

**(2011) 05 AHC CK 0330**

**Allahabad High Court**

**Case No:** Misc. Single No. 2832 of 2011

Shri Trilokeshwar Mahadev  
Mandir

APPELLANT

Vs

The Civil Judge (J.D.) Hawali

RESPONDENT

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**Date of Decision:** May 10, 2011

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 151

**Hon'ble Judges:** Anil Kumar, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Anil Kumar, J.

Heard Sri Waseequddin Ahmad, learned Counsel for Petitioner and Sri N.C. Mehrotra, learned Counsel for Respondents.

2. Facts in brief of present case as submitted by learned Counsel for Petitioner are to the effect that initially Petitioner filed a Suit for permanent injunction registered as Regular Suit No. 134 of 2011 Sri Trilokeshwar Mahadev Mandir v. Secretary, Krishi Utpadan Mandi Parishad before Respondent No. 1.

3. In the said Suit, Petitioner moved an application for grant of temporary injunction under Order 39 Rule 1 and 2 CPC On 02.02.2011, the court below after going through the said material on record came to conclusion that before granting ex-parte stay order, it will be appropriate to hear Defendants, so notices issued and the next date fixed was 14.02.2011.

4. Learned Counsel for Petitioner further submits that in the meantime, Respondent proceeded to demolish the property which is subject matter of the case, so an application u/s 151 CPC moved and in the said application, the court below passed an order dated 02.02.2011 appointing Ameen Commissioner to go on the spot, submit his report.

5. Accordingly, Ameen Commissioner submitted his report dated 25.04.2011, however inspite of the said facts, Petitioner's application for grant of temporary injunction as well as application u/s 151 Code of CPC has not been disposed of till date, hence present writ petition has been filed with the following main prayers:

Issue a writ, order or direction in the nature of mandamus directing the opposite party No. 1 to disposed of the application u/s 151 Code of CPC pending before the learned Civil Judge (J.D.), Hawali, expeditiously.

Issue a writ, order or direction in the nature of mandamus commanding the opposite party No. 2 not to disturb the possession of the Petitioner as well as not to demolish the temple in dispute.

6. Sri N.C. Mehrotra, learned Counsel for Respondents submits that Defendants already put in appearance in the matter in question before the court below and the next date fixed for disposal of application for grant of temporary injunction is fixed on 25.05.2011.

7. He further submits that there is no illegality or infirmity on the part of Respondent No. 1 thereby issuing notice on the application for grant of temporary injunction moved by Petitioner under Order 39 Rule 1 & 2 Code of CPC thereby calling Respondents/Defendants to file their objection before granting stay order, hence present writ petition filed by Petitioner is not maintainable, liable to be dismissed.

8. I have heard the learned Counsel for parties and gone through the record.

9. From the perusal of the impugned order, it is clear that while considering the Petitioner's application for grant of temporary injunction, court below had come to the conclusion that before granting the ex parte injunction order, notice may be issued to the Defendants to hear their version.

10. In view of the above said factual background the question which immediately arises is that what principles should be followed by the Courts in the matter of grant of an ad-interim injunction.

11. The answer is contained in the decision of the Hon"ble Apex Court in the case of [Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others](#), a Bench of three Judges of Apex Court has held that:

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 not 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 injection 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 that the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him.

12. In the case of [Dalpat Kumar and Another Vs. Prahlad Singh and Others](#), a Bench of two Judge of the Apex Court held that the phrases "Prima facie case", "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation but words of width and elasticity, intended to meet myriad situations presented by men's ingenuity in given facts and circumstances and should always be hedged with sound exercise of judicial discretion to meet the ends of justice. The court would be circumspect before granting the injunction and look to the conduct of the party, the probable injury to either party and whether the Plaintiff could be adequately compensated if injunction is refused.

13. In Woodroffe's Law Relating to Injunctions, 2nd revised and enlarged Edn., 1992, at page 56 in para 30.01, it is stated that:

An injunction will only be granted to prevent the breach of an obligation (that is a duty enforceable by law ) existing in favour of the applicant who must have personal interest in the matter. In the first place, therefore, an interference by injunction is founded on the existence of a legal right, an applicant must be able to show a fair prima facie case in support of the title which he asserts.

14. In The Law Quarterly Review Vol. 109, page 432 ( at p. 446), A.A.S. Zuckerman under the title "Mareva Injunctions and Security for judgment in a Framework of Interlocutory Remedies" has stated:

The Court considering an application for an interlocutory injunction has four factors to consider; first, whether the Plaintiff would suffer irreparable harm if the injunction is denied; secondly, whether this harm outweighs any irreparable harm that the Defendant would suffer from an injunction; thirdly, the parties' relative prospects of success on the merits; fourthly, any public interest involved in the decision. The central objective of interlocutory injunctions should therefore be seen as reducing the risk that rights will be irreparably harmed during the inevitable delay of litigation.

15. For the foregoing reasons, writ petition lacks merit and is dismissed.

16. However, in the interest of justice, trial court/Civil Judge(Junior Division), Hawali, Lucknow shall make all necessary endeavor to decide the application for grant of temporary injunction under Order 39 Rule 1 Code of CPC on the date fixed in the matter i.e. 25.05.2011 after hearing learned Counsel for parties in accordance with law, if not possible, the same be done before 30.05.2011.