न्यायालय

सहायक कलेक्टर / उपखंड अधिकारी, तारानगर (चूरू)

[पीठासीन अधिकारी : राजेन्द्र कुमार आर ए एस]

प्रार्थना पत्र संख्या 198/2024

दायर दिनांक 18.07.2024

पवन कुमार पुत्र मांगीलाल जाति अहीर (यादव) निवासी बायँ तहसील तारानगर जिला चूरू

प्रार्थी

बनाम

1. मांगीलाल पुत्र फुलाराम जाति अहीर (यादव) निवासी बायँ तहसील तारानगर जिला चूरू
2. राजस्थान सरकार जरिये नायब तहसीलदार साहवा तहसील तारानगर जिला चूरू
3. राजस्थान सरकार जरिये तहसीलदार (उप पंजीयक) तारानगर जिला चूरू

अप्रार्थीगण

उपस्थित अधिवक्तागण :
प्रार्थी की ओर से श्री देवकी नंदन शर्मा
अप्रार्थी सं 1 की ओर से श्री रतन कुमार चाचान

प्रार्थना पत्र अंतर्गत धारा 212
राजस्थान काश्तकारी अधिनियम 1955

-:निर्णय :-

निर्णय तिथि : 17.02.2025

आज यह पत्रावली प्रार्थना पत्र बाबत् अस्थायी निषेधाज्ञा अन्तर्गत धारा-212 राजस्थान काश्तकारी अधिनियम-1955 का वास्ते निर्णय हेतु पेश हुई। प्रार्थना पत्र का सूक्ष्म वृतान्त इस प्रकार से है कि प्रार्थी ने निवेदन किया गया कि कृषिभूमि खाता सं. 452 के ख. नं. 1045 तादादी 4.7419 हैक्टेयर, ख. नं. 1139 तादादी 6.7904 हैक्टेयर, ख. नं. 330 तादादी 0.1012 हैक्टेयर, ख. नं. 333 तादादी 5.2856 हैक्टेयर, ख. नं. 632 तादादी 6.1075 हैक्टेयर कुल तादादी 23.0266 हैक्टेयर रोही मौजा बांय पटवार हल्का बांय तहसील तारानगर जिला चूरू में स्थित है। उक्त कृषिभूमि प्रार्थी व गौणअप्रार्थीनी के दादा फुलाराम की खातेदारी व कब्जे काश्त की भूमि थी तथा फूलाराम के देहान्त होने के बाद उपरोक्त आराजी विरासतन रुप में प्रार्थी व गौणअप्रार्थीनी के पिता अप्रार्थी सं. 1 व दादी सन्तोखी देवी पत्नी फूलाराम के नाम खातेदारी दर्ज हो गई सन्तोखी देवी ने अपना हिस्सा अप्रार्थी सं. 1 के हक में परित्याग कर दिया जिसके बाद उक्त कृषिभूमि अप्रार्थी सं. 1 के नाम राजस्व रिकॉर्ड में खातेदारी दर्ज चली आ रही है जो प्रार्थी की दादालाई पैतृक कृषिभूमि है। प्रार्थी, अप्रार्थी सं. 1 तथा गौणअप्रार्थीनी एक ही परिवार के सदस्य है जो हिन्दू विधि की मिताक्षरा पद्धति से शासित होते हैं तथा हिन्दू उत्तराधिकार अधिनियम के अनुसार प्रार्थी का विवादित कृषिभूमियों में 1/4 हिस्सा जन्म से ही आता है तथा विवादित आराजी प्रार्थी की दादालाई पैतृक सम्पति कृषिभूमियां है इसलिए उक्त विवादित आराजी पैतृक, मौरुसी अविभाजित दादालाई सम्पति होने से प्रार्थी का 1/4 हिस्सा कानूनन रुप से बनता है। प्रार्थी, अप्रार्थी सं. 1 तथा गौणअप्रार्थीनी एक ही परिवार के सदस्य है जो हिन्दू विधि की मिताक्षरा पद्धति से शासित होते हैं तथा हिन्दू उत्तराधिकार

Jagendra

उपखण्ड अधिकारी
तारानगर (चूरू)

अधिनियम के अनुसार प्रार्थी का विवादित कृषिभूमि में 1/4 हिस्सा जन्म से आता है तथा अप्रार्थी सं. 1 जो काफी लोभी व लालची प्रवृति का व्यक्ति जो लालच का वशीभूत होकर अप्रार्थी सं. 2 से साज कर उक्त कृषिभूमि अपने नाम होने का नाजायज फायदा उठाकर विधि पूर्वक विभाजन करवाये बिना उक्त कृषिभूमि को भूमाफियां गिरोह को विक्रय, रहन, बैय, गिरवी करने पर आमादा है तथा प्रार्थी को एलानियां धमकी देता है इस प्रकार जैसा कि अप्रार्थी सं. 1 जाहिर करता है तथा अपने मनसूबों में सफल हो जाता है तो प्रार्थी को अपूर्तिय क्षति होगी जिसका किसी प्रकार से किसी भी मुद्रा में मूल्याकंन नहीं किया जा सकता व प्रार्थी के कानूनी अधिकारों पर घोर कुठाराघात होगा इसलिए प्रार्थी के लिये यह आवश्यक हो गया है कि वह विवादित कृषिभूमि दादालाई व पैतृक कृषिभूमि होने के कारण अप्रार्थीगण को जरिये अस्थाई निषेधाज्ञा पाबंद करवाये कि वे विवादित कृषिभूमि की वर्तमान राजस्व रिकार्ड की यथास्थिति बनाये रखे व उक्त कृषिभूमि को किसी अन्य को रहन, बैय, गिरवी, बेचान व अन्य किसी तरह से हस्तान्तरण न करें ना ही अप्रार्थी सं. 2 व 3 उक्त भूमि संबंधित कोई दस्तावेज तहरीर व तकमील करें। प्रथम दृष्टया मामला सुविधा का सिद्धान्त भी प्रार्थी के पक्ष में बनता है इसलिए अप्रार्थीगण को अस्थाई निषेधाज्ञा से पाबन्द किया जाता है तो उनको किसी प्रकार का नुकसान नहीं होगा। अतः प्रार्थना पत्र पेश कर निवेदन है कि अस्थाई निषेधाज्ञा खिलाफ अप्रार्थीगण इस अमर की जारी कि खाता सं. 452 के ख. नं. 1045 तादादी 4.7419 हैक्टेयर, ख. नं. 1139 तादादी 6.7904 हैक्टेयर, ख. नं. 330 तादादी 0.1012 हैक्टेयर, ख. नं. 333 तादादी 5.2856 हैक्टेयर, ख. नं. 632 तादादी 6.1075 हैक्टेयर कुल तादादी 23.0266 हैक्टेयर रोही मौजा बांय पटवार हल्का बांय तहसील तारानगर जिला चूरू जो प्रार्थी की दादालाई पैतृक संयुक्त सम्पति की कृषिभूमि है में जब तक प्रार्थी के 1/4 हिस्सा की घोषणा होकर खातेदारी दर्ज नहीं हो जाती है तब तक अप्रार्थी सं. 1 उक्त कृषिभूमि को किसी अन्य व्यक्ति को रहन, बैय, गिरवी, बेचान या अन्य तरीके से हस्तान्तरण नहीं करें तथा ना ही कोई ऐसा कार्य स्वयं करे तथा ना ही किसी अन्य से करवाये जिससे कि प्रार्थी के कब्जे उपयोग उपभोग में किसी प्रकार की बाधा उत्पन्न होती हो, ना ही अप्रार्थी सं. 2 व 3 उक्त कृषिभूमि बाबत कोई दस्तावेज तहरीर व तकमील करें व राजस्व रिकार्ड की वर्तमान व मौके की यथास्थिति बनाये रखे वगैरह।"

उक्त प्रार्थना पत्र वाद पत्र के साथ दिनांक 18.07.2024 को प्रस्तुत हुआ जिसे दर्ज रजिस्टर किया जाकर आदेश "प्रार्थी की एकपक्षीय बहस सुनी गई एवं प्रार्थना पत्र संलग्न रिकॉर्ड एवं शपथ पत्र का अवलोकन किया गया । प्रथम दृष्टया मामला अपूर्णीय क्षति का प्रार्थी के पक्ष में प्रतीत होता है। अतः अप्रार्थीगण को आगामी आदेश तक अस्थाई निषेधाज्ञा इस आशय की जारी की जाती है कि वे कृषि भूमि रोही ग्राम बांय के खसरा नं. 1045 तादादी 4.7419 हैक्ट, खसरा नं. 1139 तादादी 6.7904 हैक्ट खसरा नं. 330 तादादी 0.1012 हैक्ट, खसरा नं. 333 तादादी 5.2856 हैक्ट. खसरा नं. 632 तादादी 6.1075 हैक्ट. कुल तादादी 23.0266 हैक्ट. में वे प्रार्थी के हक हिस्से तक की भूमि को मुन्तकिल / हस्तान्तरित ना करें । वकील प्रार्थी आदेश 39 नियम 3 सीपीसी की पालना करें । इसकी पालना नहीं करने पर यह स्थगन स्वतः निरस्त समझा जायेगा।" आदेश द्वारा प्रार्थी के पक्ष में एक पक्षीय अस्थायी निषेधाज्ञा का आदेश जारी किया तथा अप्रार्थीगण को जरिए रजिस्टर्ड नोटिस तलब किया गया। दिनांक 16.08.2024 को अप्रार्थी सं 1 की ओर से अधिवक्ता रतन कुमार चाचान उपस्थित आए जिन्होंने दिनांक 29.01.2025 को अप्रार्थी संख्या 1 की ओर से जवाब मय सूचीबद्ध दस्तावेज पेश किया। पत्रावली में आगामी तिथि 11.02.2025 को वास्ते बहस नियत की गई। दिनांक 11.02.2025 को वकील प्रार्थी ने बहस हेतु समय देने का निवेदन किया। अप्रार्थी सं 1 के अधिवक्ता ने निवेदन किया कि प्रार्थी को अपनी KCC जमा करवाने की हद तक अनुमति दी जावे। प्रार्थी अधिवक्ता की सहमति के उपरांत विवादित भूमि में रहन/रहन मुक्त करने की अनुमति प्रदान की गई तथा आगामी तिथि 17.02.2025 वास्ते बहस नियत की गई।

अप्रार्थी अधिवक्ता ने जरिए जवाब प्रार्थना पत्र 212 RTA निवेदन किया की "कि कृषि भूमि ख.नं. 1045 तादादी 7.7419 हैक्टयर, ख.नं. 1139 तादादी 6.7904 हैक्टयर, ख.नं. 330 तादादी 0.1012 हैक्टयर, ख.नं. 333 तादादी 5.2856

Rajendra

उपखण्ड अधिकारी
तारानगर(चू.)

हैक्टयर, ख.नं. 632 तादादी 6.1075 हैक्टयर कुल तादादी 23.0266 हैक्टयर वाके रोही ग्राम बायं तहसील तारानगर जिला चूरू में स्थित है जो अप्रार्थी सं. 1 के पिता फुलाराम के नाम से खातेदारी काश्तकारी में रहा था। फुलाराम के एक लड़का अप्रार्थी मांगीलाल व पत्नी संतोखी देवी व दो पुत्रियां क्रमशः विद्या देवी व धत्री देवी हुई थी । फुलाराम की मृत्यु के पश्चात उक्त कृषि भूमि उक्त चारों व्यक्तियों के नाम से खातेदारी काश्तकारी में अंकित हुई थी लेकिन उसके पश्चात अप्रार्थी सं. 1 की माता संतोखी देवी व बहिन विद्या देवी व धत्रीदेवी ने अपना-अपना हक व हिस्सा अप्रार्थी सं. 1 के हक में परित्याग कर दिया। इस प्रकार अप्रार्थी सं. 1 के हक में परित्याग की गई कृषि भूमि अप्रार्थी सं. 1 की कानूनन स्वयं अर्जित सम्पति थी परिभाषा में आती है। शेष 1/4 हिस्से की कृषि भूमि अप्रार्थी सं. 1 को उतराधिकार स्वरूप प्राप्त हुई थी । ऐसी सूरत में प्रार्थी को उक्त विवादित कृषि भूमि किसी भी प्रकार का कोई हक व हिस्सा कानूनन नहीं बनता है और विवादित कृषि भूमि किसी भी प्रकार से प्रार्थी की दादालाई सम्पति नहीं है व ना ही सहदायिकी सम्पति है। ऐसी सूरत में उक्त विवादित कृषि भूमि में प्रार्थी का जन्म से ही अधिकार होने का प्रश्न ही नहीं उठता है अपितु प्रार्थी द्वारा गलत तथ्यों के आधार पर उक्त वाद प्रस्तुत किया गया है जो कानूनन हर सूरत में खारिज किये जाने योग्य है।"

प्रकरण में उभयपक्षकारान की उक्त प्रार्थना पत्र पर बहस सुनी गई। दौराने बहस विद्वान अधिवक्ता प्रार्थी ने दौराने जिरह प्रार्थना पत्र के तथ्यों को दौहराते हुये निवेदन किया कि उक्त आराजी के संबंध में प्रार्थी द्वारा खातेदारी अधिकारों की घोषणा का वाद प्रस्तुत किया गया है। परन्तु तथा अप्रार्थी सं. 1 जो काफी लोभी व लालची प्रवृति का व्यक्ति जो लालच का वशीभूत होकर अप्रार्थी सं. 2 से साज कर उक्त कृषिभूमि अपने नाम होने का नाजायज फायदा उठाकर विधि पूर्वक विभाजन करवाये बिना उक्त कृषिभूमि को भूमाफियां गिरोह को विक्रय, रहन, बैय, गिरवी करने पर आमादा है तथा प्रार्थी को एलानियां धमकी देता है इस प्रकार जैसा कि अप्रार्थी सं. 1 जाहिर करता है तथा अपने मनसूबों में सफल हो जाता है तो प्रार्थी को अपूर्तिय क्षति होगी जिसका किसी प्रकार से किसी भी मुद्रा में मूल्याकंन नहीं किया जा सकता व प्रार्थी के कानूनी अधिकारों पर घोर कुठाराघात होगा । अतः उक्त आराजी पर अप्रार्थीगण को राजस्व रिकॉर्ड की यथास्थिति बनाये रखने हेतु ताफैसला अस्थाई निषेधाज्ञा से पाबंद किया जाने का निवेदन किया। दौराने बहस विद्वान अधिवक्ताअप्रार्थी ने दौराने जिरह जवाब प्रार्थना पत्र के तथ्यों को दौहराते हुये निवेदन किया कि प्रार्थी को उक्त विवादित कृषि भूमि किसी भी प्रकार का कोई हक व हिस्सा कानूनन नहीं बनता है और विवादित कृषि भूमि किसी भी प्रकार से प्रार्थी की दादालाई सम्पति नहीं है व ना ही सहदायिकी सम्पति है। ऐसी सूरत में उक्त विवादित कृषि भूमि में प्रार्थी का जन्म से ही अधिकार होने का प्रश्न ही नहीं उठता है अपितु प्रार्थी द्वारा गलत तथ्यों के आधार पर उक्त वाद प्रस्तुत किया गया है जो कानूनन हर सूरत में खारिज किये जाने योग्य है। अतः उक्त प्रार्थना पत्र खारिज फरमाया जाने का निवेदन किया।

प्रकरण में पत्रावली का अवलोकन किया गया व बहस पर मनन किया गया है।

प्रकरण में विश्लेषण से पूर्व सर्वप्रथम राजस्थान काश्तकारी अधिनियम-1955 की धारा-212 के प्रावधान का प्रकरण में अवलोकन किया जाना उचित प्रतीत होता है। इस हेतु राजस्थान काश्तकारी अधिनियम-1955 की धारा-212 के प्रावधान का उद्धरण इस प्रकार है-

212. Provision for injunction and appointment of a receiver—
(1) If in the course of any suit or proceeding under this Act, it is proved by affidavit or otherwise —
(a) that any property to which such suit or proceeding relates is in danger of being wasted, damaged or alienated by any party thereto, or

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(b) that any party to such suit or proceeding threatens or intends to remove or dispose of the said property in order to defeat the ends of Justice, the court may grant a temporary injunction and, if necessary, appoint a receiver.

(2) Any person against whom an injunction has been granted or in respect of whose property a receiver has been appointed under subsection (1) may offer cash security in such amount as the court may determine to compensate the opposite party in case the suit or proceedings is decided against such persons, and on depositing the amount of such security, the court may withdraw the injunction or the order appointing a receiver, as the case may be.

राजस्थान काश्तकारी अधिनियम-1955 की धारा-212 के साथ साथ सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व 02 में अस्थाई निषेधाज्ञा के संबंध में प्रावधान बनाये गये है। जिनका उद्धरण इस प्रकार है:-

ORDER XXXIX
TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS
Temporary injunctions

1. Cases in which temporary injunction may be granted.Where in any suit it is proved by affidavit or otherwise—
(a) that any property in dispute in a suit is in danger of 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 [defrauding] his creditors,
(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 dispossession 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.

2. Injunction to restrain repetition or continuance of breach.—(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 a 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.

साथ ही राजस्थान काश्तकारी अधिनियम-1955 की धारा-212 के साथ साथ सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-04 में अस्थाई निषेधाज्ञा के संबंध में प्रावधान बनाये गये है। जिनका उद्धरण इस प्रकार है:-

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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, on application made thereto by any party dissatisfied with such order:

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.

Interpretation

प्रकरण में विश्लेषण से पूर्व सर्वप्रथम राजस्थान काश्तकारी अधिनियम-1955 की धारा-212 के प्रावधान की माननीय न्यायालयों द्वारा की गई व्याख्या का अवलोकन किया जाना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा 1992 **AIR SCW** 3128 उनवान *Dalpat Kumar vs Prahlad Singh* में दिनांक 16.12.1991 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व नियम-02 के प्रावधान की विस्तृत व्याख्या (Interpretation) की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

4. Order 39, Rule 1(c) provides that temporary injunction may be granted where, in any suit, it is proved by the affidavit or otherwise, 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... or dispossession 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. Pursuant to the recommendation of the Law Commission clause(c) was brought on statute by Section 88(i)(c) of the Amending Act 104 of 1966 with effect from February 1, 1977. Earlier thereto there was no express power except the inherent power under Section 151, C.P.C. to grant ad interim injunction against dispossession. Rule 1 primarily concerns with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court in exercise of the power of granting ad interim injunction is to preserve the subject matter of the suit in the status quo for the time being. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal

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right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

इसी संदर्भ में माननीय उच्चतम न्यायालय द्वारा 1999 AIR CSW 3050 उनवान *Colgate Palmolive (India) Ltd vs Hindustan Lever Ltd* में दिनांक 18.08.1999 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व नियम-02 के प्रावधान की विस्तृत व्याख्या (Interpretation) की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

Incidentally, the House of Lords prior to the decision in American Cyanamid Co. vs. Ethican Ltd. [1975 (1) All ER 504] in J.T. Stratford & Sons Ltd. Vs. Lindley (1965 AC 269) in no uncertain terms laid down that the plaintiff had to show a strong prima facie case that his rights has been infringed and thereafter the plaintiff was required to show that the damages would not be an adequate remedy in the event of there being a success of the plaintiff at the trial and that the balance of convenience favoured the grant. This requirement, however, in the matter of grant of an injunction so far as the English Courts are concerned, stands slightly diluted by reason of the decision in American Cyanamid's case (supra) which records that in the event of there being a serious issue to decide, the grant would be available to a plaintiff on however, compliance with the other fundamentals as noticed below. A strong prima facie case, therefore, stands substituted by a serious issue to be decided.

At this juncture, however, the decision of the House of Lords in American Cyanamid's case though raised certain eye-brows lately, ought to be considered in slightly more greater detail. Lord Diplock in Cyanamid's case laid down the following guiding principles for the grant of interlocutory injunction:
(1) "The plaintiff must first satisfy the Court that there is a serious issue to decide and that if the defendants were not restrained and the plaintiff won the action, damages at common law would be inadequate compensation for the plaintiff's loss.

(2) The Court, once satisfied of these matters will then consider whether the balance of convenience lies in favour of granting injunction or not, that is, whether justice would be best served by an order of injunction.

(3) The Court does not and cannot judge the merits of the parties 's respective cases and that any decision of justice will be taken in a state of uncertainty about the parties' rights."

It would seem to follow therefore, that what should be borne in mind, in addition to what has been phrased in Lord Diplock's speech, is that if there is uncertainty, the Court should be doubly reluctant to issue an injunction, the effect of which is to settle the parties' rights once for all. On a clear analysis of the speech of Lord Diplock, it appears that if damages, recoverable at common law, would be an adequate remedy and the defendant would be in a financial position to pay the same, no interlocutory injunction should normally be granted, howsoever strong the plaintiff's claim appear to be at that stage. Lord Diplock went on to observe further that in the event of there being any doubt, as to the adequacy of the respective remedies and damages available to either party or both, then and in that event, the question

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of balance of convenience arises and the same will vary from case to case. Similar view has also been expressed by the House of Lords in the case of Dimbleby & Sons Ltd Vs. National Union of Journalists (1984 1 ALL ER751). In Power Control Appliances Vs. Sumeet Machines Ltd. (1994 (2) SCC 448) this Court did follow the decision of this Court in Antox India's case (supra) and expressly approved the main dicta of the House of Lords in American Cyanamid's case. In Gujarat Bottling Co. Ltd. Vs. Coca Cola Co. & Ors., (1995 (5) SCC 545: AIR 1995 SC 2372) this Court however sounded a different note, though however, emphasised the discretionary power in the matter of grant of interlocutory injunction and in paragraph 43 this Court observed: "43. The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court.

While exercising the discretion the court applies the following tests - (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection, has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience" lies. (see: Wander Ltd. Vs. Antox India (P) Ltd. (1990 (supp) SCC at pp.731-32.) In order to protect the defendant while granting an interlocutory injunction in his favour the court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial".

As noted above, lately the `triable issue concept' as introduced by Lord Diplock in Cyanamid's case has been thought to be much too rigid and wide even conceptually and doubts are even raised as to its legal efficacy having regard to the facts of adequate compensation theory. As a matter of fact the Courts in England have even gone to the extent of ascribing the judgment to be beneficial for the richer sections of the society! We however can not subscribe to such a view, neither find any justification for such uncharitable comments and it seems that Cynamid's decision has been more misunderstood than understood and in this regard we record our concurrence with the views expressed by Laddie J. in Series 5 Software Vs. Clarke and Others in 1996 (1) ALL ER 853 wherein the learned Judge has explained the judgment of American Cyanamid with extreme competency and in our view also correctly Laddie, J. observed: "In many cases before American Cyanamid the prospect of success was one of the important factors taken into account in assessing the balance of convenience. The courts would be less willing to subject the plaintiff to the risk of irrecoverable

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loss which would befall him if an interlocutory injunction was refused in those cases where it thought he was likely to win at the trial than in those cases where it thought he was likely to lose. The assessment of the prospects of success therefore was an important factor in deciding whether the court should exercise its discretion to grant interlocutory relief. It is this consideration which American Cyanamid is said to have prohibited in all but the most exceptional case. So it is necessary to consider with some care what was said in the House of Lords on this issue.

Lord Diplock said ([1975] 1 ALL ER 504 at 511, [1975] AC 396 at 409):

`.if the extent of the uncompensatable disadvantage to each party would not differ widely, it may not be improper to take into account in tipping the balance the relative strength of each party's case as revealed by the affidavit evidence adduced on the hearing of the application.. The court is not justified in embarking on anything resembling a trial of the action.on conflicting affidavits in order to evaluate the strength of either party's case.' It appears to me that there is nothing in this which is inconsistent with the old practice. Although couched in terms `it may not be improper', this means that it is legitimate for the court to look at the relative strength of the parties' case as disclosed by the affidavits. The warning contained in the second of the quoted sentences is to avoid courts at the interlocutory stage engaging in mini- trials, which is what happened, at least in the Court of Appeal, in American Cyanamid itself. Interlocutory applications are meant to come on quickly and to be disposed of quickly.

The supposed problem with American Cyanamid centres on the following statement by Lord Diplock 9([1975] AC 396 at 409): Asssessing the relative strength of the parties' cases], however, should be done only where it is apparent upon the facts disclosed by evidence as to which there is no credible dispute that the strength of one party's case is disproportionate to that of the other party.' If this means that the court cannot take into account its view of the strength of each party's case if there is any dispute on the evidence, as suggested by the use of the words `only' and `no credible dispute', then a new inflexible rule has been introduced to replace that applied by the Court of Appeal. For example, all a defendant would have to do is raise a non-demurable dispute as to relevant facts in his affidavit evidence and then he could invite the court to ignore the apparent strength of the plaintiff's case. This would be inconsistent with the flexible approach suggested in Hubbard v. Vosper [1972] 1 ALL ER 1023, [1972] 2 QB 84 which was cited with approval earlier in American Cyanamid [1975] 1 ALL ER 504 at 510, [1975] AC 396 at 407.

Furthermore, it would be somewhat strange, since American Cyanamid directs courts to assess the adequacy of damages and the balance of convenience, yet these too are topics which will almost always be the subject of unresovled conflicts in the affidavit evidence.

In my view Lord Diplock did not intend by the last-quoted passage to exclude consideration of the strength of the cases in most applications for interlocutory relief. It appears to me that what is intended is that the court should not attempt to resolve difficult issues of fact or law on an application for interlocutory relief. If, on the other hand, the

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court is able to come to a view as to the strength of the parties' cases on the credible evidence, then it can do so. (Emphasis supplied)."

इसी संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील संख्या 7966-7967/2009 उनवान *Kashi Math Samsthan & Anr vs Srimad Sudhindra Thirtha Swamy* में दिनांक 02.12.2009 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व नियम-02 के प्रावधान की विस्तृत व्याख्या (Interpretation) की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

13. It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.

इसी संदर्भ में माननीय उच्चतम न्यायालय द्वारा 1995 AIR 2372 उनवान *Gujarat Bottling Co.Ltd. & Ors vs The Coca Cola Co* में दिनांक 04.08.1995 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व नियम-02 के प्रावधान की विस्तृत व्याख्या (Interpretation) की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

The grant of an interlocutory injuction during the perdency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the descretion the court. While exercising the discretion the court applies the following tests - (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the pliantiff would suffer an irreparable injury if his prayer for interlocutory injuction is disallowed. The decision whether or not to grant an onterlocutory injuction has to be taken at a time when the existence of the leagal right assailed by the plaintiff and its alleged violation are both contested and uncertain and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injuction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injuction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weghed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercisising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience' lies. [see:Wander Ltd.& Anr. v,. Antox India P. Ltd., 1990 (suoo) Scc 727 at pp. 731-32]. In order to protect the defendent whiloe

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granting an interlocutory injuction in his favour the Court can require the plaintiff to furnish an undertaking so that the defendent can be adequately compensated if the uncertainty were resolved in his favour at the trial.

Object

प्रकरण में विश्लेषण से पूर्व सर्वप्रथम आदेश-39 नियम-01 व नियम-02 के प्रावधान के उद्देश्य को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा AIRONLINE 1990 SC 156 उनवान *Wander Ltd. And Anr. vs Antox India P. Ltd.* में दिनांक 26.04.1990 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व नियम-02 के प्रावधान के उद्देश्य (Object) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

5. Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injucntion, it is stated is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience lies". The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted.

Principle

प्रकरण में विश्लेषण से पूर्व सर्वप्रथम आदेश-39 नियम-01 व नियम-02 के प्रावधान के कानूनी सिद्धांत को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा 1999 AIR SCW 3050 *Colgate Palmolive (India) Ltd vs Hindustan Lever Ltd* में दिनांक 18.08.1999 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व नियम-02 के प्रावधान के कानूनी सिद्धांत (Principle) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

Having dealt with however, the broad legislative perspective in the matter of conferment of power and authority on to the Commission in regard to the grant of injunctions and whilst on the subject let us however discuss the state of the law in the matter of grant of an order of injunction be it statutory or otherwise involving equitable considerations and the same being purely discretionary in nature though ordered only on the exigencies of the situation and not as a

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matter of course in accordance with the known principles of law. Generally, however, the interlocutory remedy by way of a grant of an order of injunction is intended to preserve and maintain in status quo the rights of the parties and to protect the plaintiff, being the initiator, of the action against incursion of his rights and for which there is no appropriate compensation being quantified in terms of damages. The basic principle of the grant of an order of injunction is to assess the right and need of the plaintiff as against that of the defendant and it is a duty incumbent on to the law courts to determine as to where the balance lies. Another redeeming feature in the matter of grant of interlocutory injunction is that, in the event of a grant of injunction in regard to a party defendant where the latter's enterprise has commenced and in that event the consideration may be somewhat different from that where the defendant is yet to commence its enterprise.

इसी संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 9479/2005 उनवान *Seema Arshad Zaheer & Ors vs Municipal Corporation Of Greater Mumbai* में दिनांक 05.05.2006 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व नियम-02 के प्रावधान के कानूनी सिद्धांत (Principle) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

29. The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff : (i) existence of a prima facie case as pleaded, necessitating protection of plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's rights or likely infringement of defendant's rights, the balance of convenience tilting in favour of plaintiff; and (iii) clear possibility of irreparable injury being caused to plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands.

Factor

प्रकरण में विश्लेषण से पूर्व सर्वप्रथम आदेश-39 नियम-01 व नियम-02 के प्रावधान के अनुप्रयोग हेतु आवश्यक परिस्थितियों/कारकों के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा 1999 AIR SCW 3050 उनवान *Colgate Palmolive (India) Ltd vs Hindustan Lever Ltd* में दिनांक 18.08.1999 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व नियम-02 के प्रावधान के अनुप्रयोग हेतु आवश्यक परिस्थितियों/कारकों के बारे में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted."

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इसी संदर्भ में माननीय उच्चतम न्यायालय द्वारा 1995 1439 AIRSCW उनवान *Mahadeo Savlaram Shelke And Ors. vs Puna Municipal Corporation* में दिनांक 24.01.1995 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व नियम-02 के प्रावधान के अनुप्रयोग हेतु आवश्यक परिस्थितियों/कारकों के बारे में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

> *12. In "Modern Law Review", Vol 44, 1981 Edition, at page 214, R.A. Buckley stated that "a plaintiff may still be deprived of an injunction in such a case on general equitable principles under which factors such as the public interest may, in an appropriate case, be relevant. It is of interest to note, in this connection, that it has not always been regarded as altogether beyond doubt whether a plaintiff who does thus fail to substantiate a claim for equitable relief could be awarded damages". In "The Law Quarterly Review" Vol 109, at page 432 (at p. 446), A.A.S. Zuckerman under Title "Mareva Injunctions and Security for Judgment in a Framework of Interlocutory Remedies" stated that "if the plaintiff is likely of suffer irreparable or uncompensable damage, no interlocutory injunction will be granted, then, provided that the plaintiff would be able to compensate the defendant for any unwarranted restraint on the defendant's right pending trial, the balance would tilt in favour of restraining the defendant pending trial. Where both sides are exposed to irreparable injury ending trial, the courts have to strike a just balance". At page 447, it is stated that 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".*

Guideline

प्रकरण में विश्लेषण से पूर्व सर्वप्रथम आदेश-39 नियम-01 व नियम-02 के प्रावधान के अनुप्रयोग हेतु माननीय न्यायालयों द्वारा प्रतिपादित मार्गनिर्देशों के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा 1999 **AIR SCW** 3050 उनवान *Colgate Palmolive (India) Ltd vs Hindustan Lever Ltd* में दिनांक 18.08.1999 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व नियम-02 के प्रावधान के अनुप्रयोग हेतु मार्गनिर्देशों के बारे में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

> *The learned Judge, thereafter went on to record that the House of Lords in American Cyanamid did not suggest that it was changing the basis upon which most courts had approached the exercise of discretion in this important area. Thus on an analysis of the decisions as noticed above, there does not seem to be any difficulty in appreciating the view as expressed by Lord Diplock in American Cynamid. As a matter of fact, Laddie, J.'s decision in Series 5 Software case (supra) has been able to resolve the issue without any departure from the true perspective of the judgment as noticed above. We, however, think it fit to note herein below certain specific considerations in the matter of grant of interlocutory injunction, the basic being-non-expression of opinion as to the merits of the matter by the Court, since the issue of grant of*

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injunction usually, is at the earliest possible stage so far as the time frame is concerned. The other considerations which ought to weigh with the Court hearing the application or petition for the grant of injunctions are as below:-

(i) Extent of damages being an adequate remedy;
(ii) Protect the plaintiff's interest for violation of his rights though however having regard to the injury that may be suffered by the defendants by reason therefor;
(iii) The court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others;
(iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case - the relief being kept flexible;

(v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties case; (vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;
(vii) Whether the grant or refusal of injunction will adversly affect the interest of general public which can or cannot be compensated otherwise.

Discretion

प्रकरण में विश्लेषण से पूर्व सर्वप्रथम आदेश-39 नियम-01 व नियम-02 के प्रावधान के अनुप्रयोग हेतु न्यायालय के विवेक के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 9479/2005 उनवान *Seema Arshad Zaheer & Ors vs Municipal Corporation Of Greater Mumbai* में दिनांक 05.05.2006 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व नियम-02 के प्रावधान के न्यायालय के विवेक के बारे में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

31. Where the lower court acts arbitrarily, capriciously or perversely in the exercise of its discretion, the appellate court will interfere. Exercise of discretion by granting a temporary injunction when there is 'no material', or refusing to grant a temporary injunction by ignoring the relevant documents produced, are instances of action which are termed as arbitrary, capricious or perverse. When we refer to acting on 'no material' (similar to 'no evidence'), we refer not only to cases where there are total dearth of material, but also to cases where there is no relevant material or where the material, taken as a whole, is not reasonably capable of supporting the exercise of discretion. In this case, there was 'no material' to make out a prima facie case and therefore, the High Court in its appellate jurisdiction, was justified in interfering in the matter and vacating the temporary injunction granted by the trial court.

इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा 1993 SCR (3) 522 उनवान *Shiv Kumar Chadha Etc. Etc vs Municipal Corporation Of Delhi* में दिनांक 04.05.1993 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908

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के आदेश-39 नियम-01 व नियम-02 के प्रावधान के न्यायालय के विवेक के बारे में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

> *TEMPORARY INJUNCTION*
> *It need not be said that primary object of filing a suit challenging the validity of the order of demolition is to restrain such demolition with the intervention of the Court. In such a suit the plaintiff is more interested in getting an order of interim injunction. 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 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 injunction is, thus, to maintain the status quo. The Court grants such relief according to the legal principles--ex debite justitiae. Before any such order is passed the Court must be satisfied that a strong primafacie case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him.*

इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील संख्या 4602/2024 उनवान *Bloomberg Television Production ... vs Zee Entertainment Enterprises Limited* में दिनांक 12.03.2024 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व नियम-02 के प्रावधान के न्यायालय के विवेक के बारे में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

> *12. Undoubtedly, the grant of an interim injunction is an exercise of discretionary power and the appellate court (in this case, the High Court) will usually not interfere with the grant of interim relief. However, in a line of precedent, this Court has held that appellate courts must interfere with the grant of interim relief if the discretion has been exercised "arbitrarily, capriciously, perversely, or where the court has ignored settled principles of law regulating the grant or refusal of interlocutory injunctions." 10 The grant of an ex parte interim injunction by way of an unreasoned order, definitely falls within the above formulation, necessitating interference by the High Court. This being a case of an injunction granted in defamation proceedings against a media platform, the impact of the injunction on the constitutionally protected right of free speech further warranted intervention.*

इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा AIRONLINE 1990 SC 156 उनवान *Wander Ltd. And Anr. vs Antox India P. Ltd* में दिनांक 26.04.1990 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व नियम-02 के प्रावधान के न्यायालय के विवेक के बारे में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

> *9. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of*

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discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा 1992 AIR SCW 3128 उनवान *Dalpat Kumar vs Prahlad Singh* में दिनांक 16.12.1991 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व नियम-02 के प्रावधान के न्यायालय के विवेक के बारे में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

6. Undoubtedly, in a suit seeking to set aside the decree, the subject-matter in the earlier suit, though became final, the Court would in an appropriate case grant ad interim injunction when the party seeks to set aside the decree on the ground of fraud pleaded in the suit or for want of jurisdiction in the Court which passed the decree. But the Court would be circumspect before granting the injunction and look to the conduct of the party, the probable injuries to either party and whether the plaintiff could be adequately compensated if injunction is refused.

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The phrases "prima facie case"; "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice. The facts are eloquent and speak for themselves. It is well nigh impossible to find from facts prima facie case and balance of convenience. The respondents can be adequately compensated on their success.

Prima Facie Case

प्रकरण में विश्लेषण से पूर्व सर्वप्रथम सिविल प्रक्रिया संहिता-1908 आदेश-39 नियम-01 व नियम-02 के प्रावधान में निहित सिद्धांत के बारे में विस्तार से समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा 1992 AIR SCW 3128 उनवान *Dalpat Kumar vs Prahlad Singh* में दिनांक 16.12.1991 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व नियम-02 के प्रावधान में निहित सिद्धांत की विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits.

Jagendra

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तारानगर([illegible])

इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा 1995 AIR SCW 1439 *Mahadeo Savlaram Shelke And Ors. vs Puna Municipal Corporation* में दिनांक 24.01.1995 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व नियम-02 के प्रावधान में निहित सिद्धांत की विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः-

> *10. In Woodroffe's "Law Relating to Injunctions, Second revised and enlarged edition, 1992, at page 56 in para 30.01, it is staled 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 a 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 fade case in support of the title which he asserts". At page 80 in para 33.02, it is further stated that "if the court be of opinion that looking to these principles the case is not one for which an injunction is a fitting remedy, it has a discretion to grant damages in lieu of an injunction. The grounds upon which this discretion to grant damages in lieu of an injunction should be exercised, have been subject of discussion in several reported Indian cases". At page 83, is stated that "the court has jurisdiction to grant an injunction in those cases where pecuniary compensation would not afford adequate relief. The expression "adequate relief is not defined, but it is probably used to meun - such a compensation as would, though not in specie, in effect place the plaintiffs in the same position in which they stood before. The determination of the question whether relief by injunction or by damages shall be granted depends upon the circumstances of each case.*

Balance of Convenience

प्रकरण में विश्लेषण से पूर्व सर्वप्रथम सिविल प्रक्रिया संहिता-1908 आदेश-39 नियम-01 व नियम-02 के प्रावधान में निहित सिद्धांत के बारे में विस्तार से समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा 1992 AIR SCW 3128 उनवान *Dalpat Kumar vs Prahlad Singh* में दिनांक 16.12.1991 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व नियम-02 के प्रावधान में निहित सिद्धांत सुविधा का संतुलन की विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः-

> *5. (.....) Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages.*

Irreparabale Damage

प्रकरण में विश्लेषण से पूर्व सर्वप्रथम सिविल प्रक्रिया संहिता-1908 आदेष-39 नियम-01 व नियम-02 के प्रावधान में निहित सिद्धांत के बारे में विस्तार से समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा 1992 AIR SCW 3128 उनवान *Dalpat Kumar vs Prahlad Singh* में दिनांक 16.12.1991 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व नियम-02 के प्रावधान में निहित सिद्धांत अपूर्णनीय क्षति की विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः-

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5. (.....) The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.

Ex Parte

प्रकरण में विश्लेषण से पूर्व एकतरफा अस्थाई निषेधाज्ञा के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा 1993 SCR (3) 522 उनवान *Shiv Kumar Chadha Etc. Etc vs Municipal Corporation Of Delhi* में दिनांक 04.05.1993 को दिये गये निर्णय में एकतरफा अस्थाई निषेधाज्ञा के बारे में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

Under the changed circumstance with so many cases pending in Courts, once an interim order of injunction is passed, in many cases, such interim orders continue for months; if not for years. At final hearing while vacating such interim orders of injunction in many cases, it has been discovered that while protecting the plaintiffs from suffering the alleged injury, more serious injury has been caused to the defendants due to continuance of interim orders of injunction without final hearing. It is a matter of common knowledge that on many occasions even public interest also suffers in view of such interim orders of injunction, because persons in whose favour such orders are passed are interested in perpetuating the contraventions made by them by delaying the final disposal of such applications. The court should be always willing to extent its hand to protect a citizen who is being wronged or is being deprived of a property without any authority in law or without following the procedure which are fundamental and vital in nature. But at the same time the judicial proceedings cannot-be. used to protect or to perpetuate a wrong committed by a person who approaches the Court.

Power to grant injunction is an extraordinary power vested in the Court to be exercised taking into consideration the facts and circumstances of a particular case. The Courts have to be more cautious when the said power is being exercised without notice or hearing the party who is to be affected by the order so passed. That is why Rule 3 of Order 39 of the Code requires that in ail cases the Court shall, before grant of an injunction, direct notice of the application to be given to the opposite party, except where it appears that object of granting injunction itself would be defeated by delay. By the Civil Procedure Code (Amendment) Act, 1976, a proviso has been added to the said rule saying that "where it is proposed to grant an injunction without giving notice of the application to the ooposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay.....

It has come to our notice that in spite of the aforesaid statutory requirement, the Courts have been passing orders of injunction before issuance of notices or hearing the parties against whom such orders are to operate without recording the reasons for passing such orders. It is said that

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if the reasons for grant of injunction are mentioned, a grievance can be made by the other side that Court has prejudged the issues involved in the suit. According to us, this is a misconception about the nature and the scope of interim orders. It need not be pointed out that any opinion expressed in connection with an interlocutory application has no bearing and shall not affect any party, at the stage of the final adjudication. Apart from that now in view of the proviso to Rule 3 aforesaid, there is no scope for any argument. When the statute itself requires reasons to be recorded, the Court cannot ignore that requirement by saying that if reasons are recorded, it may amount to expressing an opinion in favour of the plaintiff before hearing the defendant. The imperative nature of the proviso has to be judged in the context of Rule 3 of Order 39 of the Code. Before the Proviso aforesaid was introduced, Rule 3 said "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". The proviso was introduced to provide a condition, where Court proposes to grant an injunction without giving notice of the application to the opposite party, being of the opinion that the object of granting injunction itself shall be defeated by delay. The condition so introduced is that the Court "shall record the reasons" why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex parte injunction, cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule 3, the procedure prescribed under the proviso has been followed. The party who invokes the jurisdiction of the Court for grant of an order of restraint against a party, without affording an opportunity to him of being heard, must satisfy the Court about the gravity of the situation and Court has to consider briefly these factors in the ex parts order. We are quite conscious of the fact that there are other statutes which contain similar provisions requiring the Court or the authority concerned to record reasons before exercising power vested in them. In respect of some of such provisions it has been held that they are required to be complied with but non-compliance there of will not vitiate the order so passed. But same cannot be said in respect of the proviso to Rule 3 of Order 39. The Parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side, under exceptional circumstances. Such ex parte orders have far reaching effect, as such a conditions has been imposed that Court must record reasons before passing such order. If it is held that the compliance of the proviso aforesaid is optional and not obligatory, then the introduction of the proviso by the Parliament shall be a futile exercise and that part of Rule 3 will be a surplusage for all practical purpose. Proviso to Rule 3 of Order 39 of the Code, attracts the principle, that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not all. This principle was approved and accepted in well-known cases of Taylor v. Taylor. (1875) 1 Ch. D. 426, Nazir Ahmed v. Emperor, AIR 1936 PC 253. This Court has also expressed the same view in respect of procedural requirement of the Bombay Tenancy and Agricultural Lands Act in the case of Ramachandra Keshav Adke v. Govind Joti Chavare, AIR 1975 SC 915.

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इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा 1994 AIR SCW 2801 उनवान *Morgan Stanley Mutual Fund vs Kartick Das* में दिनांक 20.07.1994 को दिये गये निर्णय में एकतरफा अस्थाई निषेधाज्ञा के बारे में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

37. In United Commercial Bank v. Batik of India5, this Court observed: (SCC pp. 787-88, paras 52-53) "No injunction could be granted under Order 39, Rules 1 and 2 of the Code unless the plaintiffs establish that they had a prima facie case, meaning thereby that there was a bona fide contention between the parties or a serious question to be tried. The question that must necessarily arise is whether in the facts and circumstances of the case, there is a prima facie case and, if so, as between whom? In view of the legal principles applicable, it is difficult for us to say on tile material on record that the plaintiffs have a prima facie case. It cannot be disputed that if the suit were to be brought by the Bank of India, the High Court would not have granted any injunction as it was bound by the terms of the contract. What could not be done directly cannot be achieved indirectly in a suit brought by the plaintiffs.

Even if there was a serious question to be tiled, the High Court had to consider the balance of convenience. We have no doubt that there is no reason to prevent the appellant from recalling the amount of Rs 85,84,456. The fact remains that the payment of Rs 36,52,960 against the first lot of 20 documents made by the appellant to the Bank of India was a payment under reserve while that of Rs 49,31,496 was also made under reserve as well as against the letter of guarantee or indemnity executed by it. A payment 'under reserve' is understood in banking transactions to mean that the recipient of money may not deem it as his own but must be prepared to return it on demand. The balance of convenience clearly lies in allowing the normal banking transactions to go forward. Furthermore, the plaintiffs have failed to establish that they would be put to an irreparable loss unless an interim injunction was granted."

38. This Court had occasion to emphasise the need to give reasons before passing ex parte orders of injunction. In Shiv Kumar Chadha v. 5 (1981) 2 SCC 766 Municipal Corpn. of Delhi6, it is stated as under: (SCC pp. 176-77, paras 34-35) "... the court shall 'record the reasons' why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex parte injunction, cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule '1, the procedure prescribed under the proviso has been followed. The party which invokes the Jurisdiction of the court for grant of an order of restrain against a party, without affording an opportunity to him of being heard, must satisfy the court about the gravity of the situation and court has to consider briefly these factors in the ex parte order. We are quite conscious of the fact that there are other statutes which contain similar provisions requiring the court or the authority concerned to record reasons before exercising power vested in them. In respect of some of such provisions it has been held that they are required to be complied with but non-compliance therewith will not vitiate the order so passed. But same cannot be said in respect of the proviso to Rule 3 of Order 39. The

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Parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side, under exceptional circumstances. Such ex parte orders have far-reaching effect, as such a condition has been imposed that court must record reasons before passing such order. If it is held that the compliance with the proviso aforesaid is optional and no t obligatory, then the introduction of the proviso by the Parliament shall be a futile exercise and that part of Rule 3 will be a surplusage for all practical purposes. Proviso to Rule 3 of Order 39 of the Code, attracts the principle, that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not all. This principle was approved and accepted in well-known cases of Taylor v. Taylor', and Nazir Ahmed v. Emperor8. This Court has also expressed the same view in respect of procedural requirement of the Bombay Tenancy and Agricultural Lands Act in the case of Ramchandra Keshav Adke v. Govind Joti Chavare.

As such whenever a court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an ex parte order is not passed."

Guideline to Ex Parte TI

प्रकरण में विश्लेषण से पूर्व एकतरफा अस्थाई निषेधाज्ञा हेतु माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों के माध्यम से प्रतिपादित मार्गनिर्देश के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा 1993 SCR (3) 522 उनवान *Shiv Kumar Chadha Etc. Etc vs Municipal Corporation Of Delhi* में दिनांक 04.05.1993 को दिये गये निर्णय में एकतरफा अस्थाई निषेधाज्ञा के मार्गनिर्देश के बारे में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः-

As such whenever a Court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side. It must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an ex parte order is not passed. But any such ex parte order should be in force upto a particular date before which the plaintiff should be required to serve the notice on the defendant concerned. In the Supreme Court Practice 1993, Vol. 1, at page 514, reference has been made to the views of the English Courts saying:-

"Exparte injunctions are for cases of real urgency where there has been a true impossibility of giving notice of motion....
An ex parte injunction should generally be until a certain day, usually the next motion day. . . ."
Accordingly we direct that the application for interim injunction should be considered and disposed of in the following manner:-

(i)The Court should first direct the plaintiff to serve a copy of the application with a copy of the plaint along with relevant documents on the counsel for the Corporation or any competent authority of the Corporation and the order should be passed only after hearing the parties.

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(ii)If the circumstances of a case so warrant and where the Court is of the opinion, that the object of granting the injunction would be defeated by delay, the Court should record reasons for its opinion as required by proviso to Rule 3 of order 39 of the Code, before passing an order for injunction. The Court must direct that such order shall operate only for a period of two weeks, during which notice along with copy of the application, plaint and relevant documents should be served on the competent authority or the counsel for the Corporation. Affidavit of service of notice should be filed as provided by proviso to Rule 3 of order 39 aforesaid If the Corporation has entered appearance, any such exparte order of injunction should be extended only after hearing the counsel for the Corporation.
(iii)While passing an ex parte order of injunction the Court shall direct the plaintiff to give an undertaking that he will not make any further construction upon the premises till the application for injunction is finally heard and disposed of.

इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा 1994 AIR SCW 2801 उनवान *Morgan Stanley Mutual Fund vs Kartick Das* में दिनांक 20.07.1994 को दिये गये निर्णय में एकतरफा अस्थाई निषेधाज्ञा के मार्गनिर्देश के बारे में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः-

As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are-

(a) whether irreparable or serious mischief will ensue to the plaintiff;
(b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;
(c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;
(d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;
(e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.
(f) even if granted, the ex parte injunction would be for a limited period of time.
(g) General principles like prima facie case balance of convenience and irreparable loss would also be considered by the court.

Role/Power of Court

प्रकरण में विश्लेषण से पूर्व सर्वप्रथम अस्थाई निषेधाज्ञा के प्रावधान के अनुप्रयोजन में न्यायालय की भूमिका, शक्तियां व दृष्टिकोण के बारे में विस्तार से समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील संख्या 4602/2024 उनवान *Bloomberg Television Production vs Zee Entertainment Enterprises Limited* में दिनांक 12.03.2024 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व नियम-02 के तहत न्यायालय की भूमिका एवं शक्तियों (Role/Power of Court) को स्पष्ट करते हुए निम्न दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः-

The three-fold test of establishing (i) a prima facie case, (ii) balance of convenience and (iii) irreparable loss or harm, for the grant of interim relief, is well-established in the jurisprudence of this Court. This test is equally applicable to the grant of interim injunctions in defamation suits.

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However, this three-fold test must not be applied mechanically,3 to the detriment of the other party and in the case of injunctions against journalistic pieces, often to the detriment of the public. While granting interim relief, the court must provide detailed reasons and analyze how the three-fold test is satisfied. A cursory reproduction of the submissions and precedents before the court is not sufficient. The court must explain how the test is satisfied and how the precedents cited apply to the facts of the case.

Compensation

प्रकरण में विश्लेषण से पूर्व सर्वप्रथम अस्थाई निषेधाज्ञा के प्रावधान के तहत अस्थाई निषेधाज्ञा से विपक्षी पक्षकार को हुए नुकसान की क्षतिपूर्ति हेतु माननीय न्यायालयों द्वारा प्रतिपादित न्यायिक दृष्टांतों में की गई विवेचना के बारे में विस्तार से समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा 1995 AIR SCW 1439 उनवान *Mahadeo Savlaram Shelke And Ors. vs Puna Municipal Corporation* में दिनांक 24.01.1995 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व नियम-02 के तहत न्यायालयों द्वारा जारी अस्थाई निषेधाज्ञा से विपक्षी पक्षकार को हुए नुकसान की क्षतिपूर्ति हेतु विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

13. In "Injunctions" by David Bean, 1st Edn, at page 22, it is stated that "if the plaintiff obtains an interlocutory injunction, but subsequently the case goes to trial and he fails to obtain a perpetual order, the defendant will meanwhile have been restrained unjustly and will be entitled to damages for any loss he has sustained. The practice has therefore grown up, in almost every case where interlocutory injunction is to be granted, of requiring the plaintiff to undertake to pay any damages subsequently found due to the defendant as compensation if the injunction cannot be justified at trial. The undertaking may be required of the plaintiff in appropriate cases in that behalf. In "Joyce on Injunctions" Vol. 1 in paragraph 177 at page 293, it is stated "Upon a final judgment dissolving an injunction, a right of action upon the injunction bond immediately follows, unless the judgment is superseded. A right to damages on dissolution of the injunction would arise at the determination of the suit at law".

14. It would thus be clear that in a suit for perpetual injunction, the court should enquire on affidavit evidence and other material placed before the court to find strong prima facie case and balance of convenience in favour of granting injunction otherwise irreparable damage or damage would ensue to the plaintiff. The court should also find whether the plaintiff would adequately be compensated by damages if injunction is not granted. It is common experience that injunction normally is asked for and granted to prevent the public authorities or the respondents to proceed with execution of or implementing scheme of public utility or granted contracts for execution thereof. Public interest is, therefore, one of the material and relevant considerations in either exercising or refusing to grant ad interim injunction. While exercising the discretionary power, the court sould also adopt the procedure of calling upon the plaintiff to file a bond to the satisfaction of the court that in the event of his failing in the suit to obtain the relief asked for in the plaint, he would adequately compensate the defendant for the loss ensued due to the order of injunction granted in p favour of the plaintiff. Even otherwise the court while exercising its equity jurisdiction in granting injunction has also jurisdiction and power to grant adequate compensation to mitigate the damages caused to the defendant by grant of injunction restraining the defendant to proceed with the

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execution of the work etc., which is retrained by an order of injunction made by the court. The pecuniary award of damages is consequential to the adjudication of the dispute and the result therein is incidental to the determination of the case by the court. The pecuniary jurisdiction of the court of first instance should not impede nor be a bar to award damages beyond it pecuniary jurisdiction. In this behalf, the grant or refusal of damages is not founded upon the original cause of action but the /consequences of the adjudication by the conduct of the parties, the court gets inherent jurisdiction in doing ex debito justitiae mitigating the damage suffered by the defendant by the act of the court in granting injunction restraining the defendant from proceeding with the action complained of in the suit It is common knowledge that injunction is invariably sought for in laying the suit in a court of lowest pecuniary jurisdiction even when the claims are much larger than the pecuniary jurisdiction of the court of first instance, may be, for diverse reasons. Therefore, the pecuniary jurisdiction is not and should not stand an impediment for the court of first instance in determining damages as the part of the adjudication and pass a decree in that behalf without relegating the parties to a further suit for damages. This procedure would act as a check on abuse of the process of the court and adequately compensate the damages or injury suffered by the defendant by act of court at the behest of the plaintiff.

15. Public purpose of removing traffic congestion was sought to be served by acquiring the building for widening the road. By orders of injunction, for 24 years the public purpose, was delayed. As a consequence execution of the project has been delayed and the costs now stand mounted. The courts in the cases where injunction are to be granted should necessarily consider the effect on public purpose thereof and also suitably mould the relief. In the event the plaintiffs losing ultimately the suit, they should necessarily bear the consequences, namely, escalation of the cost or the damages the Corporation suffered on account of injunction issued by the courts. Appellate court had not adverted to any of the material aspects of the matter. Therefore, the High Court has rightly, though for different reasons, dissolved the order of ad interim injunction. Under these circumstances, in the event of the suit to be dismissed while disposing of the suit the trial court is directed to assess the damages and pass a decree for recovering the same at pro rata against the appellants.

उपरोक्त विधिक प्रावधान एवं न्यायिक दृष्टांतों के संदर्भ में राजस्थान काश्तकारी अधिनियम-1955 की धारा-212 एवं सिविल प्रक्रिया संहिता-1908 के आदेश-39 नियम-01 व नियम-02 के अवलोकन से ज्ञात होता है कि किसी प्रकरण में अस्थाई निषेधाज्ञा जारी करने हेतु प्रथमदृष्टया विवाद, सुविधा का संतुलन प्रार्थी के पक्ष में होना तथा प्रार्थी को अपूर्णनीय क्षति होने के साथ प्रार्थी का आचरण बेदाग होना आवश्यक है। उक्त संदर्भ में प्रकरण का विश्लेषण किया जाना अपेक्षित है।

प्रकरण में सर्वप्रथम प्रार्थी द्वारा प्रस्तुत प्रकरण में प्रथमदृष्टया विषयवस्तु/विवाद कारण को समझना आवश्यक है। पत्रावली के अवलोकन से स्पष्ट है कि प्रार्थी द्वारा उक्त आराजी को पैतृक दादालाई आराजी बताते हुए हिन्दू उत्तराधिकार अधिनियम-1956 के तहत कानूनी अधिकार निहित होने के आधार पर खातेदारी अधिकारों की घोषणा चाही गई है तथा जरिए प्रार्थना पत्र अस्थायी निषेधाज्ञा हेतु निवेदन किया है।

अप्रार्थी ने जवाब प्रार्थना पत्र में निवेदन किया है कि कि कृषि भूमि ख.नं. 1045 तादादी 7.7419 हैक्टयर, ख.नं. 1139 तादादी 6.7904 हैक्टयर, ख.नं. 330 तादादी 0.1012 हैक्टयर, ख.नं. 333 तादादी 5.2856 हैक्टयर, ख.नं. 632

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तादादी 6.1075 हैक्टयर कुल तादादी 23.0266 हैक्टयर वाके रोही ग्राम बायं तहसील तारानगर जिला चूरु में स्थित है जो अप्रार्थी सं. 1 के पिता फुलाराम के नाम से खातेदारी काश्तकारी में रहा था। फुलाराम के एक लड़का अप्रार्थी मांगीलाल व पत्नी संतोखी देवी व दो पुत्रियां क्रमशः विद्या देवी व धन्नी देवी हुई थी । फुलाराम की मृत्यु के पश्चात उक्त कृषि भूमि उक्त चारों व्यक्तियों के नाम से खातेदारी काश्तकारी में अंकित हुई थी लेकिन उसके पश्चात अप्रार्थी सं. 1 की माता संतोखी देवी व बहिन विद्या देवी व धन्नीदेवी ने अपना-अपना हक व हिस्सा अप्रार्थी सं. 1 के हक में परित्याग कर दिया। इस प्रकार अप्रार्थी सं. 1 के हक में परित्याग की गई कृषि भूमि अप्रार्थी सं. 1 की कानूनन स्वयं अर्जित सम्पति थी परिभाषा में आती है। शेष 1/4 हिस्से की कृषि भूमि अप्रार्थी सं. 1 को उतराधिकार स्वरुप प्राप्त हुई थी । ऐसी सूरत में प्रार्थी को उक्त विवादित कृषि भूमि किसी भी प्रकार का कोई हक व हिस्सा कानूनन नहीं बनता है। विवादित कृषि भूमि किसी भी प्रकार से प्रार्थी की दादालाई सम्पति नहीं है व ना ही सहदायिकी सम्पति है। ऐसी सूरत में उक्त विवादित कृषि भूमि में प्रार्थी का जन्म से ही अधिकार होने का प्रश्न ही नहीं उठता है अपितु प्रार्थी द्वारा गलत तथ्यों के आधार पर उक्त वाद प्रस्तुत किया गया है जो कानूनन हर सूरत में खारिज किये जाने योग्य है । इस संबंध में अप्रार्थी द्वारा छायाप्रति दस्तबरदारी विलेख संतोखी देवी बहक मांगीलाल एवं दस्तबरदारी विलेख विद्या, धन्नी पुत्रियाँ फुलाराम बहक मांगीलाल पेश की हैं जिनके संबंध में प्रार्थी अधिवक्ता ने कोई प्रत्युत्तर नहीं दिया है। इस प्रकार वादगत भूमि का प्रार्थी द्वारा पैतृक दादालाई सम्पति साबित करने में विफल रहने पर प्रकरण में प्रार्थी के पक्ष में प्रथम दृष्ट्या विषय वस्तु/ विवाद कारण उत्पन्न होना प्रतीत नहीं होता है। चूंकि वादगत भूमि में प्रार्थी अपने अधिकार होने के बिन्दु को प्रथम दृष्ट्या साबित करने में विफल रहा है अतः प्रार्थी को अपूर्णीय क्षति होने एवं सुविधा का संतुलन प्रार्थी के पक्ष में नहीं होना प्रतीत होता है।

इस प्रकार स्पष्ट है कि प्रार्थीगण का प्रकरण में प्रथम दृष्ट्या मामला नहीं होने, प्रार्थीगण को अपूर्णनीय क्षति कारित होना प्रतीत नहीं होने तथा सुविधा का संतुलन प्रार्थीगण के पक्ष में प्रतीत नहीं होने के कारण प्रार्थी के पक्ष में उक्त आराजी पर दिनांक 18.07.2024 को जारी एक पक्षीय अस्थाई निषेधाज्ञा को प्रत्याहारित किया जाना उचित प्रतीत होता है। अतः

आदेश है कि

प्रार्थी का प्रार्थना पत्र बाबत अस्थाई निषेधाज्ञा खारिज किया जाता है तथा प्रार्थना-पत्र में वर्णित आराजी पर दिनांक 18.07.2024 को जारी अंतरिम अस्थाई निषेधाज्ञा को प्रत्याहारित किया जाता है।

आज 17.02.2025 को यह निर्णय मेरे द्वारा खुले न्यायालय में सुनाया जाकर हस्ताक्षर एवं न्यायालय की मुद्रा से जारी किया गया।

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