
Order-39 TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

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1. Cases in which temporary injunction may be granted :-

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(1) Where in any suit it is proved by affidavit or otherwise-

(a) that any property in dispute in a suit is in danger or being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends to remove or dispose of his property with a view to ²[defrauding] his creditors,

³[(c) 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 the wasting, damaging, alienation, sale removal or disposition of the property [or disposition 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.

4 (2) The Court shall, while granting a temporary injunction to restrain such act or to make such other order for the purposes of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of property of dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property under disposition in the suit under sub-rule (1) direct the plaintiff to give security or otherwise as the Court thinks fit.

1. Rule 1 renumbered as sub-rule(1) in Rule 1 by " Order-39 TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS" Dt.December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

2. Subs. by C.P.C. (Amendment) Act 104 of 1976. Sec 86, for the word "defraud" (w.e.f. 1st February 1977).

3. Ins. by C.P.C. (Amendment) Act 104 of 1976.

4. Inserted vide " Order-39 TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS" Dt.December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

2. Injunction to restrain repetition or continuance of breach

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(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind whether compensation is claimed in the suit or not the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise as the Court thinks fit.

STATE AMENDMENTS Madhya Pradesh.-In Order XXXIX of First

Schedule to the principal Act, in rule 2, in sub-rule (2), the following proviso shall be inserted, namely: "Provided that no such injunction shall be granted- (a) where no perpetual injunction could be granted in view of the provisions of Sec. 38 and Sec. 41 of the Specific Relief Act, 1963 (No. 47 of 1963): or (b) to stay the operation of an order for transfer, suspension reduction in rank, compulsory retirement, dismissal, removal or otherwise termination of service of, or taking charge from, any person appointed to public service and post in connection with the affairs of the State including any employee of any Company or Corporation owned or controlled by the State Government; or (c) to stay, any disciplinary proceeding pending or intended, or the effect of any adverse entry against any person appointed to public service and post in connection with the affairs of the State including any employee of the Company owned or controlled by the State Government; or (d) to restrain any election; or (e) to restrain any auction intended to be made or, to restrain the effect of any auction made by the Government, or to stay the proceedings for the recovery of any dues recoverable as land revenue unless adequate security is furnished, and any order for injunction granted in contravention of these provisions shall be void." Uttar Pradesh.- In its application to the State of Uttar Pradesh in Order XXXIX, rule 2(2) the following proviso has been inserted as under: "Provided that no such injunction shall be granted- (a) where no perpetual injunction could be granted in view of the provisions of Sec. 38 and Sec. 41 of the Specific Relief Act, 1963 (Act 47 of 1963), or (b) to stay the operation of an order for transfer, suspension, reduction in rank, compulsory retirement, dismissal, removal or otherwise termination of service of, or taking charge from , any employee including any employee of the Government, or (c) to stay, any disciplinary proceeding pending or intended or, the effect of any adverse entry, against any employee of the Government, or (d) to affect the internal management or affairs of, any educational institution including a University, or a society, or (e) to restrain any election, or (f) to restrain, any auction intended to be made, or the effect of any auction made, by the Government, or (g) to stay the proceedings for the recovery of any dues recoverable as land revenue unless adequate security is furnished, or (h) in any matter where a reference can be made to the Chancellor of a University under any enactment for the time being in force; and any order for injunction granted in contravention of these provisions shall be void". ¹² [" " "]

1. Ins. by U.P. Act, No. 56 of 1976, Sec. 13 (w.e.f. 1st January, 1977).

2. Sub-rule (3) and (4) omitted by the C.P.C. (Amendment) Act 104 of 1976, Sec. 86 (w.e.f. 1st February, 1977).

2A. Consequence of disobedience or breach of injunction :-

(1) In the case of disobedience "of any injunction granted or other

order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one 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 property entitled thereto.]

3. Before granting injunction. Court to direct notice to opposite party :-

The Court shall in 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 : ¹ [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.]

1. Ins. by Act 104 of 1976, Sec.86 (w.e.f. 1st February,1976)

3A. Court to dispose of application for injunction within thirty days :-

Where an injunction has been granted without giving notice to the

opposite-party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted; and where it is unable so to do, .it shall record its reasons for such inability.]

4. Order for injunction may be discharged, varied or set aside :-

Any order for an injunction may be discharged, or varied or set aside by the Court, an application made thereto by any party dissatisfied with such order : ¹[Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite-party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice : Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party.] State Amendments Madhya Pradesh-In Order XXXIX in rule 4- (i) after the words "by the Court", the words "for reasons to be recorded, either on its own motion or "shall be inserted; (ii) at the end, the following proviso shall be inserted, namely : "Provided also that if at any stage of the suit it appears to the Court that the party in whose favour the order of injunction exists is delaying the proceedings or is otherwise abusing the process of Court, it shall set aside the order for injunction".²Uttar Pradesh.-In its application to the State of Uttar Pradesh in OrderXXXIX, rule 4, after the words "by the Court", the words "for reasons, to be recorded, either on its own motion or", has been inserted, and at the end of rule 2 the following proviso has been inserted : "Provided that if at any stage of the suit it appears to the Court that the party in whose favour the order of injunction exists is dilating the proceeding or is otherwise abusing the process of Court, it shall set aside the order for injunction".³

1. Added by Act 104 of 1976, Sec.86 (w.e.f. 1st February,1977).

2. Vide M.P. Act No. 28 of 1984, Sec. 8.

3. Ins. by U.P. Act 57 of 1976, Sec. 13 (w.e.f. 1st January, 1977).

5. Injunction to corporation binding on its officers :-

An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain.

6. Power to order interim sale :-

The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any moveable property, being the subject-matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once.

7. Detention, preservation, inspection, etc. of subject-matter of suit :-

(1) The Court may, on the application of any party to a suit, and on such terms as it thinks fit-

(a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein;

(b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit; and

(c) for all or any of the purposes aforesaid authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply, mutatis mutandis, to persons authorized to enter under this rule.

8. Application for such orders to be after notice :-

(1) An application by the plaintiff for an order, under rule 6 or rule 7 may be made ¹[* * *] at any time after institution of the suit.

(2) An application by the defendant for a like order may be made ²[* * *] at any time after appearance.

² [(3) Before making an order under rule 6 or rule 7 in an application made for the purpose, the Court shall, except where it

appears that the object of making such order would be defeated by the delay, direct notice thereof to be given to the opposite- party.]

1. The words "after notice to the defendant" omitted by Act 104 of 1976, Sec.86 (w.e.f. 1st February, 1976).

2. The words "after notice to the plaintiff" omitted by by C.P.C. (Amendment) Act 104 of 1976.

9. When party may be put in immediate possession of land the subject- matter of suit :-

Where land-paying revenue to Government, or a tenure liable to sale, in the subject-matter of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure; and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which maybe directed in the decree passed in the suit.

10. Deposit of money, etc. in Court :-

Where the subject-matter of suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court. HIGH COURT AMENDMENT Bombay.-After rule 10 of Order XXXIX the following new rule 11 shall be added as under:

11. Procedure on parties defying orders of court and committing breach of undertaking to the Court :-

". .-

(1) Where the Court orders any party to a suit or proceeding to do or not to do a thing during the pendency of the suit or proceeding, or where any party to a suit or a proceeding, gives any undertaking to the Court to do or to refrain from doing a thing during the pendency of the suit or proceeding, and such party commits any default in respect of or contravenes such order or commits a breach

of such undertaking, the Court may dismiss the suit or proceeding, if the default or contravention or breach is committed by the plaintiff or the applicant, or strike out the offences, if the default or contravention or breach is committed by the defendant or the opponent.

(2) The Court may on sufficient cause being shown and on such terms and conditions as it may deem fit to impose, restore the suit or proceeding or may hear the party in defence, as the case may be, if the party that has been responsible for the default or contravention or breach as aforesaid makes amends for the default or contravention or breach to the satisfaction of the Court: Provided that before passing any order under this sub-rule notice shall be given to the parties likely to be affected by the order to be passed."