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**(2010) 12 AHC CK 0066**  
**In the Allahabad High Court**  
**Case No : Misc. Single No. 7458 of 2010**

Mahant Shivram Giri

APPELLANT

Vs

Civil Judge Malihabad (S.D.) and Others

RESPONDENT

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**Date of Decision :** 20-12-2010

**Acts Referred:**

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

**Citation :** (2010) 12 AHC CK 0066

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

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Anil Kumar, J.—Heard Sri Shravan Kumar Shukla, learned Counsel for the Petitioner and Sri Nripendra Mishra, Advocate holding brief of Sri Manish Kumar, learned Counsel for the Respondent.

2. Facts in brief of the present case are that initially Petitioner filed a suit for permanent injunction registered as Regular Suit No. 712 of 2009 in the Court of Civil Judge (Sr. Div.) Malihabad, Lucknow.

3. In the said suit, an applicaiton for grant of temporary injunction under Order 39 Rule (1 and 2 Code of CPC was moved. On the said application, the court below passed an order dated 13.11.2009 stating therein that before granting temporary injunction as prayed by the Plaintiff/Petitioner, it is necessary to hear the Defendant/Respondents in the matter in question. Accordingly, notice was issued issued.

4. Learned Counsel for the Petitioner submits that till date, the matter in respect to grant of temporary injunction has not been considered by the trial court. Hence the present writ petition has been filed with the prayer that till the disposal of the suit, temporary injunction and status quo shall be maintained between the parties and trial court may be directed to consider the application for temporary injunction at an early date.

5. I have heard the learned Counsel for the Petitioner and gone through the record. From the perusal of the impugned order, it is clear that while considering the Petitioner's application for grant of temporary injunction, the court below had come to the conclusion that before granting the ex parte injunction order, notice may be issued to the Defendant to hear his version.

6. In view of the above said factual background the question which immediately arises is that what principles should be followed by the Courts in the matter of grant of an ad-interim injunction. The answer is contained in the decision of the Hon'ble Apex Court in the case of Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others, a Bench of three Judges of Apex Court has held that:

It has been pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course, grant of injunction is within the discretion of the court and such discretion is not to be exercised in favour of the Plaintiff only if it is proved to the satisfaction of the court that unless the Defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the Plaintiff during the pendency of the suit. The purpose of temporary injection is, thus, to maintain the status quo. The Court grants such relief according to the legal principles- *ex debito justitiae*. Before any such order is passed the court must be satisfied that a strong *prima facie* case has been made out by the Plaintiff including on the question of maintainability of the suit and that the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him.

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

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

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

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

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

10. In view of the abovesaid facts, the said prayer as made by the learned Counsel for the Petitioner cannot be granted. However as prayed by the learned Counsel for the Petitioner, the trial court shall make all endeavour to decide the application for temporary injunction at an early date after hearing the counsel for the parties on merit in accordance with law.

11. It is clarified that this Court has not adjudicated the claim of the Petitioner on merit.

12. With the above observations, the writ petition is disposed of.