Interim Orders – Importance, basis for granting or rejecting interim orders and importance of Reasoned Order

Paper Presentation
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a) Interim Orders:-

Interim Orders are temporary reliefs granted by Courts to protect the interests of parties and preserve subject matter of dispute during pendency of the suit. The following are the Interim remedies provided under CPC

1. Temporary Injunctions
2. Appointment of Receiver
3. Arrest before Judgment
4. Attachment before Judgment

1. The grounds for granting orders of temporary injunction (Order 39 Rule 1 & 2)

a) When there is a reasonable apprehension and danger of alienation or disposal of property by any party to the suit or by wrongful waste of the property; or

b) When there is an apprehension of alienation or disposal of the property to defraud creditors; or

c) Where defendant threatens to dispossess the plaintiff or otherwise causes injury to the interest of the plaintiff or otherwise causes injury to the interest of plaintiff in relation to the disputed property; or

d) When the defendant is about to commit a breach of contract; or

e) Any other injury is likely to be caused or likely to be repeated; or

f) Where the court is of the opinion that for protection of interest of any party to the suit or in the interest of justice injunction is required and necessary.

2. Temporary Injunction when cannot be granted

a) To restrain any person from prosecuting a judicial proceeding at the institution of the suit, in which injunction is sought, unless restraint is necessary to prevent multiplicity of proceedings.

b) To restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that, from which injunction is sought.

c) To restrain any person from applying to any legislative body.

d) To restrain any person from instituting or prosecuting any proceeding in a criminal matter.

e) To prevent the breach of a contract, the performance of which could not be specifically enforced.

f) To prevent on the ground of nuisance and act of which it is not reasonably clear that it will be a nuisance.

g) To prevent a continuing breach in which the plaintiff has acquiesced.

h) When equally efficacious relief can be certainly be obtained by any other usual mode of proceeding except in case of breach of trust.

i) When conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court.

j) When the plaintiff has no personal interest in the matter.

3. The three cardinal principles for granting of temporary injunctions

1. Prima facie case – The applicant must show a triable issue not a frivolous suit. In every application, the applicant or plaintiff must make out a prima facie case in support of the right claimed by the plaintiff. The court should be pleased that there is a bona fide dispute between the parties. The plaintiff is given the burden to prove and satisfy the court that he has a prima facie case in his favour. The plaintiff should come to the court with clean hands. In case of any material facts suppressed by the plaintiff, the plaintiff is not entitled for any relief.

In **Mandati Ranganna v. T. Ramachandra :AIR 2008 SC 2291**, it is held that while considering an application for grant of injunction, the Court will not only take into consideration the basic elements in relation thereto, viz., existence of a prima facie case, balance of convenience and irreparable injury. It must also take into consideration the conduct of the parties. Grant of injunction is an equitable relief. A person, who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The court will not interfere only because the property is a very valuable one. The court, dealing with such matters, must make all endeavours to protect the interest of the parties.

In **Paidsetti Bhanknarayana v. Paidsetti Rajeshwar Rao: AIR 1999 Orissa 92**, the Court observed that it is not necessary that the plaintiff should establish his title to the property in suit. It is enough for him to show that he has a fair question to raise as to the existence of the right which he alleges and can satisfy the Court that the property in dispute should be preserved in its present actual condition until such question be disposed of.

2. Balance of convenience - The Court weighs whether the hardship to the applicant if the order is refused is greater than the inconvenience to the Respondent if the order is granted.

3. Irreparable Injury – Harm likely to be caused if injunction is not granted which cannot be compensated in money.

The grounds for rejecting Interim orders

1. Conduct of the applicant - when there is undue delay on his part
2. Unclean hands – when there is concealment of facts
3. 3 trite principles – when any of the 3 ingredients of temporary injunction remain unfulfilled.

4. Exparte Ad-interim injunction (Order 39 Rule 3)

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.

Provided 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 and require the applicant

(a) to deliver to the opposite party or to send to him by registered post immediately, after the order granting the injunction has been made, a copy of the application for injunction together with

i) a copy of the affidavit filed in support of the application,

ii) a copy of the plaint and

iii) copies of documents on which the applicant relies and

(b) to file on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.

Therefore, this rule requires the applicant to issue notice to the opposite party before injunction is granted.

The Hon'ble Supreme Court observed in **A.Venkata Subbaiah Naidu V.S.Chellappan AIR 2000 SC 3032** that when an ex parte temporary injunction is granted, the Court must endeavour to finally dispose of the injunction application within 30 days under Order XXXIX Rule 3A of CPC

5. Consequences of disobedience or breach of injunction:-

(1) In non-compliance or breach of order made under Rules 1 and 2, the Court granting the injunction or making the order or any Court to which the suit proceeding is transferred may order the property of such wrongdoer to be attached and may also order such person to be detained in civil prison for a term not exceeding 3 months unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force more than 1 year. At the end of which time if the disobedience or breach continues the property attached may be sold and out of the proceeds the Court may award

such compensation as it thinks fit to the injured party and shall pay the balance if any to the party entitled thereto. Thus the consequences of breach of injunction are

(i) The ordering of the attachment property in question

(ii) Detention in civil prison

(iii) In the case where the breach continues for more than a certain period, the property attached may be sold.

A person is liable to the proceedings against under Order 39 Rule 2A, even if he was not personally a party to the suit, provided he is shown to have been agent or servant of the defendant and to have violated the order of injunction, in spite of the knowledge that there was such an order.

2. Appointment of Receiver (Order 40 CPC)

A Receiver is appointed by the court to take custody, preserve, manage and protect property during the pendency of litigation. The appointment of receiver displaces the possession of all parties and places the property under the custody of the court.

When a Receiver may be appointed

1. When property is at risk of being wasted, damaged or wrongfully alienated

2. In partnership disputes, mortgage suits or family property disputes

3. When it is just and convenient in the interest of justice

The Judicial principles to be adopted

1. Appointment of receiver is a harsh remedy as it deprives a party of possession before final adjudication

2. Courts exercise this power sparingly and only in extreme cases

3. The guidelines laid down in **T.Krishnaswami Chetty v. C.Thangavelu Chetty (AIR 1955 Madras 430)**. The five principles described as the "panch sadachar' in appointing receivers are as follows

(1) The appointment of a receiver pending a suit is a matter resting in the discretion of the Court. The discretion is not arbitrary or absolute: it is a

sound and judicial discretion, taking into account all the circumstances of the case, exercised for the purpose of permitting the ends of justice, and protecting the rights of all parties interested in the controversy and the subject matter and based upon the fact that there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceeding.

(2) The Court should not appoint a receiver except upon proof by the plaintiff that prima facie he has very excellent chance of succeeding in the suit.

(3) Not only must the plaintiff show a case of adverse and conflicting claims to property, but he must show some emergency or danger or loss demanding immediate action and of his own right, he must be reasonably clear and free from doubt. The element of danger is an important consideration. A Court will not act on possible danger only; the danger must be great and imminent demanding immediate relief. It has been truly said that a Court will never appoint a receiver merely on the ground that it will do no harm.

(4) An order appointing a receiver will not be made where it has the effect of depriving a defendant of a 'de facto' possession since that might cause irreparable wrong. If the dispute is as to title only, the Court very reluctantly disturbs possession by receiver, but if the property is exposed to danger and loss and the person in possession has obtained it through, fraud or force the Court will interpose by receiver for the security of the property. It would be different where the property is shown to be 'in medio', that is to say, in the enjoyment of no one, as the Court can hardly do wrong in taking possession: it will then be the common interest of all the parties that the Court should prevent a scramble as no one seems to be in actual lawful enjoyment of the property and no harm can be done to anyone by taking it and preserving it for the benefit of the legitimate who may prove successful. Therefore, even if there is no allegation of waste and mismanagement the fact that the property is more or less 'in medio' is sufficient to vest a Court with jurisdiction to appoint a receiver Otherwise a receiver should not be appointed in supersession of a bone fide possessor of property in controversy and bona fides have to be

presumed until the contrary is established or can be indubitably inferred.

(5) The Court, on the application of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame. He must come to Court with clean hands and should not have disentitled himself to the equitable relief by laches, delay, acquiescence etc.,

3. Arrest before Judgment:- (Order 38 Rule 1 to 4 CPC)

i) An application for arrest may be filed by the plaintiff at any point after the presentation of the plaint, even before the defendant has been served with summons. However, before exercising this exceptional power, the court must be satisfied with two conditions:

(a) The plaintiff's suit must be genuine, and their cause of action must appear to be prima facie valid, subject to the plaintiff substantiating the allegations made in the plaint.

(b) The court must have sufficient grounds to believe, based on adequate evidence, that unless this extraordinary power is invoked, there is a genuine risk that the defendant will attempt to evade the jurisdiction of the court by either leaving the jurisdiction or transferring their property beyond the reach of the court's authority. The authority to arrest the defendant, particularly before a decree is issued in favour of the plaintiff, is a drastic measure and should be exercised with careful consideration.

(c) Before invoking this rule, the court must be convinced, based on substantial evidence, that there exists a genuine risk that the defendant will attempt to evade the jurisdiction of the court by either leaving the jurisdiction or disposing of their assets. As highlighted in the case of

Vareed Jacob v. Sosamma Greevarghese (2004) 6 SCC 378, the court must exercise this power with due care, caution, and circumspection.

It is crucial to note that the power to arrest before judgement should not be utilised as a means for the plaintiff to coerce or compel the defendant to settle, nor should it be employed to ensure an easier execution of the decree.

This principle was emphasised in the case of **Raman Tech. & Process Engg Co. v. Solanki Traders (2008) 2 SCC 302.**

Arrest on insufficient grounds:-

a) Section 95 stipulates that in any suit where the plaintiff secures an order of arrest against the defendant based on insufficient grounds, or if the plaintiff's suit ultimately fails and the court determines that there was no reasonable or probable cause for initiating the suit, the defendant may apply to the court for compensation.

b) Upon such application, the Court has the authority to order the plaintiff to pay compensation to the defendant. The amount of compensation awarded should be reasonable and may not exceed fifty thousand rupees.

c) This compensation aims to cover any expenses incurred by the defendant or any harm, including damage to reputation, suffered as a result of the unjustified legal action taken by the plaintiff.

4. Attachment before Judgment:- (Order 38 Rule 5 to 13 CPC)

1. If the Court is satisfied that the defendant is about to dispose of or remove property with intent to obstruct execution of a decree, it may order attachment of such property.

2. The purpose is to ensure that property remains available for execution in the event of decree.

3. This is a preventive and protective remedy, not punitive.

4. It prevents fraudulent disposal of property or evasion of justice.

Settled principles for granting attachment before judgment:-

In the case of **Premraj Mundra vs Md. Maneck Gazi And Ors.: AIR 1951 Cal 156**, the following principles are given in para 10 as to attachment before judgment

(1) That an order under Order 38, Rules 5 & 6, can only be issued, if circumstances exist as are stated therein.

(2) Whether such circumstances exist is a question of fact that must be proved to the satisfaction of the Court.

(3) That the Court would not be justified in issuing an order for attachment before judgment, or for security, merely because it thinks that no harm would be done thereby or that the defendants would not be prejudiced.

(4) That the affidavits in support of the contentions of the applicant, must not be vague, & must be properly verified. Where it is affirmed true to knowledge or information or belief, it must be stated as to which portion is true to knowledge, the source of information should be disclosed, & the grounds for belief should be stated.

(5) That a mere allegation that the defendant was selling off & his properties is not sufficient. Particulars must be stated.

(6) There is no rule that transactions before suit cannot be taken into consideration, but the object of attachment before judgment must be to prevent future transfer or alienation.

(7) Where only a small portion of the property belonging to the defendant. is being disposed of, no inference can be drawn in the absence of other circumstances that the alienation is necessarily to defraud or delay the plaintiff's claim.

(8) That the mere fact of transfer is not enough, since nobody can be prevented from dealing with his properties simply because a suit has been filed: There must be additional circumstances to show that the transfer is with an intention to delay or defeat the plaintiff's claim. It is open to the Court to look to the conduct of the parties immediately before suit, & to examine the surrounding circumstances, & to draw an inference as to whether the defendant is about to dispose of the property, & if so, with what intention. The Court is entitled to consider the nature of the claim & the defence put forward.

(9) The fact that the defendant is in insolvent circumstances or in acute financial embarrassment, is a relevant circumstance, but not by itself sufficient.

(10) That in the case of running businesses, the strictest caution is necessary & the mere fact that a business has been closed, or that its turnover has diminished, is not enough.

(11) Where however the defendant starts disposing of his properties one by one, immediately upon getting a notice of the plaintiff's claim, &/or where he had transferred the major portion of his properties shortly prior to the institution of the suit & was in an embarrassed financial condition, these were grounds from which an inference could be legitimately drawn that the object of the defendant was to delay and defeat the plaintiff's claim.

(12) Mere removal of properties outside jurisdiction, is not enough, but where the defendant with notice of the plaintiff's claim, suddenly begins removal of his properties outside the jurisdiction of the appropriate Court, & without any other satisfactory reason, an adverse inference may be drawn against the defendant, Where the removal is to a foreign country, the inference is greatly strengthened.

(13) The defendant in a suit is under no liabilty to take any special care in administering his affairs, simply because there is a claim pending against him. Mere neglect, or suffering execution by other creditors, is not a sufficient reason for an order under Order 38 of the Code.

14) The sale of properties at a gross undervalue, or benami transfers, are always good indications of an intention to defeat the plaintiff's claim. The Court must however be very cautious about the evidence on these points & not rely on vague allegations.

5. In **LK Prabhu @ L.Krishna Prabhu (D) by LRs v. KT Mathew @Thampan Thomas & Ors (Civil Appeal No. /2025 arising out of SLP(C) No.15592 of 2023)**

It was held that an attachment before judgment cannot extend to properties already alienated via registered sale deed prior to the institution of suit. Fraudulent transfer allegations must be adjudicated in independent substantive suits under Section 53 of Transfer of Property Act, not in summary attachment proceedings.

6. In **N.Pappammal v. L.Chidambaram (1983 Supreme (Mad) 497)**

It was observed that issuing an attachment before judgment without giving the defendant a prior opportunity to furnish security or show cause violates sub rule (1) and invalidates attachment.

7. The Orders of attachment and raising of attachments must be communicated to the Registration department to protect bonafide purchasers and prevent obsolete entries from continuing in Encumbrance certificates.

8. <u>Importance of Reasoned Orders:-</u>

i) A reasoned order promotes transparency and accountability. When reasons are provided, it becomes easier to assess whether decision was impartial, fair and based on sound judgment.

ii) A reasoned order is linked to principles of natural justice particularly the right to be heard and right to fair trial. It provides that they have considered all the relevant material and arguments presented by the parties involved. This ensures that individuals are treated fairly and their rights are protected.

iii) A reasoned order ensures that decisions are based on evidence and logic, rather than on personal biases or whims.

iv) A reasoned order facilitate judicial review and appeals.

v) A reasoned order enhances public trust and confidence that the decisions are based on sound principles.

vi) When decisions are well reasoned and clearly explained, they are less likely to be challenged in Courts. Affected parties are more likely to accept a decision if they understand the rationale behind it and are convinced that it was made fairly. This can lead to reduction in the number of appeals saving time and resources of all parties involved.

Conclusion:-

It could be said that Interim orders are essential for smooth functioning of litigation proceedings. An Interim order is a temperory Court decision made during an active lawsuit. It keeps things stable until the Court reaches a final verdict. It preserves the rights of parties while parties wait for permanent ruling. Interim orders serve as an indispensable judicial mechanism that bridges the gap between the initiation of lawsuit and its final adjudication ensuring that status quo is maintained and irreparable injury is averted. By acting as a dynamic safeguard rather than final determination of rights these temporary measures preserve the efficacy of judicial process, protect the balance of convenience and uphold the ultimate integrity of Court's final decree.