

Specific Relief Act, 1963

LECTURE – 15

Notes - Perpetual injunctions

Before starting perpetual injunctions, we shall cover Sections 36 and 37 of the Act.

Section 36. Preventive relief how granted

Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual.

This section says that preventive relief is granted at the discretion of the court. This discretion is exercised on judicial principles, some of which have been discussed in the previous lecture. This section also tells us that two types of injunctions are issued, temporary and perpetual and they have been defined in the succeeding section Section 37.

Section 37. Temporary and perpetual injunctions

(1) Temporary injunctions are such as are to continue until a specific time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908 (5 of 1908).

(2) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

As we have seen in detail in the last class, Section 37(1) talks about temporary injunctions. The procedure for granting temporary injunction is given in Rule 1 and 2 of Order 39 of CPC, 1908.

Section 37(2) defines perpetual injunctions.

Perpetual Injunctions: Introduction

According to Section 37(2), perpetual injunction is granted to the plaintiff in a decree which is made upon the merits of the suit unlike temporary injunctions which are in the form of order made on a prima facie view. This injunction permanently applies to the defendants and is usually

made after the final hearing of the case is done. Unlike temporary injunction, it is governed by the Specific Relief Act.

Consequence of perpetual injunction

A permanent injunction finally decides the rights of parties. The defendant is perpetually enjoined from commission of an act or from asserting any right which is contrary to the rights of the plaintiff.

When granted

Section 38: Perpetual injunction when granted

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

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

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

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

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

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

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

Section 38 tells about 3 situations where the court may exercise its discretion.

Section 38(1) says that a perpetual injunction will be granted to the plaintiff if there is an obligation existing in his favor that is threatened to be breached, either by implication or expressly. The word ‘obligation’ here means not only contractual obligations, but also obligations arising from trusts, torts or other legal obligations. For example, A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C who carry out business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

Section 38(2) expressly states that when such an obligation arises from a contract, the court shall be guided by principles and rules given in connection with specific performance of contracts. On reading Section 41(e) alongwith 37(2), we see that a perpetual injunction shall only be granted in cases where the contract is capable of specific performance.

This section is also to be read with the context of Section 42, which states that

Section 42: Injunction to provide negative agreement

Notwithstanding anything contained in clause (e) of section 41, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement:

Provided that the plaintiff has not failed to perform the contract so far as it is binding on him.

It says that in a contract containing both negative and positive parts of performance, the fact that the positive part of performance may not be capable of being specifically enforced does not stop the court from granting an injunction to the negative part of performance, if the plaintiff has performed his part of the contract. For example, A contracts to sing at B's club for one year on every Saturday and also to not sing anywhere on those Saturdays. Here the part of the contract where he has to sing (positive part) cannot be specifically enforced, but to stop him from performing anywhere else (negative part) can be enforced, given that the B has performed his part of the contract.

Section 38(3) is concerned with situations where the defendant invades or threatens to invade the plaintiff's right to or enjoyment of property, the court may grant permanent injunction in the following cases:-

38(3)(a) says that when the trustee of the property for the plaintiff invades/ threatens to invade the plaintiff's right to enjoy his property, a permanent injunction can be granted. For example, A who is the advocate of B and thus a trustee of the information he received as attorney-client threatens B to disclose his medical history to a stranger. B may sue for an injunction to restrain A from disclosing such information.

38(3)(b) talks about a situation where the damages cannot be determined as there exist no standards to determine the actual damage caused or will be caused by such invasion such as in

reputation and intellectual property rights. For example, A installed a diesel generator in front of B's land and shop, without permissions, causing hindrance and interference by noise, smoke and other nuisances. Here the total damages caused to B cannot be measured through any standard, and only an injunction shall provide a solution.

In 38(3)(c), when the invasion of the plaintiff's rights is such that compensation in money cannot provide adequate relief. For example, when the work of an artist is copied, reproduced and sold by unauthorized sellers, it is not only the cost of the items, but the artistic value of those things are being invaded and damaged and such damage can be prevented only through an injunction.

Under 38(3)(d), injunction can also be granted to prevent a multiplicity of proceedings. For example, in an aforementioned example, where A was polluting the air of a locality such as to materially interfere with the normal conduct of lives of people in that locality, any member of that locality may sue to restrain the pollution. The court may grant an injunction under 38(3)(d) to provide multiplicity of proceedings.

Principles governing the grant of perpetual injunction

The grant of such relief which is discretionary is equitable in nature. The court shall attempt to restore the *status quo ante* of the parties and is only granted when it is the last or the only way of restoring a right. The person seeking such an injunction should always come with clean hands.

Mandatory Injunction

Section 39. Mandatory Injunctions

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

A mandatory injunction is a court order to protect an obligation from being breached, compels the defendant to do certain acts to prevent the breach of an obligation. Thus it is an injunction which commands the defendant to do something. For example, A builds his house of four stories in an area where only three stories are legally allowed to be built to prevent interference into other right of enjoyment. The court may compel him to demolish the fourth floor in order to bring the property in line with the laws.

The elements taken into consideration for imposition of this section is :-

- i. to prevent breach of an obligation;
- ii. it is necessary to compel performance of certain acts; and
- iii. the courts must be capable of enforcing such acts.

Like temporary injunctions, the principles governing its grant consist of having a prima facie case, the favor of balance of convenience and irreparable injury being caused or a threat of such injury getting caused.

In the case of *Bhagwan Kaur v Chetan Singh (1987)*, the SC said that the court has to first determine what acts are necessary to prevent a breach of the obligation. And the court also has to look at whether the nature of the requisite act is such which the court is capable of enforcing.

Section 40. Damages in lieu of, or in addition to injunction

(1) The plaintiff in a suit for perpetual injunction under section 38, or mandatory injunction under section 39, may claim damages either in addition to, or in substitution for, such injunction and the court may, if it thinks fit, award such damages.

(2) No relief for damages shall be granted under this section unless the plaintiff has claimed such relief in his plaint:

Provided that where no such damages have been claimed in the plaint, the court shall, at any stage of the proceedings, allow the plaintiff to amend the plaint on such terms as may be just for including such claim.

(3) The dismissal of a suit to prevent the breach of an obligation existing in favour of the plaintiff shall bar his right to sue for damages for such breach.

This section provides that the plaintiff in a suit for perpetual injunction under Section 38, or mandatory injunction under Section 39, may claim damages either in addition to, or in substitution for such injunction, and the court may, if it thinks fit, award such damages. The plaintiff has specifically to include in his plaint a claim for damages also. If he has not done so, he may seek permission of the court for the amendment of his pleadings.

But under Section 40(3), where a suit in which damages were not claimed is dismissed, a subsequent separate suit for damages would not lie. The court can award damages in lieu of injunction where the injury is threatened though not yet caused.

Section 41. Injunction when refused

An injunction cannot be granted--

(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

¹*[(ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject]matter of such project.*

(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to be the assistance of the court;

(j) when the plaintiff has no personal interest in the matter.

The bare act of this section clears up much and further explanations are not much needed. If one cannot remember all of the defences, learn at least 5 of these refusals, especially significant ones like (e) and (ha).

This section lays down circumstances where perpetual injunction shall be refused by the court, i.e. the defences that can be raised in a suit of perpetual injunction. These sections come from public policy considerations and various case laws.