

An injunction is an equitable remedy in the form of a court order that demands a party must do or must not do certain acts. A party that does not follow an order of injunction and fails to comply with it has to

1. Face both criminal and civil penalties and
2. Damages or accept sanctions for that.

Breach of injunction is considered serious criminal offenses in some cases which can result into arrest and possible prison sentences.

Emergency injunctions that are into effect only for less time and are known as temporary restraining orders. Courts can also grant ***preliminary injunctions*** to take effect immediately and effectively until a decision is made on a permanent injunction, which can stay in effect unconditionally or until certain conditions are met.

Every court is established for the purpose of providing justice to people all the courts has all such powers as may be required to do full and complete justices to the parties before it.

A court undoubtedly has the power to grant interim relief during the pendency of the suit. Temporary injunctions are thus injunctions issued during the pendency of proceedings.

DEFINITION

An injunction is a judicial process whereby a party is required to do, or is refrained from doing, any particular act. It is a remedy in the form of an order of the Court addressed to a particular person that either prohibits him from doing 'or continuing to do a particular act (prohibitory injunction); or orders him to carry out a certain act (mandatory injunction).

OBJECT

Until legal rights and conflicting claims of the parties before the court are adjudicated by the grant of the interim relief an individual's property can be preserved. Basically, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests, i.e., injury and prejudice, which the plaintiff had to bear if the relief is refused; and same goes for defendant if the relief is granted. The court in the exercise of sound judicial discretion can grant or refuse to grant interim relief.

The main object of granting an individual temporary injunction is to maintain and preserve status quo at the time of proceedings institution and to avoid any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

TYPES OF INJUNCTION

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

- Temporary
- Permanent
- Mandatory

I. 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 of the Specific Relief Act lays down the cases in which perpetual injunction can be granted.

Under **Section 38(1)**, when breach of an obligation is to be prevented, then the Court can pass permanent injunction. Such obligation can exist either expressly or impliedly.

While under **Section 38(3)**, perpetual or permanent injunction can be granted 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:

- I. Where the defendant is trustee of the property for the plaintiff;
- II. Where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion:

III. Where the invasion is such that compensation in money would not afford adequate relief;

IV. Where the injunction is necessary to prevent a multiplicity of judicial proceedings.

II. 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.
- Plaintiff from getting disposed off, or his property (subject matter) being destroyed or harmed, or from any injury to the plaintiff.

The primary reason behind granting temporary injunction is to protect the interests of an individual or the property of the suit, till the final judgment is passed. The time period of such injunction is

1. A specified period of time; or
2. Till the court deems fit.

A temporary injunction is granted after answers to the following questions are determined

- 1) Whether the plaintiff has a prima facie case?
- 2) Whether the balance of convenience is in favour of the plaintiff?
- 3) Whether the plaintiff would suffer an irreparable damage, if the injunction is not granted?

III. Mandatory Injunction:

The sole purpose of mandatory injunction is to rectify any wrong done. The acts are restored from their wrongful state to the right ones. The Court directs the defendant to do a certain thing.

The concept of mandatory injunction, though not directly but, is given under **Section 39** of the Act of 1963. The following elements have to be taken into consideration while deciding on whether to grant mandatory injunction or not:

1. What acts are necessary in order to prevent a breach of the obligation
2. The requisite acts must be such as the court is capable of enforcing.

It is well accepted by the Courts that mandatory injunction is not to be granted in the following cases:

Where compensation in terms of money would be an adequate relief to the plaintiff
Where balance of convenience is in favour of the defendant
Where plaintiff has shown acquiescence in the acts of the defendant
To create a new state of things, but rather to restore <i>status quo</i> .

The Hon'ble apex courts have laid down the following test to be taken before granting mandatory injunction:

- The plaintiff has must have a very strong case for trial. It should be of a standard higher than that of a *prima facie* case;
- The plaintiff has to lay-bare that the grant of mandatory injunction is necessary to prevent irreparable loss or serious injury, which cannot be compensated in terms of money; and
- The balance of convenience is in favour of the plaintiff as against the defendant.

When a suit for Injunction and Declaration would lie?

In the case of **Anathema Sudhakar vs. P Buchi Reddy & Ors**, The Hon'ble Supreme court clearly mentioned the general principles as to when just a suit for permanent injunction can proceed and when it is necessary to file a suit for declaration and or possession with injunction as consequential relief which reproduced as under:

- When a Plaintiff has a lawful or peaceful possession of a property and the defendant disturbs or threatens such possession, then an injunction suit can be initiated. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.
- When the Plaintiff's title is not disputed, but he does not have the possession then his remedy would be to file a suit for possession and seek in addition, if necessary an injunction. without claiming the relief for possession, a person who is out of his possession can't simply seek the remedy of injunction.
- Where even after being in possession, Plaintiff's title to the property is still in dispute, or under a cloud, or where the defendant asserts title thereto and there is also threat of dispossession from the defendant, the Plaintiff will have to sue for declaration of title and consequential relief of injunction. Where the title of the Plaintiffs is under cloud or in dispute and he is not in

possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

In view of the above judgment any person can file a suit for declaration and injunction with regard to any legal character or rights as to any property against any person who is denying or interested to deny his title or such character. In a suit for seeking declaration with regard to a right or title in respect of property along with consequential injunction the Plaintiff will have to pray for a declaration as contemplated under section 34 of the Specific Relief Act, 1877, an interim injunction during the pendency of the suit under order 39 of the Civil Procedure Code 1908 and a mandatory injunction under section 38 of the Specific Relief Act.