

INJUNCTION UNDER SPECIFIC RELIEF ACT, 1963

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INTRODUCTION

The law of injunction in our country has its origin within the Equity Jurisprudence nonheritable from England United Nations agency obtained it from Justinian code. it's a bedrock of our law that if there's a right, there ought to be a remedy. An injunction could be a Judicial Remedy prohibiting persons from doing such act known as a restrictive injunction or commanding them to undo some wrong or injury known as a compulsory injunction an should be furthermore temporary, short or talking or permanent. Relief of injunction cannot be claimed as of right. It is discretionary, equitable relief. The relief of injunction must be granted where it is necessary. It may be granted where it would help in the preservation of peace and public order. Where there is the possibility of breach of peace of public order, the Court have to proceed with caution. An injunction may be a remedy against a personal and may be issued solely in respect of acts done by him against whom it's sought-after to be implemented. Once deciding whether or not to provide associate degree injunction and deciding what its scope ought to be, courts offer special attention to queries of fairness and straightness. One manifestation of this is often that injunctions area unit subject to equitable defences, like laches and unclean hands. associate degree injunction is associate degree equitable remedy within the variety of a judicial writ that needs a celebration to try and do, or to refrain from doing, sure acts. A celebration that fails to accommodates associate degree injunction faces criminal or civil penalties and will have to be compelled to pay damages or settle for sanctions. In some cases, breaches of injunctions area unit thought-about serious criminal offences that advantage arrest and attainable jail sentences.

Emergency injunctions that area unit in result solely a brief time area unit referred to as temporary restraining orders. Courts will likewise offer elementary orders to supply results promptly and compelling till an alternative is formed on a changeless directive, which may stay if truth be told inconclusively or till specific conditions area unit met. every court is established to manage equity among particles and there're, should be honoured to possess each single such force as could be vital to try and do end judges to the gatherings before it. it's a well-settled principle of law that interim relief will forever be granted within the aid of and as auxiliary to the most relief obtainable to the party on the ultimate determination of his rights in a very suit or the other continuing. Therefore, a court beyond question possesses the facility to grant interim relief throughout the pendency of the suit. Temporary injunctions area unit therefore injunctions issued throughout the pendency of proceedings.

HISTORICAL BACKGROUND

India witnessed the seed of Law of Injunction in English Jurisprudence of Equity. The English Jurisprudence of equity is from where we inherited the present administration of law. An injunction, which means a firm warning or instruction, is derived from French and Latin verb 'injungere' which means "To Join".ⁱ 'Injungere' means "To direct or impose by authoritative order or with an urgent admonition." The English People adopted the Law of Injunction from the Roman Law, where it was known as interdict. It is relevant to note the historical background which establishes the origin of the power of Equity. The Jurisdiction to issue Injunction is a remedy which is termed as the Strong arm of the courts which unites the position of Judiciary in providing justice between the litigant parties.

MEANING AND SCOPE

Injunction is universally accepted to be the principal and most important process issued by courts of equity in India and abroad. It has been defined as "a judicial process operating in personam, and requiring the person to whom it is directed to do or refrain from doing a particular thing."ⁱⁱⁱ The purpose of injunction is to restrain action,ⁱⁱⁱ or to furnish preventive

relief against irreparable mischief or injury,^{iv} or for preservation of status quo.^v It is aimed at protection for the future and is not issued as punishment for a past act or transaction.^{vi}

An injunction is thus a prohibitive equitable remedy granted by a court at the suit of party complainant directed to a defendant forbidding the latter to do some act or to permit his servants or agents to do some act. The act restrained should be that which he is threatening or attempting to commit. Injunction may restrain him in the continuance if such act is unjust or inequitable, or is injurious to the plaintiff, and if the act is not such as can be adequately compensated in monetary terms.^{vii} The remedy of injunction is a weapon used for providing justice to the litigant in need of urgent relief and fair play when other remedies may take long time and defeat the course of justice.^{viii} It is a judicial process operating in personam and requiring the person to whom it is directed to do or refrain from doing a particular thing.^{ix} In other words, injunction is a judicial remedy by which a person is ordered to refrain from doing or compelled to do a particular act. Injunction may be either a final remedy obtained by a suit or a preliminary or interlocutory relief granted while the suit is pending. In the first case it is a decree. In the second sense, it is called an interlocutory order.^x

TYPES OF INJUNCTIONS

Section 52 to 57 of the Specific Relief Act govern injunction. Injunctions are of three kinds:

1. Temporary
2. Permanent
3. Mandatory

PERMANENT INJUNCTION

A permanent Injunction, also known by the name perpetual injunction, prohibits a party forever from doing the particular act and it can be granted only on merits at the end of the trial after hearing both parties to the suit. Section 38^{xi} of the Specific Relief Act lays down the cases in which perpetual injunction can be granted.

TEMPORARY OR INTERIM INJUNCTION

This type of injunction stops a party for a while from doing the specified act and can be granted only until the suit is not over or until any other further order of the Court. Regulated by the provision of the Order 39 of the Code of Civil Procedure, 1908 and can be granted at any stage of the suit. A temporary injunction is a provisional relief. The aim of such type of injunction is to protect the subject matter of the suit in the existing condition, without the defendant's interference or threat. The primary reason behind granting temporary injunction is to protect the interests of an individual or the property of the suit, till the final judgement is passed.

The time period of such injunction is-A specified period of time or till the court deems fit.

MANDATORY INJUNCTION

According to section 39^{xii} of the Act when to prevent a breach of an obligation it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of and also to compel the performance of requisite acts. When the injunction compels doing of some act, it is a mandatory injunction, but when the direction is not to do something, the injunction is prohibitory.

CONCLUSION

To conclude injunction means an instruction of Court by which an individual is required to achieve, or is controlled from executing a precise act. The courts exercise their authority to issue injunctions only when need arises. An injunction is usually issued only in cases where irreversible grievance to the rights of an individual would result. It should be seeming to the court that some act has been done, or is threatened, that it will produce irretrievable wound to the party seeking the injunction. An injury is generally said to be irreparable when a reward of damages cannot sufficiently compensate it. Loss of profits alone is inadequate to establish

irreparable injury. The possible annihilation of property is sufficient. Injunctive relief is not a substance of right, but its rejection is within the discretion of the court.

REFERENCES

ⁱ Article by Justice R. R. K. Trivedi Judge, Allahabad High Court

ⁱⁱ Black's Law Dictionary 705 (rev. 5th ed. 1979)

ⁱⁱⁱ Putnam v. Pyle 232 N.W.20

^{iv} Blanchard v. Golden Age Brewing Co. 63 P. 2d 397

^v Mishra, Arvind Kumar, "Injunction as a remedy for liability of state in torts", Indian Bar Review, 2003, Vol. 30, p. 143

^{vi} Gerrit F. Merkel, "Towards transnational principles of provisional and protective relief", (2006) 3 SCC (Jour) 9

^{vii} C.M. Row, Law on Injunctions, (Ed. K. Swami), Lexis Nexis Butterworths, 8th Edn., 2003.

^{viii} Nelson, Law of Injunctions, Delhi Law House, 3rd Edn., 1994

^{ix} Attorney-General v. Birmingham Tame and Red Drainage Board (1881) 17 Ch. D 685(C.A.)

^x Anand and Iyer, The Specific Relief Act, 1963, Delhi Law House, 11th Edn. 2004

^{xi} Perpetual injunction when granted—

(1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

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

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

^{xii} Mandatory injunctions—

When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.