

(2008) 01 GAU CK 0015
In the Gauhati High Court
Case No : C.R.P. No. 08 of 2007

Remisiama and Others

APPELLANT

Vs

Dr. Ainghinglova

RESPONDENT

Date of Decision : 16-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 115, 151
Mizoram Civil Courts Act, 2005 — Section 31
Specific Relief Act, 1963 — Section 41

Citation : (2009) 4 GLT 240

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : M. Guite, for the Appellant; A.K. Rokhum, for the Respondent

Final Decision : Allowed

Judgement

R.B. Misra, J.—Heard Mr. M. Guite, learned Counsel for the Petitioners and also heard Mr. A.K. Rokhum, learned Counsel for the Respondent.

2. The present revision petition u/s 115 of Code of Criminal Procedure read with Section 151 of Code of Criminal Procedure has been preferred against the order dated 29.3.2007 passed by Smt. Lucy Lalrinthari, Addl. District Magistrate, Judicial, Aizawl in FAO No. 1 of 2007 whereby the order dated 16.2.2007 passed by Shri Lalbiakzama, Asstt. to the Deputy Commissioner arising out of Civil Suit No. 38 of 2006 has not been interfered with and further by the impugned order dated 29.3.2007 learned Addl. District Magistrate (Judicial), Aizawl has directed the trial court not to pass any further relief to either parties onward until final disposal of the main suit on merit.

3. It appears that the Petitioners (Defendants) had approached earlier by preferring an appeal before this Court against the same impugned order dated 29.3.2007 (passed by the Addl. District Magistrate (Judicial) passed in FAO No. 1 of 2007 arising out of C.M. Appln. No. 14 of 2007 in Civil Suit No. 38 of 2006). When the Petitioners came to know that vide Section 31 of Mizoram Civil Courts

Act, 2005 notified on 26.4.2006 the provision of appeal was repealed, then a prayer was made to make an amendment and accordingly the present revision petition has been preferred.

4. In order to adjudicate the present revision petition it is necessary to give the factual background of the case as below:

(i) It appears one Bethesda Rural Hospital (for short, the Hospital) was established in a rented house at Bawngkawn, Aizawl, Mizoram, sometime in April 2003 at the instance of opposite party/Respondent/Plaintiff, by borrowing a sum of Rs. 7,44,800/- from the Petitioner No. 1 /Defendant No. 1 after keeping the assets of the "Hospital" as mortgage against the loan. The Sacred Heart Society (for short, the "Society"), a registered Society under the Societies Registration Act, stood as surety for the loan. An Agreement dated 28.01.2004 was executed to this effect. The Petitioner No. 1 /Defendant No. 1 as an Advisor to the "Society" also agreed in principle that the "society" shall take over the mortgaged assets in the eventuality of default however, even after the agreed period expired the Respondent/Plaintiff failed to repay the loan amount.

(ii) The "Society" and the Respondent/Plaintiff entered into an Agreement dated 07.02.2005 inter alia other points that the entire assets of Hospital shall be handed to the Society, and latter one shall make payment of an honorarium of Rs. 10,000/- to the Respondent/Plaintiff if the Hospital runs smoothly with profit. After taking over the charge of the "Hospital", the "Society" changed the name of the Hospital to Bethesda Hospital and Research Centre (for short, the BHRC). In pursuant to the said Agreement dated 07.02.2005, the Petitioner No. 1/Defendant No. 1 and the Society entered into an another Agreement dated 4.11.2005 owing to repay the liabilities.

(iii) The Society made sincere efforts for improvement of "BHRC" by generating finances and for its revival by way of employment of experts and installation of machineries, knowing well that "BHRC" is not profit oriented. However, by a resolution dated 31.01.2006 the Board of Directors of Society decided not to continue the payment w.e.f. January 2006 to Respondent/Plaintiff due to financial constraints faced by the "BHRC" and such resolution was endorsed by the resolution dated 8.4.2006 of Governing Body of "BHRC".

(iv) In reference to said Agreement dated 7.2.2005 the Respondent/Plaintiff filed a Civil Suit No. 38 of 2006 on 24.11.2006 against the officials of the Society before the Assistant to the Deputy Commissioner, Aizawl, for payment of the arrear of honorarium of Rs. 1,00,000/- of ten months (January to October) and thereafter pay the honorarium regularly to the Plaintiff at interim during the pendency of the case. The Respondent/Plaintiff also made a prayer that in case the Defendants /Petitioners herein failed to make payment of the honorarium, they be directed to handover the Hospital back to him.

The Defendants contested the suit by filing their written statement and taking plea that the Respondent/Plaintiff cannot claim the honorarium as a matter of

right as the Agreement dated 7.2.2005 is a conditional one only if the Hospital runs smoothly. The other ground of defence taken by the Petitioners/Defendants was that the Hospital has an outstanding liability of Rs. 44,57,234/- as on 9.1.2007 including the liabilities of the Respondent/Plaintiff towards the Petitioner No. 1 /Defendant No. 1 is also under repayment.

(v) Learned Trial Court passed an order on 24.11.2006 directing the Petitioners/Defendants to deposit a sum of Rs. 1,10,000/- as an arrear of honorarium for the month of January to November to that court within 10th days for the disbursement to the Plaintiff. The trial court had again passed an another order on 18.12.2006 directing the Defendants to deposit the honorarium of Rs. 1,10,000/- within 10 days, failing which warrant of arrest could be issued against the Defendants.

(vi) Being aggrieved by the said orders dated 24.11.2006 and 18.12.2006 Petitioners/Defendants preferred an appeal namely FAO-11 of 2006 before the Additional District Magistrate (Judicial), Aizawl on the ground amongst others that they have not been afforded an opportunity of hearing and it amounts to decreeing the suit in favour of the Respondent/Plaintiff before trying the suit on merit. The Additional District Magistrate (Judicial), Aizawl by an order dated 28.12.2006 set aside the above orders with directions not to grant any relief to the Respondent/Plaintiff without hearing the Petitioners/Defendants.

(vii) The Respondent/Plaintiff, it appears, filed another application on 01.02.2007 as CM Appln. No. 14 of 2007 under Order 39 Rule 1(b) and (c) read with Section 151 Code of Criminal Procedure for passing an interim order against the Petitioners /Defendants to pay the arrear of honorarium alleged to be a sum of Rs. 1,20,000/- (for the period from January 2006 to December 2006) and thereafter for regular payment of honorarium in accordance to the agreement/deeds executed dated 7.2.2005 during pendency of the main suit regularly during the pendency of the suit.

(viii) The Petitioners/Defendants submitted their objections stating that the application is barred by constructive res judicata as the said order dated 24.11.2006 had already been dismissed by the first appellate court by its order dated 28.12.2006. The Petitioners/Defendants also contended that the prayer made in the C.M. Appln. No. 14 of 2007 is similar to one made in the suit and allowing the application would amount to decreeing the suit in favour of the Respondent/Plaintiff. It was also contended that the provisions of Order 39 Rule 1 and Section 151 being a procedural provision, does not confer any substantial right upon the Respondent/Plaintiff as the three necessary ingredients of injunction viz., prima facie case, balance of convenience, and irreparable loss are all against the Respondent-Plaintiff.

(ix) The Assistant to the Deputy Commissioner has however after hearing allowed the said C.M. Appln. No. 14 of 2007 by Order dated 16.2.2007 directing that the Defendant shall deposit Rs. 1,20,000/- arrear of honorarium for the

period of January to December 2006 within two weeks from the date of the order for the disbursement to the Petitioner.

5. The Petitioners/Defendants being aggrieved by the said order dated 16.2.2007 preferred an appeal namely FAO No. 1 of 2007 before the first appellate court i.e., the Additional District Magistrate, which was disposed of by the impugned Order dated 29.03.2007, which reads as "This Misc. Appln. Registered FAO No. 1/07 is put along with the lower cases C/S No. 38/06.

Heard both the parties at length, after hearing the both parties and on careful perusal of the material on record of the lower court, and also the interim order passed by the Id. Magistrate of lower court on dt. 16.2.2007 I find no reasonable ground to interfere with the order lower court passed on dt. 16.2.2007.

However the learned Lower trial court is directed not to pass any further relief to either parties onward until final disposal of the main suit on merit.

With such order and direction this FAO No. 1/2007 filed by the Appellant is disposed off.

6. In order to deal the present revision petition it is necessary to refer some relevant provisions of Code of Civil Procedure:

115. Revision

(1) The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears--

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.]

(2) The High Court shall not, under this section vary or reverse any decree or order against which an appeal lies either to the High Court or to any court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the court except where such suit or other proceeding is stayed by the High Court.

Explanation: In this section, the expression "any case which has been decided" includes any order made, or any other deciding an issue, in the course of a suit or other proceeding." 151. Saving of inherent powers of court.

Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the court.

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 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, of 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.

7. According to Mr. Guite, learned Counsel for the Petitioners the relief given by the impugned order cannot be granted while adjudicating the application of opposite party preferred under Order 39 Rule 1 of Code of Civil Procedure. The impugned order is in the form of direction or mandamus and is not in the form of injunction. The impugned order dated 29.3.2007 has erroneously and illegally not interfered with the judgment dated 16.2.2007 passed by the Asstt. to the Deputy Commissioner, Aizawl while disposing of the application No. 14 of 2007 and has affirmed the same indirectly by way of not interfering with the direction of Asstt. to the Deputy Commissioner, Aizawl given on 16.2.2007 that the Petitioner shall deposit Rs. 1,20,000/- for the period from January to December

2006 within two weeks. According to Mr. Guite, the C.M. Appln. No. 14 of 2007 preferred by the Opposite Party under Order 39 Rule 1(b)(c) read with Section 151 CPC was for the purpose of passing interim order directing the Petitioners herein/Defendants to pay the arrear of honorarium of Rs. 1,20,000/- and thereafter regular honorarium every month in accordance to the deed/agreement dated 7.2.2005. Whereas, the Respondent/Plaintiff has mainly prayed for payment of arrear of honorarium of Rs. 1,00,000/- (from January to October 2006) i.e. for ten months and as an interim for payment of regular honorarium in the Civil Suit No. 38 of 2006: which shows prayers in both civil suit as 38/06 are different to that of C.M. Appln. No. 14 of 2007 (in Civil Suit No. 38 of 2006). For ensuring the recovery the Respondent/Plaintiff could have approached to the appropriate forum by filing suit for specific performance and relief in reference to the provisions of Specific Relief Act, 1963. Since the payment had already been stopped, therefore, grant of status quo could also not be fruitful and more so, opposite party could not show before the trial court that necessary three conditions for granting interim injunction namely, prima facie case, balance of convenience and irreparable loss were available to the opposite party/ Plaintiff. The nature and form of the impugned order dated 29.3.2007 affirming the direction of payment of arrear of honorarium granted by order dated 16.2.2007 under Order 39 Rule 1 of CPC read with Section 151 of Code of Civil Procedure, by the Asstt. to the Deputy Commissioner, Aizawl i.e. the trial court was not in consonance to the provisions of law, therefore, apparently the present revision petition is to be allowed u/s 115 of CPC treating that the Additional District Magistrate (Judicial) has failed to exercise the jurisdiction so vested in him and for the reason that Additional District Magistrate (Judicial) has also acted illegally with material irregularity and has erroneously and illegally has not been interfered in the order dated 16.2.2007 which required rectification in exercise of the appellate power.

8. In order to appreciate the meaning of injunction it is necessary to locate its meaning in different dictionaries. As per Oxford Dictionary injunction means:

An order by a court of law stating that someone must or must not do something

As per New Standard Encyclopedia:

Injunction: in-jungk shun, in law, a writ (order) of a court requiring a party to refrain from doing something he proposes to do or to stop doing what he has already started. Cases arise at law in which the ordinary legal procedure, if followed, might cause a great injury to one of the parties. For example, if Brown is about to turn aside a stream that provides water for Smith's cattle, Smith may obtain an injunction to stop the action. If Smith had to wait and bring suit for damages, his cattle might be dead before the case could be tried. The judge heard and decides the injunction case without a jury. If Brown violates the order he may be punished by the judge for contempt of court.

Formerly, injunctions were issued by chancery courts in England and by courts of

equity in the United States. Now a few states still have separate courts of law and equity but in most states the same courts administer both law and equity.

There are three kinds of injunctions. In the Brown-Smith example, the judge might issue a temporary restraining order on the application of Smith without giving notice to Brown. Then, after giving Brown a chance to present his case, the judge might either withdraw the order or issue a temporary injunction. Finally, after a full hearing attended by both Brown and Smith, the judge might either withdraw the order or issue a permanent injunction.

In the United States employers formerly obtained injunctions to curb strikes. Labor carried on a bitter campaign against this use of the writ. The Norris-Iaguardia Anti-Injunction Act of 1932 greatly restricted the use of federal court injunctions in labor dispute. Under the Taft-Hartley Act of 1947, however, the President may seek on injunction delaying for 80 days any strike that threatens the national health and safety.

As per Strouds Judicial Dictionary, Fourth Edition:

Injunction. (1) An injunction is a judgment, or Order, to do or refrain, from doing a particular thing. It is either (1) interlocutory or interim, i.e. an order until the hearing of the action or further order; or (2) perpetual, i.e. a judgment determining and concluding the right in litigation; it is also (a) restraining, i.e. when it inhibits the doing of anything; or (b) mandatory, i.e. when it commands the doing, or restoring of anything.

(2) An injunction restraining an act which is a statutory offence may be granted at the instance of the Attorney General, representing the public interest, whether the relator is a public body or not (A.G.V. Sharpe [1931] 1 Ch. 121; A-G V. Premier Line Ltd. [1932] 1 Ch. 303).

(3) Contract of personal service. Where a contract of personal service contains negative covenants the enforcement of which will not amount either to a decree of specific performance of the positive covenants of the contract or to the giving decree under which the Defendant must either remain idle or perform those positive covenants, the court will enforce those negative covenants by granting an injunction in such terms as it thinks reasonable in all the circumstances (Warner Brothers Pictures Inc. v. Nelson [1937] 1 K.B. 209, 217)(4) "Injunction" in R.S.C., Order 11, Rule 1(i) see Rosier v. Hilberry and Caroly, 94 Cp. Mandamus.

As per Black's Law Dictionary, Sixth Edition:

Injunction. A court order prohibiting some one from doing some specified act or commanding someone to undo some wrong or injury. A prohibitive, equitable remedy issued or granted by a Court at the suit of a party complainant, directed to a party Defendant in the action, or to a party made a Defendant for that purpose, forbidding the latter from doing some act which he is threatening or attempting to commit, or restraining him in the continuance thereof, such act being unjust and inequitable, injurious to the Plaintiff, and not such as can be

adequately redressed by an action at law. A judicial process operating in personam, and requiring person to whom it is directed to do or refrain from doing a particular thing. *Gainsburg V. Dodge*, 193 Ark. 473, 101 S.W. 2d 178, 180. Generally, it is a preventive and protective remedy, aimed at future acts, and is not intended to redress past wrongs. *Snyder V. Sullivan Colo.*, 705 P. 2d 510, 513. Fed. R. Civil P. 65. See also Temporary restraining order.

Interlocutory injunction. Interlocutory injunctions are those issued at any time during the pendency of the litigation for the short-term purpose of preventing irreparable injury to the Petitioner prior to the time that the court will be in a position to either grant or deny permanent relief on the merits. In accordance with their purpose, interlocutory injunctions are limited in duration to some specified length of time, or at the very outside, to the time of conclusion of the case on the merits. Within the category of interlocutory injunctions there are two distinct types which must be considered individually. The first is generally referred to as a injunction granted after the Respondent has been given notice and the opportunity to participate in a hearing on whether or not that injunction should issue. The second is generally referred to as a temporary restraining order, and differs from a preliminary injunction primarily in that it is issued ex parte, with no notice or opportunity to be heard granted to the Respondent. Temporary restraining orders supply the need for relief in those situations in which the Petitioner will suffer irreparable injury if relief is not granted immediately, and time simply does not permit either the delivery of notice or the holding of a hearing. Fed. R. Civil P. 65 See also injury (Irreparable injury), Temporary restraining order.

Mandatory injunction. One which (1) commands the Defendant to do some positive act or particular thing; (2) prohibits him from refusing (or persisting in a refusal) to do or permit some act to which the Plaintiff has a legal right; or (3) restrains the Defendant from permitting his previous wrongful act to continue operative, thus virtually compelling him to undo it.

Permanent injunction. One intended to remain in force until the final termination of the particular suit.

Perpetual injunction. As injunction which finally disposes of the suit, and is indefinite in point of time.

Preliminary injunction. An injunction granted at the institution of a suit, to restrain the Defendant from doing or continuing some act, the right to which is in dispute, and which may either be discharged or made perpetual, according to the result of the controversy as soon as the rights of the parties are determined. Fed. R. Civil P. 65.

Preventive injunction. One which prohibits the Defendant from doing a particular act commands him to refrain from it.

Prohibitory injunction. An order of a court in the form of a judgment which

directs one not to do a certain thing; sometimes called a restraining order. See. Restraining order.

Provisional injunction. Another name for a preliminary or temporary injunction or an injunction pendente lite.

Restraining order. See order;

Restraining order; Temporary restraining order.

Temporary injunction. A preliminary or provisional injunction, or one granted pendente lite; as opposed to a final or perpetual injunction. A provisional remedy to preserve subject matter of controversy pending trial. *Electronic Data Systems Corp. V. Powell*, Tex Civ App, 508 S.W. 2d 137, 139. It is one which operates until dissolved by interlocutory order or until final hearing on matter. *Brines V. Mciihaney*, Tex., 596. S.W. 2nd 519, 523. See also Temporary restraining order.

9. While dealing the scope and object of Order 39 Rule 1 and 2 of CPC it becomes clear that a stay order or an ad interim injunction is issued to maintain and preserve the status quo existing at the time of the institution of the proceedings. The injunction is not how the question ought to be investigated; but it is whether the matter should not be preserved in status quo until the question can be finally disposed of. A stay order or an order of injunction is not granted to disturb the status quo. It is no doubt granted to restore the status quo, but it is never granted to establish a new state of things different from the state which existed at the date when proceedings were instituted: *Durg Transport Co. Private Ltd. Vs. Regional Transport Authority and Others*, ; *Banappa Dyavappa v. Gurunath Krishnaji* AIR 1973 Kar 199.

10. Interim relief should not be granted in a case where it amounts to grant of final relief at the interlocutory stage: *Rasilaben Kesharbhair Parmar v. Induben Hejabhai Solanki* (1999) 2 G.C.D. 1216 (Guj.)

In respect of relief not sought in the main suit no temporary injunction can be granted; *Prem Chand Vs. Manak Chand and Others*,

11. The purpose of Order 39 CPC is to preserve and protect the interest in the property in suit and to protect the interest of the parties by preserving certain properties till final disposal of the case. It may be suit property, it may be a property which might form part of the security for any subsequent performance of a certain contract or a security for repayment of a loan or a property on which a charge has been created. If the grounds under Order 38, Rule 5 are made out then any property could also be attached under Order 38, Rule 5. But at the same time any order passed by Single Judge which remains intact, cannot be lightly interfered with simply because a party is trying to use the term "changed circumstances" which have not changed: *HIH Ltd. v. Jyoti Pvt. Ltd.* (1998) 72 Del. L.T. 696.

12. In a given case, it is the bounden duty of the Court to examine in detail, with

reference to the specific material on record, to find out whether prima facie case is made out or not; in whose favour does the balance of convenience lie; and whether the Petitioner suffers any irreparable loss if injunction is refused. The Court is not justified in granting injunction without examining the matter in detail by merely saying that prima facie case was made out apart from stating that the other two requirements were also fulfilled. *M/s. Ultra Drytech Engineering Private Limited Vs. M/s. Niraj Petro-chemicals Limited*,

13. Before a temporary interlocutory injunction can be granted, it is necessary to prove that there is going to be caused irreparable injury which cannot be properly compensated in damages: *Rajasthan State Electricity Board v. Original Mineral Industries* AIR 1994 N.O.C. 127 (Raj). Where the Plaintiff himself assessed the damages going to be caused if injunction is refused, held, this clearly showed that the damages could be assessed in terms of money and, as such there was no question of granting injunction; *State of Assam and Another Vs. M.S. Associates*,

14. An injunction of the court ought not to be an instrument which is used in nullifying the terms of a contract, agreement or undertaking which is lawfully enforceable: *Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd.*, and another,

15. No injunction restraining initiation of legal proceedings, can be granted restraining a person from initiating legal proceedings; *Cotton Corporation of India Limited Vs. United Industrial Bank Limited and Others*, however a second application for grant of a temporary injunction is not barred, it can be considered only if new facts and circumstances have subsequently emerged; *Madan Lal Khuteta Vs. Badri Narayan*,

16. Principles for the grant of temporary injunction- Before issuing a temporary injunction pending disposal of a suit, the Plaintiff has to make out, firstly, that he has got a prima facie title to the properties. Secondly, the Plaintiff must establish that he will be compensated for by damages. Thirdly, he must prove that the balance of convenience is in favour of the Plaintiffs, who are likely to suffer substantial mischief if the injunction is refused when compared to the mischief which might be caused to the Defendants if the injunction is granted. Fourthly, the status quo must be maintained. The court has to take into consideration all these points before granting a temporary injunction: *Nath Boundhavanrai v. Churamani* AIR 1969 Gau 29 . Temporary injunction--Grant of-Principles - See *Chand Sultana alias Indra Bai Vs. Khurshid Begum and Others*, ; *Secretary, Bhudan Yajna Samiti v. Mahendra Ahir* 1969 Pat. L.J.R. 577; *Hemanta Kumar v. Lilabati* AIR 1971 Ori. 34 ; *Sankara Pillai Madhavan Pillai Vs. Inez Rosario*, N.T. *Raghunathan v. All India Reporter* AIR 1971 Bom. 48 ; *Shayak Mohammad and Others Vs. Iqbal Ahmed*, ; *C.R. Das v. E.L. Manufacturers* AIR 1974 Col. 119; *Narayan v. R. Vaidyanath* AIR 1975 Kar. 117; *Khemraj v. Garg and Co.* AIR 1975 Del. 130 ; *Nawab Mir Barkat Ali Khan Vs. Nawab Zulfiquar Jah Bahadur and Others*, ; *Chandu Lal v. Municipal Corpn.* AIR 1978 Del. 174 (FB); *Miss Smita*

Agarwal and Others Vs. Nirmal Kumar Das and Others, ; Ghanashyam Das and Others Vs. Muralidhar and Others, ; Parveeb Chander v. Raj Kumar AIR 1980 P and H 217; State of Orissa and Others Vs. Orissa Oil Industries Ltd. and Others, ; K. Gangulappa Naidu and Others Vs. K. Gangi Naidu, ; Raj Narain Pratap Narain Vs. U.P. State Electricity Board, ; Ganikhan and Others Vs. Amanabai and Others, ; Gangubai Bablya Chaudhary and Others Vs. Sitaram Bhalchandra Sukhtankar and Others, ; Ramji Lal Mohinder Kumar v. Naresh Kumar AIR 1984 Del. 95; S. Sundaram Pillai and Others Vs. P. Govindaswami and Another, ; Union of India and Others Vs. Zenith Silk Mills, . Smt. Kusuma Gupta and Others Vs. Smt. Sarla Devi and Others, ; Gowrishankara Swamigalu v. Sidhaganga Mutt (1989) 2 Karn. L.J. 548; Shashi Malhotra v. Lakshman Kumar Aggarwal (1996) 3 RCR 733; Jagadish Mohanty v. Kaliprasad Singh (2000) 89 Cut. L.T. 99.

17. In a suit for permanent injunction while the Court is considering an interlocutory application, the court is not called upon to decide the real disputes between the parties. The court is called upon to see whether the party who has approached the court has a plausible case and whether there is a possibility of such case succeeding at the trial. If that test is satisfied then it is the duty of the Court to see whether the damages, the Plaintiff is likely to suffer for the action of the Defendants complained of, can be compensated in money and if so whether there is a standard for ascertaining such compensation. If such compensation can be ascertained and afforded in money then the interlocutory order of injunction should normally be refused. But it, on the other hand, the Court is of the view that such compensation cannot be ascertained and afforded in money then it is the duty of the court to see the balance of convenience and inconvenience of the parties. If the balance of convenience is in favour of grant then the court shall normally issue an interlocutory order of injunction upon undertaking of the Plaintiff to compensate the Defendant against whom the order of injunction is passed in case at the trial it is held that the Plaintiff is not entitled to such permanent injunction. On the other hand, if it is found that the balance of convenience is against passing of such order, the Court will normally refuse to pass interlocutory injunction. The aforesaid are broadly the principles on which the court acts while exercising discretion in deciding an interlocutory, application for temporary injunction made in a suit for permanent injunction. It is also the duty of the court to preserve the status quo as far as practicable, while dealing with such a matter: Gramophone Company of India Limited Vs. Shanti Films Corporation and others,

18. Even where the three well known concurrent conditions (prima facie case, balance of convenience and irreparable injury) requisite for grant of the relief exist, the Court, on the facts and in the circumstances of the case, in exercising its discretion judicially, may still refuse the relief as where there has been delay and the party applying for the relief has not come with clean hands: National Airport Authority and Others Vs. Vijaydutt, .

19. Injunction is a preventive relief and is generally granted taking note of the equities of the case and to protect the Plaintiffs right to peacefully enjoy the property in his possession: *Shamsher Vs. Rustam and Others*, .

Every party to a litigation before the Court is obliged to bring true and correct facts and all necessary documentary evidence in its possession before the Court. A party who omits to discharge its obligation can never claim relief in equity: *Veer Singh v. Udham Singh* (1999 1) 121 P&H L.R. 598 : (1999) 1 P&H L.J. 299.

20. Law is well settled that granting or refusing of a temporary injunction is covered by three well established principles: (a) whether the Petitioners have made out a prima facie case; (b) whether the balance of convenience is in their favour; and (c) whether the Petitioners will suffer irreparable injury if the temporary injunction is not granted. The parties who seek the aid of the court for injunction must show that the act complained of is in violation of his right and whether there is a fair and substantial question to be decided between the parties, and there is a bona fide contention between the parties. If such conditions are available, the relief may be granted. It is then the duty of the court to consider the materials placed on record in the matter of granting or refusing to grant temporary injunction and considering the documents, such an order can be passed. Considering a document does not mean the mere reference to it, but there must be some discussion regarding the document before coming to a conclusion: *Rev. Joseph Cherian v. Celine Thomas* (1999) 88 Cut. L.T. 604.

21. Admittedly, it is a settled principle of law that injunction or interim orders are issued not on grace or on default of any person. Interim orders are granted on the basis of the case made out prima facie in the pleadings and that in the interest of justice such interim order is necessary in order to prevent abuse of process of law to prevent wastage or to maintain the situation as on date or from recurrence of certain incident which were existing as on the date of presenting such application or at least the presentation of main application out of which the proceeding is arising. It is also to take into consideration the balance of convenience and inconvenience and other important matters, which are necessary factors for grant of interim order: *Hari Das Singh Vs. Commissioner Agra Division and Others*,

An interim order restraining the other side from doing a particular act can be granted in favour of such a claimant/Plaintiff: *Cantonment Board, Cantonment Board, Sagar Vs. Sudhanshu*, .

22. Grant of temporary injunction in exercise of inherent powers u/s 151 -The Court has powers u/s 151 to issue injunction in cases not falling within Order 39, Rules 1 and 2: *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*, . But while exercising this inherent power, the court should not overlook the statutory provision which already indicates that injunction to restrain initiation of proceeding cannot be granted and Section 41(b) of the Specific Relief Act is one such provision. And it must be remembered that inherent power of the Court

cannot be invoked to nullify or stultify a statutory provision: Cotton Corporation of India Limited Vs. United Industrial Bank Limited and Others, Wankhem Ningol Pheiroijam Ongbi Nupimacha Devi v. Kshetrimayum Kulla Singh AIR 1987 Gau. 16. Where there is a specific provision for grant of the relief sought, Courts need not resort to exercise inherent powers vested u/s 151. Thus, where a case was not made out for granting interim injunction by fulfilling the requirements of Order 39, Rule 1, held the court cannot grant temporary injunction under its inherent jurisdiction u/s 151: M/s. Ultra Drytech Engineering Private Limited Vs. M/s. Niraj Petro-chemicals Limited,

23. The Court has got power to impose conditions while granting an injunction under Order 39, Rule 2 but it does not enable the court to impose conditions while rejecting the prayer for injunction. Thus, where while dismissing the application filed under Rules 1 and 2, Order 39, such conditions are imposed, the remedy of the aggrieved party is to prefer a revision petition and not to file an appeal under Order 43: Jeevajyothi Ashrama, Sorab v. B.P. Ramamanohara (1996) 3 Karn. L.J. 213.

24. The Supreme Court in Union of India (UOI) and Others Vs. Modiluft Ltd., has held that final relief cannot be granted by an interim order. Similar view was also taken by the Supreme Court in AIR (2005) SC 328 () State of UP v. Ramsukhi Devi relying upon the earlier decision of the Supreme Court in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, State of Rajasthan and Others Vs. Swaika Properties and Another, State of U.P. v. Visheshwar Bharatbhushan Sonaji Kshirsagar (Dr.) v. Abdul Khalik Mohd. Musa Shiv Shankar and Others Vs. Board of Directors, U.P.S.R.T.C. and Another, Commissioner/Secretary to Government Health and Medical Edu. Deptt. Civil Sectt., Jammu Vs. Dr Ashok Kumar Kohli, Commissioner v. Ashok Kumar Kohli. It was clearly held in Ram Sukhi Devi (supra) that the final relief sought for cannot be granted at the initial stage by way of interim relief.

25. The opposite party has also executed a deed of agreement dated 7.2.2005 during pendency of the suit indicating the condition that the Petitioners/Defendants shall pay Rs. 10,000/- per month as honorarium to the Plaintiff/opposite party herein provided Hospital runs smoothly. The Misc. application No. 14 of 2007 was preferred in Civil Suit No. 38 of 2006 before ADC/ Magistrate First Class for payment of arrear honorarium of Rs. 1,20,000/- and payment of regular honorarium every month in reference to the agreement dated 7.2.2005. While adjudicating the injunction application under Order 39 Rule 1(b)(c) ADC/ Magistrate First Class has failed to consider that the Board of Directors of BHRC in its meeting on 31.1.2006 had decided not to continue the monthly honorarium of Rs. 10,000/- and since payment has already been stopped, therefore, by no order current payment could be maintained by passing even status quo order. While granting interim relief by order dated 16.2.2007 in Misc. Application No. 14 of 2007 a final partial substantial relief was granted in Civil Suit No. 38 of 2006 by making a direction to the Petitioners/Defendants to deposit Rs. 1,20,000/- as

arrear honorarium within two weeks from the date of the order. In the order dated 16.2.2007 affirmed (as not interfered) by the impugned order dated 29.3.2007 by Addl. District Magistrate (Judicial) the three aspects about the existence of the prima facie case, balance of convenience and irreparable loss before granting injunction were neither discussed nor analysed properly. The opposite party was not having any prima facie case and by not making payment of arrear the irreparable loss was not to be suffered by opposite party/Plaintiff.

26. In view of the above analysis following material aspects emerges--

(i) Injunction is an order by a court of law stating that someone must or must not do something.

(ii) Injunction in Law is a form of writ (order) of a court requiring a party to refrain from doing something he proposes to do or to stop doing what he has already started.

(iii) An injunction is a judgment, or Order, to do or refrain from doing a particular thing. It is either (1) interlocutory or interim, i.e. an order until the hearing of the action or further order; or (2) perpetual, i.e. a judgment determining and concluding the right in litigation; it is also (a) restraining i.e. when it inhibits the doing of anything; or (b) mandatory, i.e. when it commands the doing, or restoring of anything.

(iv) Injunction is a form of court's order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury. Interlocutory injunction. Interlocutory injunctions are those issued at any time during the pendency of the litigation for the short-term purpose of preventing irreparable injury to the Petitioner prior to the time that the court will be in a position to either grant or deny permanent relief on the merits. Mandatory injunction One which (1) commands the Defendant to do some positive act or particular thing; (2) prohibits him from refusing (or persisting in a refusal) to do or permit some act to which the Plaintiff has a legal right; or (3) restrains the Defendant from permitting his previous wrongful act to continue operative, thus virtually compelling him to undo it.

(v) A stay order or an ad interim injunction is issued to maintain and preserve the status quo existing at the time of the institution of the proceedings. The injunction is made, is not how the question ought to be investigated; but it is whether the matter should not be preserved in status quo until the question can be finally disposed of. A stay order or an order of injunction is not granted to disturb the status quo. It is no doubt granted to restore the status quo, but it is never granted to establish a new state of things different from the state which existed at the date when proceedings were instituted.

(vi) Interim relief should not be granted in a case where it amounts to grant of final relief at the interlocutory stage.

(vii) The purpose of Order 39 CPC is to preserve and protect the interest in the

property in suit and to protect the interest of the parties by preserving certain properties till final disposal of the case.

(viii) Before a temporary interlocutory injunction can be granted, it is necessary to prove that there is going to be caused irreparable injury which cannot be property compensated in damages.

(ix) An injunction of the court ought not to be an instrument which is used in nullifying the terms of a contract, agreement or undertaking which is lawfully enforceable.

(x) Before issuing a temporary injunction pending disposal of a suit, the Plaintiff has to make out, firstly, that he has got a prima facie title to the properties. Secondly, the Plaintiff must establish that he will compensated for by damages. Thirdly, he must prove that the balance of convenience is in favour of the Plaintiffs, who are likely to suffer substantial mischief if the injunction is refused when compared to the mischief which might be caused to the Defendants if the injunction is granted. Fourthly, the status quo must be maintained. The court has to take into consideration all these points before granting a temporary injunction.

27. In my considered view the Addl. District Magistrate (Judicial) by order dated 29.3.2007 has erroneously and illegally not interfered with the order dated 16.2.2007 passed by the ADC/Magistrate First Class. The impugned order of the Additional District Magistrate (Judicial) has been suffering from the selected legal position of law. The Additional District Magistrate (Judicial) has erroneously given direction in the order dated 29.3.2007 not to pass any further relief to either parties until final disposal of the main suit on merits. The Addl. District Magistrate (Judicial) has failed to exercise his jurisdiction so vested and has illegally and erroneously exercised his jurisdiction vested in him, therefore, an apparent case has been made out where this Court is inclined to exercise its revisional power u/s 115 of CPC to interfere with the impugned order dated 29.3.2007.

28. In view of the above analysis and observations the impugned order dated 29.3.2007 is not legally sustainable, therefore, it is set aside. Accordingly present Civil Revision Petition is allowed.

No order as to cost.