

45. We are inclined to agree with the submission of Shri Nariman and Shri Andhyarujina. Having regard to the negative covenant contained in paragraph 14 of the 1993 Agreement which is subsisting, Coca Cola has made out a prima facie case for grant of an injunction. As regards the other two requirements for grant of interlocutory injunction, viz., balance of convenience and irreparable injury, we find that as a result of the transfer of shares of GBC and Respondent 7 in favour of Appellants 2 to 5, the plants of GBC at Ahmedabad and Rajkot are now under the control of Pepsi. The 1993 Agreements were entered into by Coca Cola to ensure that the plants of GBC at Ahmedabad and Rajkot are available for manufacture of the beverages bearing the trade marks that were acquired by Coca Cola. The negative stipulation in paragraph 14 was inserted in order to preclude the said plants being used for manufacture of products of other manufacturers during the period the 1993 Agreements were subsisting. Pepsi by taking control over GBC sought to achieve a dual purpose, viz., reduce the production capacity of beverages bearing the trade marks held by Coca Cola by denying use of the plants of GBC at Ahmedabad and Rajkot for manufacture of those products and to increase the production capacity of Pepsi products by making available these plants for manufacture of Pepsi products. As a result of the interim injunction granted by the High Court the two plants of GBC cannot be used for manufacture of Pepsi products till 25-1-1996 and the effort of Pepsi to gain an advantage over Coca

Cola by reducing the availability of products of Coca Cola and increasing the availability of Pepsi products in the areas covered by the 1993 Agreements has been frustrated to a certain extent inasmuch as the increase in the availability of Pepsi products has been prevented. In the absence of such an order Pepsi would have been free to use the plants of GBC at Ahmedabad and Rajkot for the manufacture of their products. This would have resulted in reduction of the share of Coca Cola in the beverages market and the resultant loss in goodwill and profits could not be adequately compensated by damages. Insofar as loss that may be caused to GBC as a result of grant of interim injunction, we are of the view that the loss that may be sustained by GBC can be assessed and GBC can be compensated by award of damages which can be recovered from Coca Cola in view of the undertaking that Coca Cola is required to give under Rule 148 of the Bombay High Court (Original Side) Rules, 1980. It has not been suggested that Coca Cola does not have the financial capacity to pay the amount that is found payable.

46. The interim injunction granted by the High Court has been assailed by the appellants on the ground that as a result of refusal by Coca Cola to continue with the supply of essence/syrup and/or materials the bottling plants of GBC at Ahmedabad and Rajkot would remain idle and a large number of workmen who were employed in the said plants would be rendered unemployed. We cannot lose sight of the fact that this complaint is being made by Pepsi through the mouth of the appellants. It is difficult to appreciate how Pepsi can ask Coca Cola to part with its trade secrets to its business rival by supplying the essence/syrup etc. for which Coca Cola holds the trade marks to GBC which is under effective control of Pepsi. Pepsi took a deliberate decision to take over GBC with the full knowledge of the terms of the 1993 Agreement. It did so with a view to paralyse the operations of Coca Cola in that region and promote its products. In view of the negative stipulation contained in paragraph 14 of the 1993 Agreement which has been enforced by the High Court, Pepsi has not succeeded in this effort. It must suffer the consequences

of the failure of the effort and it cannot assail the interim injunction granted by the High Court by invoking the plight of the workmen who are employed in the bottling plants of GBC.

47. In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the Court for vacating the ad interim or temporary injunction order already granted in the pending suit or proceedings.

6. This extract is taken from *Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd.*, (1999) 7 SCC 1 : 1999 SCC OnLine SC 774 at page 9

9. Generally, however, the interlocutory remedy by way of a grant of an order of injunction is intended to preserve and maintain in status quo the rights of the parties and to protect the plaintiff, being the initiator, of the action against incursion of his rights and for which there is no appropriate compensation being quantified in terms of damages. The basic principle of the grant of an order of injunction is to assess the right and need of the plaintiff as against that of the defendant and it is a duty incumbent on to the law courts to determine as to where the balance lies.

10. Another redeeming feature in the matter of grant of interlocutory injunction is that in the event of a grant of injunction in regard to a party defendant where the latter's enterprise has commenced, and in that event the consideration may be somewhat different from that where the defendant is yet to commence its enterprise.

11. The decision of this Court in *Wander Ltd.* v. *Antox India (P) Ltd.* [1990 Supp SCC 727] lends support to the observations as above.

12. This Court in para 9 of the Report observed: (SCC pp. 731-32)

> "*9.* Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well-settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated
>
> '... is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding

need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine where the "balance of convenience" lies'.

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted."

13. Incidentally, the House of Lords prior to the decision in *American Cyanamid Co.* v. *Ethicon Ltd.* [(1975) 1 All ER 504 : 1975 AC 396 (HL)] in *J.T. Stratford & Son Ltd.* v. *Lindley* [1965 AC 269 : (1964) 3 All ER 102 (HL)] in no uncertain terms laid down that the plaintiff had to show a strong prima facie case that his rights had been infringed and thereafter the plaintiff was required to show that the damages would not be an adequate remedy in the event of there being a success of the plaintiff at the trial and that the balance of convenience favoured the grant. This requirement, however, in the matter of grant of an injunction so far as the English courts are concerned, stands slightly diluted by reason of the decision in *American Cyanamid case* [(1975) 1 All ER 504 : 1975 AC 396 (HL)] which records that in the event of there being a serious issue to decide, the grant would be available to a plaintiff on, however, compliance with the other fundamentals as noticed below. A strong prima facie case, therefore, stands substituted by a serious issue to be decided.

14. At this juncture, however, the decision of the House of Lords in *American Cyanamid case* [(1975) 1 All ER 504 : 1975 AC 396 (HL)] though raised certain eyebrows lately, ought to be considered in slightly more greater detail.

15. Lord Diplock in *Cyanamid case* [(1975) 1 All ER 504 : 1975 AC 396 (HL)] laid down the following guiding principles for the grant of interlocutory injunction:

"(*1*) The plaintiff must first satisfy the court that there is a serious issue to decide and that if the defendants were not restrained and the plaintiff won the action, damages at common law would be inadequate compensation for the plaintiff's loss.

(*2*) The court, once satisfied of these matters will then consider whether the balance of convenience lies in favour of granting injunction or not, that is, whether justice would be best served by an order of injunction.

(*3*) The court does not and cannot judge the merits of the parties' respective cases and that any decision of justice will be taken in a state of uncertainty about the parties' rights."

16. It would seem to follow, therefore, that what should be borne in mind, in addition to what has been phrased in Lord Diplock's speech, is that if there is uncertainty, the court should be doubly reluctant to issue an injunction, the effect of which is to settle the parties' rights once for all.

17. On a clear analysis of the speech of Lord Diplock, it appears that if damages, recoverable at common law, would be an adequate remedy and the defendant would be in a financial position to pay the same, no interlocutory injunction should normally be granted, howsoever strong the plaintiff's claim appears to be at that stage. Lord Diplock went on to observe further that in the event of there being any doubt, as to the adequacy of the respective remedies and damages available to either party or both, then and in that event, the question of balance of convenience arises and the same will vary from case to case.

18. Similar view has also been expressed by the House of Lords in the case of *Dimbleby & Sons Ltd.* v. *National Union of Journalists* [(1984) 1 All ER 751 (HL)] .

19. In *Power Control Appliances* v. *Sumeet Machines (P) Ltd.* [(1994) 2 SCC 448] this Court did follow the decision of this Court in *Antox India case* [1990 Supp SCC 727] and expressly approved the main dicta of the House of Lords in *American Cyanamid case* [(1975) 1 All ER 504 : 1975 AC 396 (HL)] .

20. In *Gujarat Bottling Co. Ltd.* v. *Coca Cola Co.* [(1995) 5 SCC 545 : AIR 1995 SC 2372] this Court, however, sounded a different note, though, however, emphasised the discretionary power in the matter of grant of interlocutory injunction and in para 43 this Court observed: (SCC p. 574)

> "*43*. The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests — (*i*) whether the plaintiff has a prima facie case; (*ii*) whether the balance of convenience is in favour of the plaintiff; and (*iii*) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience' lies. [See: *Wander Ltd.* v. *Antox India (P) Ltd.* [1990 Supp SCC 727] (SCC at pp. 731-32).] In order to protect the defendant while granting

an interlocutory injunction in his favour the court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial."

21. As noted above, lately the "triable issue concept" as introduced by Lord Diplock in *Cyanamid case* [(1975) 1 All ER 504 : 1975 AC 396 (HL)] has been thought to be much too rigid and wide even conceptually and doubts are even raised as to its legal efficacy having regard to the facts of adequate compensation theory. As a matter of fact the courts in England have even gone to the extent of ascribing the judgment to be beneficial for the richer sections of the society! We, however, cannot subscribe to such a view, neither find any justification for such uncharitable comments and it seems that *Cyanamid decision* [(1975) 1 All ER 504 : 1975 AC 396 (HL)] has been more misunderstood than understood and in this regard we record our concurrence with the views expressed by Laddie, J. in *Series 5 Software* v. *Clarke* [(1996) 1 All ER 853 (Ch D)] wherein the learned Judge has explained the judgment of *American Cyanamid* [(1975) 1 All ER 504 : 1975 AC 396 (HL)] with extreme competency and in our view also correctly. Laddie, J. observed:

"In many cases before *American Cyanamid* [(1975) 1 All ER 504 : 1975 AC 396 (HL)] the prospect of success was one of the important factors taken into account in assessing the balance of convenience. The courts would be less willing to subject the plaintiff to the risk of irrecoverable loss which would befall him if an interlocutory injunction was refused in those cases where it thought he was likely to win at the trial than in those cases where it thought he was likely to lose. The assessment of the prospects of success therefore was an important factor in deciding whether the court should exercise its discretion to grant interlocutory relief. It is this consideration which *American Cyanamid* [(1975) 1 All ER 504 : 1975 AC 396 (HL)] is said to have prohibited in all but the most exceptional case. So it is necessary to consider with some care what was said in the House of Lords on this issue.

Lord Diplock said in *American Cyanamid* (All ER at 511 : AC at 409):

> '... if the extent of the uncompensatable disadvantage to each party would not differ widely, it may not be improper to take into account in tipping the balance the relative strength of each party's case as revealed by the affidavit evidence adduced on the hearing of the application.... The court is not justified in embarking on anything resembling a trial of the action on conflicting affidavits in order to evaluate the strength of either party's case.'

It appears to me that there is nothing in this which is inconsistent with the old practice. Although couched in terms 'it may not be improper', this means that it is legitimate for the court to look at the relative strength of the parties' case as disclosed by the affidavits. The warning contained in the second of the quoted sentences is to avoid courts at the interlocutory stage engaging in mini-trials, which is what happened, at least in the Court of Appeal, in *American Cyanamid* [(1975) 1 All ER 504 : 1975 AC 396 (HL)] itself. Interlocutory applications are meant to come on quickly and to be disposed of quickly.

The supposed problem with *American Cyanamid* [(1975) 1 All ER 504 : 1975 AC 396 (HL)] centres on the following statement by Lord Diplock (AC at 409):

> '[Assessing the relative strength of the parties' cases], however, should be done only where it is apparent upon the facts disclosed by evidence as to which there is no credible dispute that the strength of one party's case is disproportionate to that of the other party.'

If this means that the court cannot take into account its view of the strength of each party's case if there is any dispute on the evidence, as suggested by the use of the words 'only' and 'no credible dispute', then a new inflexible rule has been introduced to replace that applied by the Court of Appeal. For example, all a defendant would have to do is raise a non-demurrable dispute as to relevant facts in his affidavit evidence and then he could invite the court to ignore the apparent strength of the plaintiff's case.

This would be inconsistent with the flexible approach suggested in *Hubbard* v. *Vosper* [(1972) 1 All ER 1023 : (1972) 2 QB 84 (CA)] which was cited with approval earlier in *American Cyanamid* [(1975) 1 All ER 504 : 1975 AC 396 (HL)] All ER at 510 : AC at 407. Furthermore, it would be somewhat strange, since *American Cyanamid* [(1975) 1 All ER 504 : 1975 AC 396 (HL)] directs courts to assess the adequacy of damages and the balance of convenience, yet these too are topics which will almost always be the subject of unresolved conflicts in the affidavit evidence.

In my view *Lord Diplock did not intend by the last-quoted passage to exclude consideration of the strength of the cases in most applications for interlocutory relief. It appears to me that what is intended is that the court should not attempt to resolve difficult issues of fact or law on an application for interlocutory relief. If, on the other hand, the court is able to come to a view as to the strength of the parties' cases on the credible evidence, then it can do so.*"

(emphasis supplied)

22. The learned Judge thereafter went on to record that the House of Lords in *American Cyanamid* [(1975) 1 All ER 504 : 1975 AC 396 (HL)] did not suggest that it was changing the basis upon which most courts had approached the exercise of discretion in this important area.

23. Thus on an analysis of the decisions as noticed above, there does not seem to be any difficulty in appreciating the view as expressed by Lord Diplock in *American Cyanamid* [(1975) 1 All ER 504 : 1975 AC 396 (HL)] . As a matter of fact, Laddie, J.'s decision in *Series 5 Software case* [(1996) 1 All ER 853 (Ch D)] has been able to resolve the issue without any departure from the true perspective of the judgment as noticed above.

24. We, however, think it fit to note herein below certain specific considerations in the matter of grant of interlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the court, since the issue of grant of injunction, usually, is at the earliest possible stage

so far as the time-frame is concerned. The other considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:

(*i*) extent of damages being an adequate remedy;

(*ii*) protect the plaintiff's interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefor;

(*iii*) the court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the other's;

(*iv*) no fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case — the relief being kept flexible;

(*v*) the issue is to be looked at from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;

(*vi*) balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;

(*vii*) whether the grant or refusal of injunction will adversely affect the interest of the general public which can or cannot be compensated otherwise.

Interim Injunction order 39 Rule 1& 2

7.This extract is taken from *Hindustan Petroleum Corpn. Ltd. v. Sriman Narayan*, (2002) 5 SCC 760 : 2002 SCC OnLine SC 618 at page 765

7. It is elementary that grant of an interlocutory injunction during the pendency of the legal proceeding is a matter requiring the exercise of discretion of the court. While exercising the discretion the court normally applies the following tests:

(*i*) whether the plaintiff has a prima facie case;

(*ii*) whether the balance of convenience is in favour of the plaintiff; and

(*iii*) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

8. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the exercise of the legal right asserted by the plaintiff and its alleged violation are both contested and remain uncertain till they are established on evidence at the trial. The relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience" lies. (See *Gujarat Bottling Co. Ltd.* v. *Coca Cola Co.* [(1995) 5 SCC 545] SCC at p. 574.)

9. In *Dorab Cawasji Warden* v. *Coomi Sorab Warden* [(1990) 2 SCC 117] this Court, discussing the principles to be kept in mind in considering the prayer

for interlocutory mandatory injunction, observed: (SCC pp. 126-27, paras 16-17)

"*16*. 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.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as a prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

8. This extract is taken from *Best Sellers Retail (India) (P) Ltd. v. Aditya Birla Nuvo Ltd.*, (2012) 6 SCC 792 : (2012) 3 SCC (Civ) 1044 : 2012 SCC OnLine SC 424 at page 798

26. It has been held by this Court in *Kishoresinh Ratansinh Jadeja* v. *Maruti Corpn.* [(2009) 11 SCC 229 : (2009) 4 SCC (Civ) 506] that it is well established that while passing an interim order of injunction under Order 39 Rules 1 and 2 CPC, the Court is required to consider:

(*i*) whether there is a prima facie case in favour of the plaintiff;

(*ii*) whether the balance of convenience is in favour of passing the order of injunction; and

(*iii*) whether the plaintiff will suffer irreparable injury if an order of injunction would not be passed as prayed for.

Hence, we only have to consider whether these well-settled principles relating to grant of temporary injunction have been kept in mind by the trial court and the High Court.

29. Yet, the settled principle of law is that even where prima facie case is in favour of the plaintiff, the Court will refuse temporary injunction if the injury suffered by the plaintiff on account of refusal of temporary injunction was not irreparable.

30. In *Dalpat Kumar* v. *Prahlad Singh* [(1992) 1 SCC 719] this Court held: (SCC p. 721, para 5)

"*5.* … Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in 'irreparable injury' to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but

means only that the injury must be a material one, namely, one that cannot be adequately compensated by way of damages."

36. To quote the words of Alderson, B. in *Attorney General* v. *Hallett* [(1857) 16 M & W 569 : 153 ER 1316] : (ER p. 1321)

"... I take the meaning of irreparable injury to be that which, if not prevented by injunction, cannot be afterwards compensated by any decree which the court can pronounce in the result of the cause."

Injunction I suit for specific performance and declaration of title

9.This extract is taken from *Ambalal Sarabhai Enterprise Ltd. v. KS Infraspace LLP Ltd.*, (2020) 5 SCC 410 : (2020) 3 SCC (Civ) 305 : 2020 SCC OnLine SC 1 at page 415

15. Chapter VII, Section 36 of the Specific Relief Act, 1963 (hereinafter referred to as "the Act") provides for grant of preventive relief. Section 37 provides that temporary injunction in a suit shall be regulated by the Code of Civil Procedure. The grant of relief in a suit for specific performance is itself a discretionary remedy. A plaintiff seeking temporary injunction in a suit for specific performance will therefore have to establish a strong prima facie case on basis of undisputed facts. The conduct of the plaintiff will also be a very relevant consideration for purposes of injunction. The discretion at this stage has to be exercised judiciously and not arbitrarily.

16. The cardinal principles for grant of temporary injunction were considered in *Dalpat Kumar* v. *Prahlad Singh* [*Dalpat Kumar* v. *Prahlad Singh*, (1992) 1 SCC 719] , observing as follows : (SCC p. 721, para 5)

> "*5.* … Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely, one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused

and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

17. The negotiations between the plaintiff and the defendant is reflected in approximately 17 e-mails exchanged between them commencing from December 2017 to 31-3-2018. The file size of the attachment to the mails has varied from 48-50-52-48-57-56 KBs indicating suggestions and corrections from time to time. The WhatsApp messages which are virtual verbal communications are matters of evidence with regard to their meaning and its contents to be proved during trial by evidence-in-chief and cross-examination. The e-mails and WhatsApp messages will have to be read and understood cumulatively to decipher whether there was a concluded contract or not. The use of the words "final draft" in the e-mail dated 30-3-2018 cannot be determinative by itself. The e-mail dated 26-2-2018 sent by the defendant at 11.46 a.m. had also used the same phraseology. The plaintiff was well aware from the very inception that the defendant was negotiating for sale of the lands simultaneously with two others. The plaintiff was further aware on 30-3-2018 itself that the deal with it had virtually fallen through as informed to the escrow agent. The fact that a draft MoU christened as "final-for discussion" was sent the same day cannot lead to the inference in isolation, of a concluded contract. There is no evidence at this stage that the acceptance was communicated to the defendant before the latter entered into a deal with Defendant 2 on 30-3-2018 and executed a registered agreement for sale on 31-3-2018. Defendant 2 paid Rs 17.69 crores and Rs 2.20 crores towards the income tax dues of the defendant the same day, as part of the consideration amount. It is only thereafter the plaintiff purports to have communicated its acceptance to the defendant on 31-3-2018 at 1.13 p.m. The prolonged negotiations between the

parties reflect that matters were still at the "embryo stage" as observed in *Agriculture Produce Market Committee* v. *Girdharbhai Ramjibhai Chhaniyara* [*Agriculture Produce Market Committee* v. *Girdharbhai Ramjibhai Chhaniyara*, (1997) 5 SCC 468] . The plaintiff at this stage has failed to establish that there was a mutuality between the parties much less that they were ad idem.

18. The pleadings in the suit acknowledge the awareness of the plaintiff of the ongoing negotiations with Defendant 2. The advance of Rs 2.16 crores was refunded to the plaintiff in the evening on 31-3-2018 by RTGS. No effort was made by the plaintiff to again remit the sum by RTGS immediately or the next day. Only a public notice was published on 3-4-2018 refuted by the defendant on 4-3-2018. The suit was then filed seven months later on 1-10-2018. The explanation that the plaintiff waited hopefully for a solution outside litigation as a prudent businessman before finally instituting the suit is too lame an excuse to merit any consideration.

19. In a matter concerning grant of injunction, apart from the existence of a prima facie case, balance of convenience, irreparable injury, the conduct of the party seeking the equitable relief of injunction is also very essential to be considered as observed in *Motilal Jain* [*Motilal Jain* v. *Ramdasi Devi*, (2000) 6 SCC 420] holding as follows : (SCC p. 424, para 6)

> "*6*. The first ground which the High Court [*Ramdasi Devi* v. *Motilal Jain*, 1990 SCC OnLine Gau 120 : (1991) 2 Gau LR 195] took note of is the delay in filing the suit. It may be apt to bear in mind the following aspects of delay which are relevant in a case of specific performance of contract for sale of immovable property:
>
> (*i*) delay running beyond the period prescribed under the Limitation Act;
>
> (*ii*) delay in cases where though the suit is within the period of limitation, yet:
>
> (*a*) due to delay the third parties have acquired rights in the subject-matter of the suit;

(*b*) in the facts and circumstances of the case, delay may give rise to plea of waiver or otherwise it will be inequitable to grant a discretionary relief."

20. Defendant 2, in addition to the dues of the Income Tax Department as aforesaid, made further payments to the defendant of Rs 25,44,57,769 by 16-1-2019 aggregating to a total payment of Rs 45,84,71,869. The defendants had also proceeded to utilise a sum of Rs 36.20 crores also and had therefore materially altered their position evidently by the inaction of the plaintiff to institute the suit in time and having allowed third party rights to accrue by making substantial investments. In *Madamsetty* [*Mademsetty Satyanarayana* v. *G. Yelloji Rao*, (1965) 2 SCR 221 : AIR 1965 SC 1405] it was observed : (AIR p. 1410, para 11)

"*11*. … It is not possible or desirable to lay down the circumstances under which a court can exercise its discretion against the plaintiff. But they must be such that the representation by conduct or neglect of the plaintiff is directly responsible in inducing the defendant to change his position to his prejudice or such as to bring about a situation when it would be inequitable to give him such a relief."

Similar view has been expressed in *Mandali Ranganna* [*Mandali Ranganna* v. *T. Ramachandra*, (2008) 11 SCC 1] .

21. We are therefore of the considered opinion that in the facts and circumstances of the present case, and the nature of the materials placed before us at this stage, whether there existed a concluded contract between the parties or not, is itself a matter for trial to be decided on basis of the evidence that may be led. If the plaintiff contended a concluded contract and/or an oral contract by inference, leaving an executed document as a mere formality, the onus lay on the plaintiff to demonstrate that the parties were ad idem having discharged their obligations as observed in *Brij Mohan* [*Brij Mohan* v. *Sugra Begum*, (1990) 4 SCC 147] . The plaintiff failed to show the same on admitted facts. The draft MoU dated 30-3-2018 in Clause C contemplated payment of

the income tax dues of Rs 18.64 crores as part of the consideration amount only whereafter the agreement was to be signed relating back to the date 29-3-2008. Had this amount been already paid or remitted by the plaintiff, entirely different considerations would have arisen with regard to the requirement for execution of a written agreement remaining a mere formality. Needless to state the balance of convenience is in favour of the defendants on account of the intervening developments, without furthermore, inter alia by reason of the plaintiff having waited for seven months to institute the suit. The question of irreparable harm to a party complaining of a breach of contract does not arise if other remedies are available to the party complaining of the breach. The High Court has itself observed that from the negotiations between the parties that "some rough weather was being reflected between the plaintiff and the defendant …". The Special Civil Judge failed to address the issue of delay. The High Court noticed the arguments of the defendants with regard to delay in the institution of the suit but failed to deal with it.

22. In *M.P. Mathur* v. *DTC* [*M.P. Mathur* v. *DTC*, (2006) 13 SCC 706] , this Court observed : (SCC p. 716, para 14)

> "*14*. The present suit is based on equity. … In the present case, the plaintiffs have sought a remedy which is discretionary. They have instituted the suit under Section 34 of the 1963 Act. The discretion which the court has to exercise is a judicial discretion. That discretion has to be exercised on well-settled principles. Therefore, the court has to consider—the nature of obligation in respect of which performance is sought, circumstances under which the decision came to be made, the conduct of the parties and the effect of the court granting the decree. In such cases, the court has to look at the contract. The court has to ascertain whether there exists an element of mutuality in the contract. If there is absence of mutuality the court will not exercise discretion in favour of the plaintiffs. Even if, want of mutuality is regarded as discretionary and not as an absolute bar to specific performance, the court has to consider the entire conduct of the parties in

relation to the subject-matter and in case of any disqualifying circumstances the court will not grant the relief prayed for (*Snell's Equity*, 31st Edn., p. 366)."

23.*Wander Ltd.* [*Wander Ltd.* v. *Antox (India) (P) Ltd.*, 1990 Supp SCC 727] prescribes a rule of prudence only. Much will depend on the facts of a case. It fell for consideration again in *Gujarat Bottling Co. Ltd.* v. *Coca Cola Co.* [*Gujarat Bottling Co. Ltd.* v. *Coca Cola Co.*, (1995) 5 SCC 545] , observing as follows : (SCC p. 576, para 47)

"*47*. ... Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest."

9. This extract is taken from *Ambalal Sarabhai Enterprise Ltd. v. KS Infraspace LLP Ltd.*, (2020) 5 SCC 410 : (2020) 3 SCC (Civ) 305 : 2020 SCC OnLine SC 1 at page 417

19. In a matter concerning grant of injunction, apart from the existence of a prima facie case, balance of convenience, irreparable injury, the conduct of the party seeking the equitable relief of injunction is also very essential to be considered as observed in *Motilal Jain* [*Motilal Jain* v. *Ramdasi Devi*, (2000) 6 SCC 420] holding as follows : (SCC p. 424, para 6)

"*6*. The first ground which the High Court [*Ramdasi Devi* v. *Motilal Jain*, 1990 SCC OnLine Gau 120 : (1991) 2 Gau LR 195] took note of is the delay in filing the suit. It may be apt to bear in mind the following aspects of delay which are relevant in a case of specific performance of contract for sale of immovable property:

(*i*) delay running beyond the period prescribed under the Limitation Act;

(*ii*) delay in cases where though the suit is within the period of limitation, yet:

(*a*) due to delay the third parties have acquired rights in the subject-matter of the suit;

(*b*) in the facts and circumstances of the case, delay may give rise to plea of waiver or otherwise it will be inequitable to grant a discretionary relief."

22. In *M.P. Mathur* v. *DTC* [*M.P. Mathur* v. *DTC*, (2006) 13 SCC 706] , this Court observed : (SCC p. 716, para 14)

"*14*. The present suit is based on equity. … In the present case, the plaintiffs have sought a remedy which is discretionary. They have instituted the suit under Section 34 of the 1963 Act. The discretion which the court has to exercise is a judicial discretion. That discretion has to be exercised on well-settled principles. Therefore, the court has to consider—the nature

of obligation in respect of which performance is sought, circumstances under which the decision came to be made, the conduct of the parties and the effect of the court granting the decree. In such cases, the court has to look at the contract. The court has to ascertain whether there exists an element of mutuality in the contract. If there is absence of mutuality the court will not exercise discretion in favour of the plaintiffs. Even if, want of mutuality is regarded as discretionary and not as an absolute bar to specific performance, the court has to consider the entire conduct of the parties in relation to the subject-matter and in case of any disqualifying circumstances the court will not grant the relief prayed for (*Snell's Equity*, 31st Edn., p. 366)."

23.*Wander Ltd.* [*Wander Ltd.* v. *Antox (India) (P) Ltd.*, 1990 Supp SCC 727] prescribes a rule of prudence only. Much will depend on the facts of a case. It fell for consideration again in *Gujarat Bottling Co. Ltd.* v. *Coca Cola Co.* [*Gujarat Bottling Co. Ltd.* v. *Coca Cola Co.*, (1995) 5 SCC 545] , observing as follows : (SCC p. 576, para 47)

"*47.* … Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest."

10. This extract is taken from *Narendra Hirawat & Co. v. Sholay Media Entertainment (P) Ltd.*, (2023) 16 SCC 102 : 2022 SCC OnLine SC 1878 at page 108

19. In *Shah Babulal Khimji* v. *Jayaben D. Kania* [*Shah Babulal Khimji* v. *Jayaben D. Kania*, (1981) 4 SCC 8] , a three-Judge Bench of this Court had opined that Section 104 read with Order 43 Rule 1 of the Code of Civil Procedure, 1908 applied to a letters patent appeal as well. In *Dorab Cawasji Warden* v. *Coomi Sorab Warden* [*Dorab Cawasji Warden* v. *Coomi Sorab Warden*, (1990) 2 SCC 117] grant of mandatory injunction at the interim stage has been left to the sound judicial discretion of the court. *Metro Marins* v. *Bonus Watch Co. (P) Ltd.* [*Metro Marins* v. *Bonus Watch Co. (P) Ltd.*, (2004) 7 SCC 478] also follows the principles laid down in *Dorab Cawasji Warden* [*Dorab Cawasji Warden* v. *Coomi Sorab Warden*, (1990) 2 SCC 117] . But these two authorities dealt with the question of grant of interim injunction in relation to disputes arising out of transfer of immovable property. Applicability of Rules 1 and 2 of Order 39 of the Code on the question of granting interim injunction has been reconfirmed by a coordinate Bench of this Court in *Best Sellers Retail (India) (P) Ltd.* v. *Aditya Birla Nuvo Ltd.* [*Best Sellers Retail (India) (P) Ltd.* v. *Aditya Birla Nuvo Ltd.*, (2012) 6 SCC 792 : (2012) 3 SCC (Civ) 1044] In *Colgate Palmolive (India) Ltd.* v. *Hindustan Lever Ltd.* [*Colgate Palmolive (India) Ltd.* v. *Hindustan Lever Ltd.*, (1999) 7 SCC 1] , the principles guiding grant of interim injunction have been summarised as : (*Colgate Palmolive case* [*Colgate Palmolive (India) Ltd.* v. *Hindustan Lever Ltd.*, (1999) 7 SCC 1] , SCC pp. 13-14, para 24)

> "*24*. We, however, think it fit to note hereinbelow certain specific considerations in the matter of grant of interlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the court, since the issue of grant of injunction, usually, is at the earliest possible stage so far as the time-frame is concerned. The other considerations which

ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:

(*i*) extent of damages being an adequate remedy;

(*ii*) protect the plaintiff's interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefor;

(*iii*) the court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the other's;

(*iv*) no fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case — the relief being kept flexible;

(*v*) the issue is to be looked at from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;

(*vi*) balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;

(*vii*) whether the grant or refusal of injunction will adversely affect the interest of the general public which can or cannot be compensated otherwise."

Compiled by

(Purushottam Mishra)
Principal District & Sessions Judge, Bihar